IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered) **Re: Docket No. 1192**

DECLARATION OF METTA MACMILLAN-HUGHES KC IN SUPPORT OF THE MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-U.S. LAW AND OTHER ISSUES

I, Metta MacMillan-Hughes KC, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a King's Counsel, Attorney at Law and a partner of Lennox Paton. Lennox Paton is a leading offshore, full service commercial law firm providing services to clients in relation to Bahamian law..

2. I was admitted to practice at the Bar of England and Wales in 1984, to The Bahamas Bar in 1986 and as Queen's Counsel in February, 2022. I enjoy a highly successful commercial, civil and international litigation practice in insolvency, fraud claims and asset tracing, proceeds of crime litigation, insurance, tax and HNW family law proceedings. I have a particular interest in the development of the law and novel questions of law. I am currently licensed to practice law in The Bahamas and am a member in good standing.

3. I respectfully submit this declaration (the "**Declaration**") in support of the *Motion*

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX.

of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay does not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in The Supreme Court of The Commonwealth of The Bahamas Seeking Resolution of Non-U.S. Law and Other Issues (the "**Motion**"),[2] filed concurrently herewith.

4. The statements made in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by the professionals in these cases, or my opinion based upon my experience, knowledge, and information concerning multi-jurisdictional disputes, Bahamian law, English, and Antiguan law. I declare that the following statements are true to the best of my knowledge, information and belief formed after a reasonable inquiry under the circumstances.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the JPLs in the above-captioned chapter 11 cases. If called as a witness I would testify truthfully to the matters stated in this Declaration.

A. The Non-U.S. Law Customer Issues

6. The Application sets out several novel questions that are governed by the laws of England, Antigua & Barbuda ("**Antigua**"), and The Bahamas. Greaves Decl. Exhibit A. The governing law of the terms of the 2019 Terms of Service is Antiguan law. Greaves Decl. Exhibit C (2019 Terms of Service) ¶ 27. The governing law of the 2022 Terms of Service is English Law. Greaves Decl. Exhibit D (2022 Terms of Service) ¶ 38.11. In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("**IBC**") in liquidation. Trust issues are also likely to be

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

governed by Bahamian, English or Antiguan law, which is also a question that the Bahamas Court will need to and has the capability to adjudicate.

B. The Bahamian Legal System

7. The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. The legal systems of both The Bahamas and Antigua are based on English common law.

8. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom.

9. The Bahamas Court is familiar with the English and Commonwealth common law applicable to the Non-U.S. Law Customer Issues set out in the Application and, where applicable regularly applies such common law in its determinations.

10. The Non-U.S. Law Customer Issues contemplated by the Application involve complex and novel issues of English, Antiguan, or Bahamian law relating to cryptocurrency, some of which I believe no court in the Commonwealth has previously adjudicated on. Accordingly, I anticipate that the determination of these issues are likely to generate appeals

therefrom, which ultimately would, subject to such permission as is required, be heard by the Privy Council.

C. Procedure in the Bahamas Court After Filing the Application

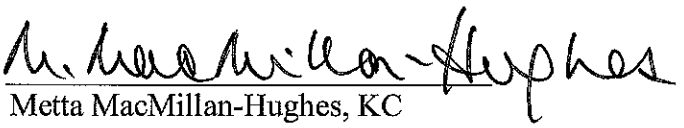
11. When the JPLs file the Application, the Bahamas Court will schedule a Case Management Hearing the purpose of which will be to schedule a hearing date and to give directions. I am informed by the JPLs that all interested parties/classes of parties having an interest in the application (including customers who have already submitted claims in FTX's Digital's Claims Portal) will have the right to appear on the Case Management hearing and on the Application and to be heard individually or in a representative capacity.

12. It is my understanding that the Bahamas Court has facilitated swift hearings in this matter to date and expedited its decisions therein and will continue to do so. While it is difficult to say with certainty how long it will take the Court to rule, the return date for FTX Digital's winding up petition is August 10, 2023, and I would expect the Bahamas Court to render its decision on the various issues raised in the Application before then.

13. The laws of The Bahamas provide for a robust appeal process. After the Bahamas Court rules, all interested parties, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) from the decision to the Bahamian Court of Appeal and ultimately to the Privy Council.

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

Dated: March 29, 2023



Metta MacMillan-Hughes, KC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date:** **April 12, 2023 1:00 p.m.** **Obj. Deadline:** **April 5, 2023 4:00 p.m.**

MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided here. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

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MISCELLANEOUS

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, the Joint Provisional Liquidators and Foreign Representatives (the "**the JPLs**") of FTX Digital Markets Ltd. ("**FTX Digital**") submit this motion (the "**Motion**") seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court. The JPLs request that this Court enter the Order, substantially in the form attached hereto as **Exhibit 1.** In support of the Motion, the JPLs rely upon and incorporate by reference the *Declaration of Metta MacMillan-Hughes KC* ("**MacMillan-Hughes Declaration**") and the *Declaration of Peter Greaves* ("**Greaves Declaration**") filed simultaneously herewith. A copy of the Application is attached as Exhibit A-1 to the Greaves Declaration.

PRELIMINARY STATEMENT

1. On November 10, 2022 (the day before these Chapter 11 Cases were filed), FTX Digital became a debtor in provisional liquidation under the control and supervision of the Bahamas Court (the "**Provisional Liquidation**"). On February 15, 2023, this Court recognized FTX Digital's Provisional Liquidation as the "foreign main proceeding" and the JPLs as the duly appointed "foreign representatives" of the FTX Digital estate in the United States. *See* Case No 22-11217, Order Granting Recognition, Docket No. 129. In connection with that recognition, this Court granted, among other things, "all relief and protection" afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, including but not limited to section 362 of the Code.

2. In their now-recognized Provisional Liquidation, the JPLs are tasked with, among other duties, the duty to maintain the value of the assets of FTX Digital for the benefit of all of

FTX Digital's customers and creditors. Of course, given the admitted "complete absence of trustworthy financial information" for the FTX enterprise, determining which assets and which creditors map to which FTX entity is far from an easy task. *Declaration of John J. Ray III in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] ("**First Day Declaration**") ¶ 5. Thus, from the outset of their appointments, the JPLs have actively sought (i) to identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors, (ii) to determine the legal relationship between FTX Digital and those who are identified as such, and (iii) to recover assets for all FTX Digital's stakeholders to be distributed in accordance with Bahamian law and procedure. Greaves Decl. ¶ 8. These issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors, (the "**Non-U.S. Law Customer Issues**"), are highly complex and turn on key questions of the laws of the Bahamas, Antigua & Barbuda ("**Antigua**") and England. Indeed, the Provisional Liquidation cannot materially progress further unless the Non-U.S. Law Customer Issues are resolved.

3. To that end, the JPLs now seek to file the Application in the Bahamas Court to provide the Bahamas Court with the predicate jurisdiction to answer those Non-U.S. Law Customer Issues necessary to advance FTX Digital's Provisional Liquidation. Because none involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs believe these issues are most efficiently resolved by the Bahamas Court, which routinely considers and applies the Non-U.S. laws at issue. But, the issue of exactly which court is the best court to decide exactly what question is an issue for another day. For now, the JPLs seek only to invoke the jurisdiction of the Bahamas Court to allow for the process of cross-border judicial coordination and resolution to unfold.

4. Importantly, the answers to the Non-U.S. Law Customer Issues are not monolithic. Certain customers and accountholders of the FTX enterprise were indisputably FTX Digital's customers, as the U.S. Debtors admitted in their first day hearing. *See, Hr'g Tr. November 22, 2022*, 26:13-18. ("[A]pproximately 6 percent [of International Customers] were customers of FTX Digital Markets Limited, the Bahamian entity that is under the jurisdiction of the joint provisional liquidators.").[2] Certain other customers of the FTX enterprise might be accountholders or customers of FTX Trading Ltd. ("**FTX Trading**"), which is a U.S. Debtor before this Court. The ultimate legal question is how to sort the entire FTX international account holder and customer constituency – do they map to FTX Digital, to FTX Trading, or to both? But the question at bar is not even who will decide those issues but how we will go about deciding who will decide.

5. In accordance with the court-approved cooperation agreement between the JPLs and the U.S. Debtors (the "**Cooperation Agreement**"),[3] the JPLs sought for months to jointly tee up that issue with the U.S. Debtors. Having had no engagement on the topic, the JPLs sent the U.S. Debtors' counsel a draft of the Application on March 9, 2023 (*see* Greaves Decl. Ex. E.) They then held a telephonic conference with Mr. Ray and his counsel on March 15 in an attempt to discuss a cooperative framework for resolution to all the Non-U.S. Law Customer Issues, in accordance with this Court's Local Rules and the Cooperation Agreement. By these efforts, the JPLs intended to frame a process, described more fully below, in which the two courts with uncontested jurisdiction over the issues – this Court and the Bahamas Court – can resolve which

[2] For the avoidance of doubt, and as discussed further below, the JPLs do not agree that only 6% of the International Customers are customers of FTX Digital.

[3] *See* Settlement And Cooperation Agreement dated January 6, 2023, Case No. 22-11068, Docket No. 402, Exhibit 1.

questions would be addressed in which court, as is common practice in cross-border insolvencies like these.

6. The reaction of the U.S. Debtors to that concept has been, regrettably, frosty. During the meet and confer, they asserted that the mere filing of the Application in the Bahamas would be viewed as a wilful breach of FTX Trading's automatic stay and a material breach of the Cooperation Agreement, both of which would entitle the U.S. Debtors to relief in this Court. At the same time, the U.S. Debtors asserted that (1) none of the Non-U.S. Law Customer Issues could or should ever be litigated, given that in their view the FTX enterprise operated as one economic entity and (2) any litigation over the Non-U.S. Law Customer Issues would be so severely value-destructive that it would "torpedo" the U.S. cases. Days later, the U.S. Debtors immediately made an abrupt unexplained about-face on both of these points and, without ever having had a discussion with the JPLs on the topic, filed an adversary proceeding against FTX Digital, each of the JPLs, and John Does 1-20 (the "**Adversary Proceeding**"). In that Adversary Proceeding, the U.S. Debtors allege (without any specificity) that the creation and entire operation of the FTX Digital estate was an intentionally fraudulent scheme and that therefore, neither the recognized JPLs nor the Bahamas Court in the recognized foreign main proceeding should ever be entitled to any deference, comity, or indeed good standing in this Court. Adv. Pro. No. 23-50145 (JTD). The U.S. Debtors' campaign to disenfranchise the JPLs and the Bahamas Court needs to stop.

7. To be clear, the filing of the Adversary Proceeding was made in direct violation of the Cooperation Agreement and FTX Digital's own automatic stay which came into effect when this Court issued FTX Digital's recognition order. The JPLs will address the consequences of the U.S Debtors' breaches in subsequent pleadings. But for now, and as discussed below, the U.S.

Debtors, in advancing the most un-comitous of agendas in their own cases, seriously misunderstand the extent of section 362 of the Code.

8. ***First***, as set forth in Section I, *infra*, the filing of the Application is merely the expected predicate for any cooperation between this Court and the Bahamas Court regarding the resolution of Non-U.S. Law Customer Issues. Far from portending doom, as the U.S. Debtors have decried, the filing of the Application only begins the legal proceedings in the Bahamas so that this Court and the Bahamas Court may then start to coordinate on deciding legal issues critical to both FTX Digital and FTX Trading's respective proceedings, if agreeable to both Courts. A subsequent comprehensive protocol may then be adopted which will allow for a coordinated claims-distribution process to achieve the goals of both the JPLs and the U.S. Debtors consistent with how the two courts decide. In all cases, both courts will be involved in the restructuring of the FTX enterprise, likely for years to come, so establishing an initial judicial protocol to coordinate between the proceedings (once the Bahamian Application is filed) is necessary if only to manage costs that are already spiralling out of control and to ensure judicial efficiency.

9. ***Second,*** as set forth in Section II, *infra*, the automatic stay in the Chapter 11 Case of FTX Trading does not apply to the filing of the Application. While section 362 is broad, it does not reach so far as to ban the recognized JPLs from asking their own court, which oversees their own recognized foreign main proceeding for guidance on issues central to their insolvency process. This is exactly what the JPLs are seeking to do by the Application – to invoke the jurisdiction of the Bahamas Court, which has the control and supervision of the JPLs and the Provisional Liquidation, to determine the issues of (a) whether the contracts entered into by "FTX customers" using the FTX International Platform prior to the U.S. Debtors' petition date, were novated from FTX Trading to FTX Digital, (b) whether these customers therefore migrated to FTX Digital;

(c) whether digital assets or fiat transferred by customers of the FTX International Platform or presently held in the name of FTX Digital were virtual assets or fiat of FTX Digital in law and, if so, (d) whether such digital assets or fiat are held by FTX Digital in trust for the benefit of its customers, and (e) who is the counterparty in respect of perpetual futures contracts. That's it. None of these issues are deserving of the U.S. Debtors' histrionic allegations that the JPLs' views are "baseless" and only are being interposed to serve "fiduciaries with no constituency but themselves." Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 3.

10. ***Third***, as discussed in Section III, *infra*, even if the U.S. automatic stay were found to apply to bar the JPLs' seeking to determine for whom they serve as fiduciaries, the Court should lift the stay in the Chapter 11 Cases to allow the JPLs to file the Application and invoke the jurisdiction of the Bahamas Court. There is no legitimate reason for the U.S. Debtors to prevent the Bahamas Court from ever obtaining jurisdiction over any of the threshold Non-U.S. Law Customer Issues, particularly while the U.S. Debtors are spending tens of millions of dollars a month on professionals based on the untested legal assumption that the money that they are spending is benefitting their own customers. In short, lifting the stay would allow the Bahamas Court presiding over the Provisional Liquidation, which regularly considers similar issues of English, Antiguan, and Bahamian law, to begin to address fundamental questions in a timely and efficient manner to the benefit of all stakeholders, without impinging on this Court's jurisdiction over the U.S. Debtors' cases.

11. When one moves past the inevitable and unfortunate rhetoric that has emanated (and will presumably continue to emanate) from the U.S. Debtors' counsel in New York, the U.S. Debtors cannot possibly be prejudiced by the Bahamas Court answering any of the Non-U.S. Law Customer Issues. It is the only court which has both the U.S. Debtors and FTX Digital in

proceedings before it and which is familiar with the applicable law. By contrast, the FTX Digital estate and the JPLs would be significantly prejudiced if this Court were to maintain a stay (to the extent it even applies), effectively stopping FTX Digital's Provisional Liquidation until the JPLs learn from this Court the identity of their own creditors or their own estate's assets via application of non-U.S. law in a cumbersome, foreign-law-expert-driven process. Plainly, considerations of comity and judicial economy support lifting the stay by allowing the key issues of English, Antiguan, or Bahamian law to be resolved by the court that regularly applies those substantive laws particularly where its rulings will have far-reaching implications for bankruptcies of cryptocurrency companies across the entire Commonwealth.

12. ***Finally***, and contrary to the U.S. Debtors' threats, the Cooperation Agreement does not prevent the JPLs from advancing the Provisional Liquidation of FTX Digital by submitting the Application to the Bahamas Court. On the contrary, it expressly identifies and prescribes a known, disclosed dispute over customer mapping. Three months ago, at the first day hearing, counsel for the U.S. Debtors represented to the Court that (1) "94% of the customers on the FTX international platform" were customers of FTX Trading Limited; (2) the remaining 6% were customers of FTX Digital, and (3) while FTX Trading "planned" to migrate its customers to the Bahamian debtor FTX Digital, it failed to do so prior to filing. *Hr'g Tr. November 22, 2022*, 26:13-27:1. At that same hearing, FTX Digital's JPLs flagged for this Court that they did not agree with the U.S. Debtors' factual assertions regarding the migration. *Id.* 57:3-8.[4] With those positions staked out,

[4] Noting the problem of non-engagement, the JPLs raised the customer migration issue again on February 15, 2023, at the hearing about the recognition of FTX Digital's Provisional Liquidation as FTX Digital's foreign main proceeding. *Hr'g Tr. February 15, 2023*, 27:25-28:7 (noting that "determining whether customers were customers of U.S. debtors or Digital is going to be critical to any distribution scheme . . . [And that] . . . There are unresolved legal and factual issues as to the nature of the customers' deposits whether they're held in trust, [and] whether they're general unsecured claims . . . ."). Counsel for the U.S. Debtors acknowledged that, "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues . . . ." about which the parties have a live dispute. *See id.* 30:10-24 ("And so, the

the Cooperation Agreement expressly provides that the parties "will work together and in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute are conducted as efficiently as possible." Cooperation Agreement ¶ 11. For months, the JPLs, through counsel, in good faith, sought to engage the U.S. Debtors to address an efficient legal mechanism for resolving the Non-U.S. Law Customer Issues. The U.S. Debtors have never actually engaged, and instead have simply proceeded to administer their cases and expend material resources as if no accountholder or customer ever migrated, ultimately initiating a litigation in breach of FTX Digital's chapter 15 stay and the Cooperation Agreement.

13. In sum, the JPLs submit that the proper procedure here, involving two affiliated debtor estates in separate bankruptcy proceedings in two jurisdictions both of whom need intervention to resolve common legal and factual issues affecting the proceedings, is for the respective debtors to invoke the jurisdiction of each of their courts and have the two courts resolve which court will answer which issues under which procedures. It is not, as the U.S. Debtors posit, to simply have this Court ignore all concepts of comity based on veiled insinuations that the JPLs and their Bahamas Court cannot be trusted with interpreting non-U.S. laws in a proceeding that this Court has already recognized as legitimate.

14. The JPLs therefore ask this Court to declare that the automatic stay does not apply to the Application, or, alternatively, to lift the stay and allow the JPLs to file the Application in The Bahamas without prejudice to entry of a judicial protocol whereby the two involved courts –

statement that Mr. Shore has made in that regard are statements that the U.S. debtors reserve all their rights on and, frankly, disagree with many of them.").

the U.S. and The Bahamas – jointly and collaboratively determine which court will address which of the many Non-U.S. Law Customer Issues that are framed below.

JURISDICTION, VENUE, AND PREDICATES FOR RELIEF

15. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b)(2).

16. Under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the JPLs consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

17. Venue in this district for this proceeding and for this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

18. The statutory predicates for this relief are 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001, and Rule 4001-1 of the Local Rules.

BACKGROUND

19. By the Application, the JPLs seek to invoke the jurisdiction of the Bahamas Court to obtain directions as to the Non-U.S. Law Customer Issues. We set forth below those facts most relevant to the Application in particular to make clear just why the Non-U.S. Law Customer Issues are so important for FTX Digital's Provisional Liquidation and just why the Bahamas Court must be involved.

A. History of the FTX International Platform

20. FTX Trading was incorporated on April 2, 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Greaves Decl. ¶ 9. Immediately

following its formation, FTX Trading was headquartered, along with the rest of the FTX group of companies ("**FTX Group**"), in Hong Kong, China. *Id.* The FTX International Platform never carried on any business in a market served by FTX U.S. Greaves Decl. ¶ 11.

21. Initially, FTX Trading was responsible for running FTX's international digital asset exchange platform — the platform through which FTX did business with somewhere between 2.5 million to upwards of 7.4 million customers, all located outside the United States ("**International Customers**"). Greaves Decl. ¶ 10. U.S. persons were not permitted to trade on FTX.com, and therefore the JPLs believe that none of the customers affected by the Application are U.S. citizens.[5] Greaves Decl. ¶ 11. So, again, the Application does not affect the rights of any customer of FTX who was bound by a customer agreement governed by U.S. law.

22. At first, most of the International Customers entered into contracts with FTX Trading accepting FTX Trading's terms of service (the "**2019 Terms of Service**"). Greaves Decl. Exhibit C. Antiguan law governs the 2019 Terms of Service.[6] 2019 Terms of Service ¶ 27.

23. The migration of International Customers from FTX Trading was a direct product of the shifting regulatory environment facing FTX. As the U.S. Debtors' counsel stated at the first day hearings, "[i]n November of 2020, the Bahamas passes the DARE Act, a digital assets act, which is intended to encourage the relocation of crypto businesses to the Bahamas. In July of 2021, FTX Digital Markets, the Bahamian single debtor, is formed. And in September of 2021,

[5] *See* Wall Street Journal, 'This Company Was Uniquely Positioned to Fail:' FTX Group CEO John Ray Testimony, YOUTUBE, at 21:25-22:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s. ("**Ray Testimony**"); *see also* First Day Declaration ¶ 33 ("The FTX.com platform is not available to U.S. Users").

[6] As discussed further below, Antigua, like the Bahamas, is a legal system based on the English system, with the ultimate appeal court being the Judicial Committee of the Privy Council consisting of a five-judge panel of justices of the Supreme Court of the United Kingdom.

Mr. Bankman-Fried announces that FTX Digital Markets is going to be registered with the Securities Commission of the Bahamas."). *Hr'g Tr. November 22, 2022*, 23:10-17. To explain further, at FTX's inception, no jurisdiction had a sufficiently regulated exchange system for the sought-after institutional funds that FTX's founders wished to attract. Greaves Decl. ¶ 10. Then, on December 14, 2020, the Commonwealth of The Bahamas enacted a licensing and regulatory regime for the digital asset industry pursuant to the Digital Assets and Registered Exchanges Act of 2020 ("**DARE Act**"). Greaves Decl. ¶ 12.

24. Following the enactment of the DARE Act, the FTX Group openly moved the headquarters of its business operations from Hong Kong to The Bahamas. Greaves Decl. ¶¶ 12-14. Up until the filing of the Adversary Proceeding, there was never any insinuation that the movement of the FTX enterprise to The Bahamas was anything other than a legitimate attempt to take advantage of a new regulatory scheme. Indeed, that movement was from a market that was largely unregulated as to virtual assets (Hong Kong) to one with a detailed regulatory regime (The Bahamas).

25. By July 22, 2021, FTX Digital had been incorporated in the Bahamas. Greaves Decl. ¶ 12. That same month, at least 38 individuals, including the co-founders, senior management, and key employees from entities that employed FTX International Platform employees started the transition to move from Hong Kong to The Bahamas and their employment contracts were transferred to FTX Digital. Greaves Decl. ¶ 14. Before the appointment of the JPLs, FTX Digital employed 83 individuals, most of whom resided in The Bahamas. *Id.* It was suggested that 700 FTX employees would eventually work and live in The Bahamas.[7]

[7] *See* Neil Hartnell, *FTX to hire more than 100 Bahamians for Crypto Work*, The Tribune (October 19, 2022) ("**Bahamas Tribune Article**").

26. In August 2021, more than a year prior to the FTX bankruptcies, FTX Digital prepared a document called "FTX Digital Markets Limited Customer Migration Plan" ("**Migration Plan**") approved by FTX Digital's then-CEO, Ryan Salame, stating an objective "*to migrate customers to its [i.e. FTX Digital's] business from FTX* [Trading]." Greaves Decl. Ex. B.

27. The Migration Plan envisioned that users of the FTX international exchange platform (the "**FTX International Platform**") would accept new terms of service, and that the migration would be complete by 2023, with all "institutional" users being migrated by Q2 2022. Migration Plan at p 5. The Migration Plan's staged transfer of International Customers started with high volume users and ended with lower volume users. *Id*. High volume institutional users were to be migrated under the Migration Plan by Q1 2022, other institutional users by Q2 2022, "low risk" (i.e., users with low know your customer ("KYC") risk profiles) individual users by Q3 2022, and "medium risk" and "high risk" individual users by Q4 2022 and Q1 2023, respectively. *Id*. Explicit in the Migration Plan is that users' entire experience would be controlled and overseen by FTX Digital. *Id.* ("The ultimate objective is a ***smooth transition from a user experience perspective***. Front end and back end systems ***should also reflect a shift of activity to FDM as smoothly as possible***, subject to regulatory considerations.") (emphasis added).[8]

[8] *See id.* at p 4 ("The CEO and CO will engage with FTX customer support and marketing in order to ensure both FTX and FDM are aligned on the transition, from messaging to the operational execution."); *id.* at p 4-5 ("Customers who will be migrated from FTX to FDM will be required to accept new terms of service and the sharing of information from FTX to FDM prior to onboarding. As the migration commences, customers will be notified of the change and will be given a period of 90 days to raise any queries, comments, or concerns to the centralised customer support team, before accepting the new terms of service and sharing of information or withdrawing their funds. If customers do not actively accept the new terms of service or the sharing of information within 90 days and do not remove all of their funds, they will be assumed to have accepted the new terms of service and be migrated."); *id.* at p 4("This policy outlines FDM's approach to the migration of customers from FTX Trading Limited (FTX). In developing this policy, FDM has considered the operational, technical and regulatory aspects of its approach to the migration.").

28. On September 10, 2021, in advance of the Migration Plan, FTX Digital was registered as a digital asset business under the DARE Act, becoming the only FTX Group entity regulated to run the FTX International Platform for most of the products on the platform. Greaves Decl.¶ 15. FTX Digital remains the only FTX entity that was ever licensed as such. *Id.* ¶ 12. By September 24, 2021, FTX Trading officially confirmed that it had moved its headquarters from Hong Kong to the Bahamas.[9]

29. A month later, The Bahamas Tribune reported on the FTX Group's expansive, long term plans to center its enterprise in The Bahamas. Bahamas Tribune Article, *supra note* 7. The Tribune reported that FTX's headquarters would be located on a "4.95 acre site…will feature two boutique hotel buildings" and that "[o]ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'." *Id.* It further announced that, "Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025." *Id.*

30. Between November 2021 and June 2022, FTX Digital opened bank accounts in its name ("**FTX Digital Accounts**") that were used to receive and send fiat currency from and to International Customers. Greaves Decl. ¶ 17. Starting in January 2022, it was clear that International Customers were using the FTX Digital Accounts to deposit and withdraw fiat to and from their accounts on the International Platform. *Id.* From January 20, 2022 through November 12, 2022, the FTX Digital Accounts maintained in FTX Digital's name had receipts of $13.4 billion

[9] Nelson Wang, *FTX Moves Headquarters From Hong Kong to Bahamas*, Coindesk (Sept. 27, 2021), https://www.coindesk.com/business/2021/09/24/ftx-moves-headquarters-from-hong-kong-to-bahamas-report/.

and outflows of the same amount. *Id*. From January 20, 2022 through October 31, 2022, the institutional International Customer account in FTX Digital's name had receipts of $9.2 billion and withdrawals of $8.9 billion. *Id*.

31. On May 13, 2022, six months before any FTX bankruptcy, new International Customer terms of service ("**2022 Terms of Service**") were uploaded to the FTX.com site. Greaves Decl. Ex. D. The governing law of the 2022 Terms of Service is English law. 2022 Terms of Service ¶ 38.11. Customers' acceptance of those terms – like many terms of service in a digital age – were automatic upon use. By logging into his, her or its account and using any of the services on the FTX International Platform, an International Customer would be deemed to accept the 2022 Terms of Service. *Id.* ¶ 22.1. These Terms of Service explicitly specified that FTX Digital was the "Service Provider" for nearly all digital asset product lines offered on the FTX International Platform, and permitted FTX Trading to novate its position under the Terms of Service to another party, including FTX Digital.[10] *Id.* ¶ 37.2; Schedules 2-7.[11] Although the U.S. Debtors try to diminish the role of the Service Provider (Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 38 ("FTX DM had a limited mandate and a limited balance sheet, merely providing certain 'Specified Services' as a 'Service Provider' under the New Terms of Service."), it was actually the Service Provider with control over the accounts according to the "Specified Service description" and

[10] A "Service Provider" is defined as "the entity specified in a Service Schedule as responsible for providing the Specified Service referred to in that Service Schedule." 2022 Terms of Service § 1.1.

[11] Per the 2022 Terms of Service, FTX Trading remained the service provider for the NFT Market (Schedule 11) and the NFT Portal (Schedule 12) (together, the "**Unregulated Services**") because the DARE Act did not permit the Unregulated Products to be migrated to FTX Digital. Greaves Decl. ¶ 16. FTX Trading also remained the service provider for the leveraged tokens spot market (Schedule 8), the BVOL/iBVOL volatility market (Schedule 9) (the "**Other Services**" and together with the Unregulated Services, the "**Remaining FTX Trading Services**"). Based on the information available to the JPLs to date, the Remaining FTX Trading Services that stayed with FTX Trading represented no more than 10% of the business on the FTX International Platform.

"Service Provider" descriptions in each of the Schedules. 2022 Terms of Service, Schedules 2-7; *see e.g.* Schedule 6 ("The Volatility Market is a trading platform on which you can trade Daily MOVE Volatility Contracts, Weekly MOVE Volatility Contracts and Quarterly MOVE Volatility Contracts (collectively, MOVE Volatility Contracts) with other Users, with or without leverage…This Specified Service forms part of the Services and is provided by FTX Digital Markets Ltd."). In other words, if an International Customer accessed his account on or after May 13, 202, FTX Digital became the Service Provider for a customer on the FTX International Platform and was the entity with control over that customer's account and its deposits.

32. Further, any new International Customers who registered with the FTX International Platform after May 13, 2022 became customers of FTX Digital with respect to most of the services offered on the FTX International Platform. *Id.*¶ 1.3.

B. The SCB Revokes FTX Digital's License and Commences FTX Digital's Provisional Liquidation

33. On November 10, 2022, the Securities Commission of The Bahamas ("**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act. Greaves Decl. ¶ 6. The SCB was, in fact, the only regulatory body worldwide that took any enforcement action against any FTX entity prior to the U.S. Debtors' petition date. On November 10, the SCB petitioned the Bahamas Court for the Provisional Liquidation of FTX Digital, which the Bahamas Court granted. *Id.* The Bahamas Court appointed Brian Simms KC as provisional liquidator. *Id*. On November 14, 2022, the Bahamas Court also appointed Kevin G. Cambridge and Peter Greaves as joint provisional liquidators. *Id*. Pursuant to the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors. *Id.*

34. The next day, FTX Trading, along with the other U.S. Debtors, commenced these chapter 11 cases. To date, FTX Trading has listed over 9 million International Customers on its

creditor matrix, more than 7 million of which they allege used the FTX International Platform.[12] As noted above, the issue of which customers would be mapped to which debtor has been a topic of discussion since the first day hearings, with all parties having reserved all rights to claim a customer as either a FTX Trading or FTX Digital customer. *See supra* ¶ 12.

C. Non-U.S. Law Customer Issues

35. As also noted above, the sorting of account holders or customers will involve a series of legal determinations involving the various terms of service under non-U.S. laws, and then when it comes to customer recoveries, U.S. and Bahamian insolvency laws. All of the legal issues raised by the Application turn on questions of non-U.S. law. MacMillan-Hughes Decl. ¶ 5; Greaves Decl. Ex. A. In general, the Application concerns two overarching questions: 1) whether and to what extent the International Customer contracts were novated/migrated to FTX Digital prior to November 2022; and 2) whether and to what extent assets are held in trust by FTX Digital for the benefit of certain or all of its International Customers. Both issues are critical to the proper administration of FTX Digital's estate, and each raises a host of non-U.S. legal issues; including:

Illustrative Foreign Law Customer Issues	Governing Law
1. Interpretation of the customer Terms of Service governing the FTX International Platform, both prior to and subsequent to May 13, 2022.[13]	Antiguan/English[14]

[12] *See* Verification of Creditor Matrix, Case No. 22-11068-JD, Docket No. 574, Jan. 25, 2023; Ray Testimony at 1:17:30-1:19:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s.

[13] Application ¶¶ 1-3.

[14] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
2. Applicable law regarding the novation/migration of customers from FTX Trading to FTX Digital.[15]	Antiguan/English[16]
3. Whether the plan for novation/migration of the exchange business from FTX Trading to FTX Digital was implemented or legally effective.[17]	Bahamian, English or Antiguan[18]
4. The legal terms of commercial arrangements and documents used in connection with the novation/migration and the enforceability thereof.[19]	Antiguan/English[20]
5. The enforceability of the International Customers' advance consent in the applicable Terms of Service to the novation/migration and transfer of customers.[21]	Antiguan/English[22]
6. The enforceability and effectiveness of amendments to the Terms of Service purportedly effective upon next login and use of the services.[23]	Antiguan/English[24]

[15] Application ¶ 2.

[16] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[17] Application ¶¶ 3(a)-(b).

[18] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[19] Application ¶¶ 1-3(a)-(c).

[20] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[21] Application ¶¶ 2-3(a)-(c).

[22] 2019 Terms of Service ¶¶ 27, 29; 2022 Terms of Service ¶¶ 37, 38.11.

[23] Application ¶¶ 1-3(a)-(c).

[24] 2019 Terms of Service ¶¶ 27-28; 2022 Terms of Service ¶¶ 22, 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
7. Whether a partial novation of certain Specified Services to FTX Digital (e.g. in respect of the provision of "futures market") while leaving other Specified Services behind (e.g. "leveraged tokens") was permissible under the applicable Terms of Service. [25]	Antiguan/English[26]
8. In what capacity does FTX Digital hold any digital assets or fiat (including what is the applicable law and whether FTX Digital holds these assets/currency as the legal owner for its own account or on trust).[27]	Bahamian/English[28]
9. If FTX Digital holds any digital assets or fiat currency on trust, what assets are subject to the trust; whether FTX Digital, as trustee, had obligations with respect to the segregation or use of the assets); whether the trust is over a fluctuating pool of assets for the benefit of all International Customers of FTX Digital as co-owners; whether International Customers have any rights to trace their property into specific assets held on trust; what if any rights do International Customers have against FTX Digital in respect of shortfalls in the assets held on trust. [29]	Bahamian/English[30]
10. Whether cryptocurrency or fiat can be held by FTX Digital as bailee[31]	English/Antiguan law/Bahamas[32]

[25] Application ¶¶ 3(a)-(c)

[26] 2019 Terms of Service ¶¶ 27-29, 2022 Terms of Service ¶¶ 1.3, 38.11, Schedules 2-7.

[27] Application ¶¶ 4(a)-(b).

[28] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶¶ 22, 27; 2022 Terms of Service ¶¶ 8.2.6., 38.11.

[29] Application ¶ 4(c).

[30] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[31] Application ¶ 4(d).

[32] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
11. Who is the counterparty to the perpetual futures contracts[33]	English law[34]

D. The English, Bahamas, And Antiguan Laws Applicable To The Non-U.S. Law Customer Issues

36. As depicted in the foregoing chart, one or more of English, Antiguan, or Bahamian law govern all of the issues framed by the Application. The governing law of the 2022 Terms of Service is English Law;[35] the governing law of the terms of the 2019 Terms of Service is Antiguan law.[36] In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("IBC") in liquidation. MacMillan-Hughes Decl. ¶ 5. Trust issues are also likely to be governed by Bahamas, English or Antiguan law, which is also a question that the Bahamas Court will need to adjudicate. *Id.*

37. What is most relevant (and perhaps most obvious) is that none of the issues framed in the Application are governed by U.S. law. The FTX International Platform was not even available to U.S. users. *See* First Day Declaration, ¶ 33 ("The FTX.com platform is not available to U.S. Users."). Rather, the 2022 Terms of Service explicitly state, "Our services are not offered to Restricted Persons or persons who have their registered office or place of residence in the United States of America or any Restricted Territory." 2022 Terms of Service at 1. *See id.* at 6-7 ("In order to be eligible to open an Account or use the Services you must meet the following eligibility

[33] Application ¶ 5.

[34] 2022 Terms of Service ¶ 38.11

[35] 2022 Terms of Service ¶ 38.11.

[36] 2019 Terms of Service ¶ 27.

criteria . . . 4.1.4 You do not have your registered office or place of residence in the United States of America or any Restricted Territory.").

38. As to the non-U.S. laws that are, in fact, applicable here, The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. MacMillan-Hughes Decl. ¶ 6. The legal systems of both The Bahamas and Antigua are based on English common law. *Id.* Because certain of the legal issues set out in the Application are novel issues (due to the technology surrounding digital assets) of English, Antiguan or Bahamian law, they are likely to generate appeals. *Id.* ¶ 9. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. *Id.* ¶ 7. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and, are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom. *Id.*

E. The Next Procedural Steps In The Bahamian Liquidation After the Joint Provisional Liquidators File the Application

39. When the JPLs file the Application, the Bahamas Court is expected to schedule a prompt, initial hearing to enter a case management order. MacMillan-Hughes Decl. ¶ 10. Among other things, the case management order will address issues such as case scheduling, the filing of any affidavit evidence (and reply evidence), written submissions, and determining who should be notified of the Application (including customers who have already submitted claims in FTX Digital's Claims Portal). *Id.* All parties who have an interest in the Application will have the right

to appear and be heard individually or in a representative capacity. *Id.* Importantly, if they so choose, the U.S. Debtors may appear and request that the Bahamas Court defer to the U.S. Court for resolution on any issues framed by the Application. *Id.*

40. Absent any abstention, the JPLs expect that the Bahamas Court will address each of the non-U.S. law questions in an efficient manner. *Id*. ¶ 11. And, while it is difficult to say with certainty how long it will take that Court to rule, the return date for FTX Digital's winding up Petition is August 10, 2023, and the JPLs expect the Court to rule on the Application before this date. *Id.*

41. The laws of The Bahamas also provide for a robust appeal process following any ruling. *Id*. ¶ 12. All parties in interest, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) the decision to the Court of Appeal of the Commonwealth of The Bahamas, and ultimately to the Privy Council. *Id.*

F. The Cooperation Agreement

42. On January 6, 2023, the JPLs and the U.S. Debtors entered into the Cooperation Agreement. The Cooperation Agreement, among other things, (i) provides that the U.S. Debtors and the JPLs will support the Provisional Liquidation of FTX Digital and the Chapter 11 Cases, respectively (¶¶ 12-13); (ii) renders the JPLs responsible for recovering all assets and value of FTX Digital (¶ 4); and (iii) authorizes the JPLs to manage the disposition of property held by Bahamas-based FTX Property Holdings, Ltd. (¶ 15). Both this Court and the Bahamas Court have approved the Cooperation Agreement. Case No. 22-11068, Docket No. 683. Order (Settlement and Co-Operation Agreement), 10, February, 2023, attached hereto as **Exhibit 2**.

43. By design, the Cooperation Agreement does not compromise any rights or obligations arising from the novation/migration of International Customers to FTX Digital. *See*

Cooperation Agreement ¶ 10. All rights of the Parties with respect to those issues are expressly preserved.[37] The Cooperation Agreement also states that "recognition in The Bahamas will not require the Bahamas Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the JPLs in The Bahamas Proceedings with respect to property of the estate of FTX Digital (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 13. A corresponding provision addresses the role of this Court: "recognition under Chapter 15 would not require the U.S. Bankruptcy Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the Chapter 11 Debtors in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 12. In other words, the Cooperation Agreement itself contemplates a process by which the two affected courts will themselves have to coordinate on key issues affecting the FTX estates.

G. The U.S. Debtors' Lawsuit Against FTX Digital and the JPLs

44. As discussed above, the JPLs gave the U.S. Debtors advance notice of their intent to file the Application by way of letter dated March 9, 2023. *See* Greaves Decl. Ex. E. The JPLs did this in an effort to cooperate and coordinate with the U.S. Debtors, with the goal of ensuring an efficient resolution of these important legal issues. The JPLs also gave advance notice to the

[37] The Cooperation Agreement states: "This Agreement does not address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform or any other matter not specifically addressed in this Agreement." Cooperation Agreement ¶ 10.

U.S. Debtors that they would be seeking leave from the Bahamas Court to file this Motion, and counsel for FTX Trading appeared and were heard by the Bahamas Court on this issue at a hearing on March 20, 2023. At that hearing, counsel for the U.S. Debtors did not object to the JPLs' request to file this Motion. The Bahamas Court granted leave on March 21, 2023 (the "**Bahamas Lift Stay Order**"), paving the way for this Motion. Greaves Decl. Ex. H. As set forth in the Bahamas Lift Stay Order, the Bahamas Court expressly recognized that "*the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd. in this Honorable Court.*" *Id*. at 2. (emphasis added)

45. Given the importance of prompt resolution of the Application the JPLs actively sought to engage the U.S. Debtors in discussions around coordinated, efficient, proceedings to resolve the Non-U.S. Law Customer Issues. After a letter campaign on the issue (*see* Greaves Decl. Exs. E-G), on March 15, 2023, the JPLs, their counsel, Mr. Ray and counsel to the U.S. Debtors held a virtual telephonic conference. The call began constructively, and the JPLs explained what it was that they were seeking to do and why it was important to proceed with filing the Application – to fulfill their duty to make a recommendation to the Bahamas Court on whether liquidation or reorganization of FTX Digital will serve the best outcome for FTX Digital's estate, its customers and its creditors. The JPLs explained that they could not progress towards this goal without an understanding of (i) who FTX Digital's customers and creditors are, and (ii) the scope of FTX Digital's rights to its and its customers' assets. Despite the JPLs' efforts to keep the discussion productive, it soon turned unproductive. The U.S. Debtors noted that FTX Digital was the only FTX entity that was not falling in line with their agenda, that the mere filing of the Application would send a "torpedo" into the Chapter 11 Cases, and that the U.S. Debtors would never consent

to any jurisdiction other than the U.S. to resolve any Non-U.S. Law Customer Issues. While sensitive to the U.S. Debtors' concerns, the JPLs explained that, as court-appointed fiduciaries, they are duty-bound to serve and cannot abdicate their duties in deference to the professionals of an afflicted entity. The JPLs reiterated their view that the best path forward would be to work together and come up with a consensual protocol to resolve all issues as to whose customers were whose. But, because the U.S. Debtors insisted that all Antiguan, Bahamian and English law issues should not be resolved at all, or should all be resolved by this Court at some unspecified future time, there was no engagement on any consensual protocol for a coordinated resolution of outstanding legal issues. The meeting ended with the U.S. Debtors committing only to think further on the issues discussed.

46. Without any further engagement, on March 19, 2023, the U.S. Debtors filed the Adversary Proceeding. Adv. Pro. No. 23-50145, Docket No. 1 ("**Adv. Compl.**"). That filing was never substantively discussed with the JPLs, and instead was filed on one hour's notice to one of the JPLs' attorneys. The complaint seeks declaratory judgment on the same issues that the JPLs had been identifying for months and sought to resolve through a consensual cross-border cooperation protocol between the Bahamas and U.S. courts. Among other things, the complaint asks this Court to declare that no customers ever migrated from FTX Trading to FTX Digital under the 2022 Terms of Service and that FTX Digital has no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform *at all*.[38] Adv. Compl. Counts I-IV, ¶¶ 53-87. It also alleges, without any specificity, that every transaction that FTX Digital was involved in during its existence was

[38] The complaint concedes that the 2019 and 2022 Terms of Service govern the relationship between customers and FTX Trading (¶ 36), but fails to mention that those documents are governed by Antiguan and English law, respectively.

fraudulent and is subject to avoidance. *Id*. Counts V-VII, ¶¶ 85-98. The complaint then seeks an order that the U.S. Debtors may recover from the FTX Digital estate all such transfers, and interest thereon to the date of payment, as well as the costs of the Adversary Proceeding. *Id.* at 26 (Prayer for Relief No. 6). The complaint specifically references recovering from FTX Digital's accounts at Moonstone Bank and Silvergate Bank, both of which are located in the U.S.

47. Most inflammatory, the complaint alleges, in contradiction of the U.S. Debtors' prior statements to this Court, that Mr. Sam Bankman-Fried ("**SBF**") moved the FTX enterprise to The Bahamas for the sole purpose of funneling customer deposits and valuable property to The Bahamas, "out of the reach of American regulators and courts." *Id.* ¶ 23. Bizarrely, the U.S. Debtors also allege, for the first time, that FTX Digital's "formation and existence" was in furtherance of FTX's criminal conspiracy (*Id.* ¶ 21) despite the fact that SBF was the same individual who hired the U.S. Debtors' counsel and turned his enterprise over to Mr. Ray. Finally, despite the fact that the SCB was the first regulator to take action against any FTX entity, the U.S. Debtors allege that SBF and those he directed "maintained a close accommodating relationship with Bahamian law enforcement agencies" (*Id*. ¶ 24), that FTX Digital was only "ostensibly regulated by The Bahamas" (*Id.* ¶ 25) and that when operating in The Bahamas, SBF and his cohorts were "outside of the reach of any independent and effective regulatory authority." *Id.* ¶ 5. The JPLs and FTX Digital will respond to the complaint in due course and reserve all rights.

RELIEF REQUESTED

48. By the Motion, the JPLs respectfully request the Court to enter an order ("**Order**") substantially in the form attached as **Exhibit 1** (i) declaring that the automatic stay does not apply to the filing of the Application or in the alternative (ii) granting relief from the automatic stay

under Section 362(d)(1) of the Bankruptcy Code to allow the JPLs to file the Application and thereby start the process of a cross-border protocol for judicial cooperation.

ARGUMENT

I. The Filing and Prosecution Of The Application Is A Normal, Expected Predicate For Cooperation Between This Court And The Bahamas Court Regarding The Resolution Non-U.S. Law Customer Issues

49. As noted above, the resolution of all Non-U.S. Law Customer Issues will require both this Court and the Bahamas Court to coordinate on resolving various legal and factual issues and how they pertain to the estates under their jurisdiction.

50. This is, of course, not the first time that a U.S. bankruptcy court, supervising the chapter 11 case of a U.S. debtor, has had to coordinate with a non-U.S. court to come to closure on issues affecting that U.S. debtor's estate. Indeed, U.S. bankruptcy courts have routinely relied on joint protocols in cross-borders cases such as this one, where coordination is necessary in order to prevent conflicts and the waste of estate resources. This Court's Local Rules expressly provide detailed guidelines for judicial cooperation in parallel cross-border insolvencies, including court-to-court communication in such cases.[39] *See* Local Rules for the United States Bankruptcy Court for the District of Delaware, Effective February 1, 2023, Part X ("Modalities of Court-to-Court Communication); *see also* Appendix A to the Local Rules "Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters" (the "**Guidelines**"). The Guidelines, which "should be considered at the earliest practicable opportunity" state, among other things, that "where a court intends to apply these Guidelines . . . it will need to do so by a protocol

[39] While the Local Rules seem to contemplate a single debtor in multiple parallel proceedings, as opposed to closely affiliated debtors in separate proceedings, the same concepts of comity, coordination, and efficiency should apply here, where the U.S. Debtors and FTX Digital were so closely intertwined in their pre-petition operations.

or an order . . .” (Guideline 2) and note that “[i]n the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.” *Id.* n. 3.

51. Three cases are particularly instructive on how U.S. Courts view what should happen in a “normal” cross-border insolvency.

52. In *Nortel Networks Inc.*, the U.S. debtors moved, on the petition date, for entry of a cross-border protocol, which established procedures for the coordination of cross-border hearings between the U.S. and Canadian courts. *In re Nortel Networks, Inc.,* 532 B.R. 494, 501–02 (Bankr. D. Del. 2015). Both the U.S. and Canadian courts approved the protocol and subsequent amendments to the same. *Id.* The protocol provided for communication and cooperation between the two courts, without divesting either court from its respective jurisdictions. *Id.* at 531-532. The protocol provided that the U.S. and Canadian Courts could coordinate to “determine an appropriate process by which the issue of jurisdiction [over specific issues] will be determined” (after submissions from all interested parties). Order Approving Stipulation of the Debtors and the Official Committee of Unsecured Creditors of Nortel Networks Inc., Et Al., Amending the Cross-Border Court-to-Court Protocol at 7, *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jun 29, 2009) [Docket No. 990-1], attached hereto as **Exhibit 3**. Where one Court had jurisdiction over a matter that required the application of the law of the jurisdiction of the other Court to determine an issue before it, the Court with jurisdiction could, among other things, hear expert evidence or seek the advice and direction of the other Court. *Id.* at 7-8. The protocol further provided that the Courts could communicate with each other to determine whether they could arrive at consistent rulings. *Nortel*, 532 B.R. 494 at 532.

53. Pursuant to the *Nortel* protocol, the two courts held a 21-day cross-border, joint evidentiary trial on a central issue in the case (the allocation of proceeds from the sale of various Nortel assets and business units). *Id.* at 499-500. After the trial, the Courts communicated "in an effort to avoid the travesty of reaching contrary results which would lead to further and potentially greater uncertainty and delay. Based on these discussions, the Courts have learned that although their approaches to the complex issues differ, they agree upon the result." *Id.* at 532. In its decision, the U.S. Court noted that, "one of the reasons the cases have progressed to date is that the Courts have communicated and have arrived at consistent rulings even while exercising their judicial independence." *Id.*

54. In *In re Soundview Elite, Ltd.*, the Court *sua sponte* ordered the parties to work together to create a cross-border protocol for cooperation in a case concerning six U.S. debtors and the Cayman winding-up proceedings of three of those U.S. debtors. *In re Soundview Elite, Ltd.*, 503 B.R. 571, 575 (Bankr. S.D.N.Y. 2014). The Cayman liquidators and certain creditors moved to dismiss the U.S. bankruptcy cases or, alternatively, for relief from the stay. *Id.* The debtors, like the U.S. Debtors here, sought to enforce the stay and prevent any activities in the Cayman proceeding. *Id*. Based on considerations of comity, the U.S. Court instead lifted the automatic stay to allow the existing Cayman proceedings for three of the debtors to continue, and "if necessary, to entertain similar proceedings for the three Debtors in this Court that do not have JOLs[.]" *Id.* at 589. The Court also ordered the parties to create a joint protocol to facilitate the cooperative administration of parallel proceedings in the U.S. and the Cayman Islands. *Soundview*, 503. B.R. at 589. In so doing, Judge Gerber reasoned that "the Cayman and U.S. courts can and should work together cooperatively, with due comity to each other, to address the needs and concerns of stakeholders." *Id.* at 595.

55. In *In re Calpine Corporation,* Case No. 05-60200 (CGM) (Bankr. S.D.N.Y. 2005), Calpine Corporation, and its US affiliates (in chapter 11) were subject to a bond-ownership claim by their Canadian affiliates that were in separate Canadian bankruptcy proceedings. Debtors' Motion for an Order to Approve a Settlement with Calpine Canadian Debtors ("Debtors' Motion to Approve Settlement") at ¶¶ 5-12, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113], attached hereto as **Exhibit 4**. Ultimately, a cross-border protocol was negotiated by the parties and entered by both the Canadian and U.S. courts, which was instrumental in settling the bond-ownership issue. Order Approving Cross-Border Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309], attached hereto as **Exhibit 5**; Court of Queen's Bench of Alberta Approval of Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3], attached hereto as **Exhibit 6**; Debtors' Motion to Approve Settlement at ¶ 25. At a joint hearing to approve the settlement, Judge Lifland (in the U.S. Court) and Justice Romaine (in the Canadian Court) emphasized the importance of the cross-border protocol in helping the parties reach resolution, and the value-draining alternative that the parties would have otherwise faced. Transcript of Joint Hearing with Canadian Judge in re Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and other Relief at 207:20-24, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749], attached hereto as **Exhibit 7**. (Judge Lifland noting that the settlement and efforts to achieve it "go[es] to demonstrate the desirability of approaching these cross-border matters through a medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately."); *id.* at 45:13-20 (Judge Lifland discussing "the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a

different perspective, with coordination and cooperation being the watch word which turned out to be --well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit"); *id*. at 206:18-207:07 (Justice Romaine emphasizing that "the enormous complexity and highly intertwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to proceed cautiously and with careful consideration; nevertheless, we must proceed toward the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian [sic] knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.").

56. Each of these cases demonstrates that the overriding principles in successful cross-border disputes should be coordination, comity, and conservation of estate resources. The filing of the Application is just the necessary first step in that process, and that filing should happen now.

II. The Automatic Stay Does Not Apply to Filing or Prosecution of the Application

57. As the foregoing cases show, rather than using their respective automatic stays to mire the progress of parallel bankruptcy proceedings, courts charged with presiding over cross-border insolvencies tend to favor cooperation and coordination, if only to avoid the chaos and uncertainty of inconsistent rulings on issues that affect their debtors. Here, however, the U.S. Debtors have claimed that the JPLs' mere filing of the Application, much less its prosecution, would constitute a willful violation of their automatic stay imposed by Section 362. That is simply not true.

58. Section 362(a) of the Bankruptcy Code imposes an automatic stay prohibiting, among other things, "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor[,]" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(1), (a)(3). The JPLs' Application is neither.[40]

59. *First*, Section 362(a)(1) does not apply because the Application is not an action *against* the U.S. Debtors. *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) ("Although the scope of the automatic stay is broad, the clear language of section 362(a) indicates that it stays only proceedings against a 'debtor' — the term used by the statute itself."). The Application merely frames for the Bahamas Court the issues of: (i) whether the International Customers were migrated to FTX Digital; (ii) if so, when; (iii) if so, what were FTX Digital's obligations to those International Customers; (iv) if the digital assets or fiat were assets of FTX Digital; legally and beneficially; and (v) whether the perpetual futures contracts (which is part of the Services to which only Digital is named as Service Provider under the 2022 Terms) amounted to a contract between or among customers, or between customers and Digital or someone else. These questions can all be answered without necessarily involving FTX Trading.

60. *Second*, Section 362(a)(3) does not apply because the Application does not seek to "obtain possession of property" of the U.S. Debtors' estates or "to exercise control over property of the estate." Although courts have interpreted 362(a)(3) broadly, its application is not limitless. The JPLs have identified no case holding that the U.S. automatic stay can act to prohibit a foreign

[40] The other subsections of Section 362(a) are inapplicable here: Section 362(a)(2) is not applicable as there is no judgment sought to be enforced; Section 362(a)(4) and (a)(5) are not applicable as there is no lien sought to be created, perfected, or enforced; Section 362(a)(6) is not applicable as there is no act to collect, assess, or recover a claim; Section 362(a)(7) is not applicable as there is no attempt to setoff a debt; Section 362(a)(8) is not applicable as the Application is not a proceeding concerning a tax liability.

debtor from determining the nature and extent of the liabilities and assets of its own estate. Importantly, the Application will not have the effect of transferring or voiding any interest in any property of any U.S. Debtor. Rather, were there to be any asset transfers that are necessitated by a ruling of the Bahamas Court on any of the Non-U.S. Law Customer Issues, those will have to be addressed in subsequent proceedings involving this Court.

61. In addressing overlapping insolvency regimes, courts have acknowledged that a debtor taking actions within its rights under the applicable bankruptcy laws does not violate the stay of another debtor – even if those actions have consequences that flow to the other debtor's estate. Cases involving the rejection of contracts between two debtors help clarify this point. For example, in *In re Old Carco,* the debtor car-manufacturer did not have to seek relief from the automatic stay in another debtor's bankruptcy case before exercising its right to reject a contract in the debtor car-manufacturer's case, even though the counter-party to the rejected contract was another debtor. The court held that rejection of the contract was "a fundamental right" of the debtor to not perform its contractual obligations. *In re Old Carco LLC*, 406 B.R. 180, 211-12 (Bankr. S.D.N.Y. 2009); *see also In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016) (when the debtor sought to reject an executory contract that a debtor in a separate case and court sought to accept, allowing the debtor to reject upon satisfying ordinary business judgment test); *In re Railyard Co.*, 562 B.R. 481, 487 (Bankr. D.N.M. 2016) (following *Old Carco* and *Noranda* and granting stay relief to allow the Chapter 11 Trustee to reject the debtor-landlord's unexpired commercial lease with related company also in bankruptcy, even though related company wished to assume the lease). In a similar vein, one bankruptcy court held that a unilateral price increase by one debtor, did not necessarily violate the automatic stay of another debtor (the counterparty to the contract). *In re Nat'l Steel Corp.*, 316 B.R. 287 (Bankr. N.D. Ill. 2004). *Nat'l*

Steel involved a contract for the supply of steel used to make wheels and both supplier and manufacturer had filed their own chapter 11 petitions. Rather than move to assume or reject the contract, the supplier-debtor unilaterally increased its prices after notifying the debtor-manufacturer that the price increase was necessary to enable it to continue shipping steel. *Id.* at 297-98. The manufacturer-debtor opposed the increase but paid the increased price. *Id.* Thereafter, the manufacturer-debtor moved before the supplier-debtor's court, seeking allowance of an administrative expense and alleging, among other things, that the supplier-debtor had violated the manufacturer-debtor's automatic stay. *Id.* at 299-311. The court held that, although the contract was property of both bankruptcy estates, the supplier-debtor did not violate the manufacturer-debtor's automatic stay. *Id.* at 311. The court reasoned that, because the contract was not assumed, it was not enforceable, and therefore the supplier-debtor's price increase did not constitute an act to obtain possession of or control over property of the estate in violation of Section 362(a)(3). *Id.* Unlike the unilateral financial action that was permitted in *Nat'l Steel*, the Application here merely seeks to obtain clarity on novel issues of Bahamian, Antiguan, and English law that directly affect the FTX Digital estate and its creditors.

62. The same reasoning extends to the JPLs' attempts, by the Application, to identify creditors that may have claims against their estate, and the determination of the extent of their estate's obligations and liabilities. It is within any debtor's rights – indeed, it is paramount to any debtor's bankruptcy proceedings – to determine the extent of the debtor's property and its creditor body. The automatic stay does not function to impede these rights, even if exercising them would "affect" the U.S. Debtors.

63. Finally, the filing of the Application is not an act to control or take possession of the property of the estate of FTX Trading. Ultimately, this Court will decide what is, or is not,

property of FTX Trading's estate whether in its own proceeding or by granting comity to the Bahamas Court's process and rulings either on a prospective or post-hoc basis. *In re SCO Grp., Inc.*, 395 B.R. 852, 858 (Bankr. D. Del. 2007) ("[I]t is the very essence of a bankruptcy court's jurisdiction to decide what is property of the estate."). Asking the Bahamas Court to answer the legal questions that must be resolved before this Court can determine what is and is not property of the U.S. Debtors' estates is not an act to take control over that property. While the JPLs certainly believe that the Bahamas Court's answer will be persuasive and should be adopted by this Court, this Court will ultimately decide for itself what effect the Bahamas Court's order has in these cases. For all of these reasons, the proper view is that the automatic stay does not apply to the Application at all.[41]

III. In the Alternative, The Court Should Lift the Automatic Stay to Allow the JPLs to File the Application and Initiate a Cross-Border Protocol

64. Section 362(d)(1) provides that upon request of a party in interest and after notice and a hearing, the court may grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay — for cause. 11 U.S.C. § 362(d). The Bankruptcy Code does not define "cause." It is a flexible concept that is fact intensive, and must be determined case-by-case upon consideration of the totality of the circumstances. *See In re Scarborough St. James Corp.*, 535 B.R. 60, 67 (Bankr. D. Del. 2015); *see also In re Downey Fin. Corp.*, 428 B.R. 595, 608-09 (Bankr. D. Del. 2010).

65. This Court has developed a three-prong balancing test for determining whether cause exists to lift the stay:

[41] The U.S. Debtors' Adversary Proceeding is a different animal entirely, as it names FTX Digital as a defendant and specifically asserts claims seeking to avoid FTX Digital's interests in its own assets in the United States. As to that violation, FTX Digital and the JPLs reserve all rights.

> (i) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit;
>
> (ii) Whether the hardship to the [movant] by maintenance of the stay considerably outweighs the hardship to the debtor; and
>
> (iii) Whether the creditor has a probability of prevailing on the merits.

In re Scarborough-St. James Corp., 535 B.R. at 68.

66. Courts in the Third Circuit also consider general policies underlying the automatic stay in determining whether to lift it. *In re Abeinsa Holding, Inc.*, Case No. 16-10790 (KJC), 2016 WL 5867039, at *3 (Bankr. D. Del. Oct. 6, 2016). These factors can include considerations of comity and the factors supporting mandatory abstention. *Drauschak v. VMP Holdings Ass'n, L.P. (In re Drauschak)*, 481 B.R. 330, 345-46 (Bankr. E.D. Pa. 2012) (explaining that "[i]ssues of comity and economy may dictate that the non-bankruptcy forum conclude the resolution of . . . [a pending] dispute and the bankruptcy stay should be modified for such purpose" and, "[t]he factors supporting mandatory abstention . . . including judicial economy, would also justify applying the aforementioned exception to modify the automatic stay."); *see also In re SCO Grp., Inc.*, 395 B.R. at 857 (discussing the legislative history of Section 362(d)(1) and the "importance of allowing the case to proceed in the original tribunal so long as there is no prejudice to the estate").

A. The Three Prong Balancing Test Weighs In Favor of Lifting the Stay

1. Resolving the Foreign Law Customer Questions in The Bahamas Does Not Prejudice the U.S. Debtors

67. The first factor in the balancing test is "[w]hether any great prejudice to either the bankrupt estate or the debtor will result from" the proceeding. *In re SCO Grp., Inc.*, 395 B.R. at 857-58; *see also In re Scarborough-St. James Corp*., 535 B.R. at 68.

68. In *Scarborough*, a landlord sought relief from the stay to continue eviction proceedings against the debtor in Michigan state court. The debtor argued that it would suffer

harm if the Michigan litigation continued because (i) a negative determination of the debtor's lease rights would prejudice it in another appeal and, (ii) the Michigan litigation would distract from and interfere with the debtor's reorganization efforts. *In re Scarborough-St. James Corp.*, 535 B.R. at 68. The *Scarborough* court rejected both arguments, finding that there was no prejudice because the issue of "whether or not the lease was terminated prepetition must be decided in order to determine Debtor's interest in the lease . . . [and] . . .the Michigan Court [was] in a position to make that determination and has familiarity with the parties and the facts of the case." *Id.* The court noted that the debtor's rights were not in jeopardy because it could still "raise in the Michigan Court any and all arguments in support of its position." *Id.* The court held that lifting the stay would not cause the debtor great prejudice.

69. Similarly, in the *SCO* litigation, a creditor moved to lift the stay to continue a lawsuit against the debtors concerning software licensing and copyright issues. *In re SCO Grp., Inc.*, 395 B.R. at 856. The court lifted the stay, finding that the debtors would not be prejudiced because, "the Debtors simply cannot file a confirmable plan of reorganization until they know what liability they have to . . . [the creditor]. The resolution of the issues remaining in the District Court litigation will assist the Debtors, not burden them." *Id.* at 859.

70. The facts here compel the same result for four reasons:

71. *First*, the U.S. Debtors cannot be harmed by having the jurisdiction of the Bahamas Court invoked to allow that Court and this Court to decide who decides. The U.S. Debtors consented to jurisdiction in The Bahamas, insisted that they be recognized in that proceeding, and, in fact, have been recognized with full rights of participation. The mere notion, promoted by the U.S. Debtors, that this Court and the Bahamas Court cannot be allowed to talk to one another to explore the contours of an efficient, prompt and coordinated litigation is, frankly, offensive.

72. *Second*, like the *SCO* and *Scarborough* debtors, the U.S. Debtors are not prejudiced by having the Non-U.S. Law Customer Issues submitted to the Court best positioned to resolve them. Indeed, the JPLs submit that the Bahamas Court provides a more appropriate forum for deciding these issues because the Bahamas Court is familiar with the applicable English and Commonwealth laws. This is especially so because the Non-U.S. Law Customer Issues involve largely complex and novel issues of English, Antiguan or Bahamian law relating to cryptocurrency, some of which no court in the Commonwealth has heard before. MacMillan-Hughes Decl. ¶ 9. *See In re DHP Holdings II Corp.*, 435 B.R. 220, 227 (Bankr. D. Del. 2010) (holding that state courts are the best forum to decide novel or unsettled issues of state law); *see also In re A & D Care, Inc.*, 90 B.R. 138, 141-42 (Bankr. W.D. Pa. 1988) (non-bankruptcy court more appropriate especially when the controversy arises on unsettled issue of non-bankruptcy law) (collecting cases).[42] The only alternative – having this Court take jurisdiction over the Non-U.S. Customer Issues – is the least attractive alternative, if only because each party-in-interest on the customer issues, including the JPLs, the U.S. Debtors, the UCC, the Ad Hoc Group of Non-US Customer of FTX, and an unknown number of actual customers would all have to hire and present their own foreign law experts. In contrast, the expert in The Bahamas – the Court – can provide a clear unconflicting depiction of Bahamas law and, unlike almost everyone else in these Cases (save this Court and the U.S. Trustee), will provide its views free of charge.

[42] *See also In re Williams*, 88 B.R. 187, 191 (Bankr. N.D. Ill. 1988) (abstaining from action concerning alleged violation of state insurance laws and reasoning, "[t]he issues are not simple[,]" "[t]he statutes and regulations involved are not clear[,] "[u]nresolved issues of Illinois law are involved[,] and "[s]uch question are best left to the interpretation of an Illinois State judge."); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941) (finding Texas state courts were proper forum to determine state law issues that needed to be resolved); *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940) (affirming Bankruptcy Court's decision that state court was proper forum to determine oil rights, and therefore, the extent of property of the estate); *In re FairPoint Commc'ns, Inc*., 462 B.R. 75, 88 (Bankr. S.D.N.Y. 2012) (finding New Hampshire state courts to be better suited to debtor's rights under the New Hampshire Constitution).

73. *Third*, even an ultimate adjudication of the non-U.S. Law Customer Issues in the Bahamas will not prejudice FTX Trading. As noted, FTX Trading's foreign representative was recognized in the Bahamas, can participate in the Application proceedings, has been involved in the proceedings on the Application to date (through appearing before the Bahamas Court with respect to the Bahamas Lift Stay Order),[43] and will be able to appeal if necessary and if they so choose. *Cf. In re Spanish Cay Co., Ltd.*, 161 B.R. 715, 724-727 (Bankr. S.D. Fla. 1993) (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."). The U.S. Debtors will therefore receive notice and will have the right to oppose the Application and be heard on the matter. Additionally, the laws of The Bahamas provide for due process and a robust appeal process. MacMillan-Hughes Decl. ¶ 12. Courts have recognized that the Bahamian bankruptcy laws are in harmony with those of the United States and should be afforded comity. *See In re Northshore Mainland Servs., Inc.*, 537 B.R. 192 (Bankr. D. Del. 2015) (Winding up Proceeding in the Bahamas was the appropriate forum to adjudicate issues involving the Bahamian Debtor.); *see also Matter of Culmer*, 25 B.R. 621 (Bankr. S.D.N.Y. 1982); *Aranha v. Eagle Fund, Ltd. (In re Thornhill Glob. Deposit Fund Ltd.)*, 245 B.R. 1 (Bankr. D. Mass. 2000) ("The provisions of Bahamian law related to liquidation proceedings are in substantial conformity with our own Bankruptcy Code.").

[43] As mentioned in the Greaves Declaration, through counsel, FTX Trading appeared at the hearing on the Bahamas Lift Stay Order and did not oppose the relief sought by the JPLs in getting leave from the Bahamas Court to file this Motion. Greaves Decl. ¶ 21.

74. *Fourth and finally*, the U.S. Debtors and this Court will not be prejudiced by the adjudication of the Application because it will not ultimately determine what cash or other assets are or are not property of FTX Trading's estate. The Application effectively seeks only to have the Bahamas Court determine (1) which customers are mapped to FTX Digital's estate and (2) what right those customers have in the assets of FTX Digital's estate. Again, courts routinely lift the stay where another court is better positioned to address underlying legal issues, while reserving issues as to how that resolution affects the estate. *See In re Tribune Co.*, 418 B.R. 116, 128 (Bankr. D. Del. 2009) (lifting the stay to allow a California Action to proceed, which would determine whether debtors held rights in the published comic strip series entitled "Dick Tracy" as the questions to be addressed in the California Action would determine whatever rights the debtors held and thus what assets are property of the estate); *Thors v. Allen*, Civ. Nos. 16-2224 (RMB), 16-2225 (RMB), 2016 WL 7326076, at *8 (D.N.J. Dec. 16, 2016) (affirming bankruptcy court decision to lift stay where the state court was "the more capable and the more proper venue to resolve" an issue of state law "that was throwing a wrench in the ability of the bankruptcy to proceed"); *In re Breitburn Energy Partners L.P.,* 571 B.R. 59, 68 (Bankr. S.D.N.Y. 2017) (affirming decision to lift stay to allow Texas court to determine an issue of unsettled Texas law which would "assist [the bankruptcy] court and ultimately contribute to a resolution of the dispute."); *In re Mark Scott Constr., LLC*, Case No. 03-36440 (HCD), at *4-5 (Bankr. N.D. Ind. Apr. 23, 2004) (granting stay relief where Michigan was the proper locale for litigation because, among other things "the Michigan state trial courts have more expertise concerning the interpretation of Michigan's [laws and regulations]," and the contracts at issue were signed in Michigan and involved land and projects in Michigan), attached hereto as **Exhibit 8**; *In re PG & E Corp.*, Case No. 19-30088 (DM), 2019 WL 3889247, at *2 (Bankr. N.D. Cal. Aug. 16, 2019)

(granting stay because, "relief from stay [would] definitively bring a resolution as to Debtors' liability [], and provide an important data point that most likely [would] facilitate resolution of . . . claims in this case."); *see also Int'l Tobacco Partners, Ltd. v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (implicitly lifting the stay by abstaining in favor of a Massachusetts state court proceeding because it "appears to be the more appropriate forum for determining the preliminary questions: whether [d]ebtor holds a valid assignment under Massachusetts law, and whether that assignment has priority over Ohio's attachment and levy.").

2. The Hardship to the JPLs by Maintenance of the Stay Considerably Outweighs the Hardship to the U.S. Debtors

75. The second lift-stay factor is "[w]hether the hardship to the [moving] party by maintenance of the stay considerably outweighs the hardship to the debtor." *In re SCO Grp., Inc*., 395 B.R. at 857.

76. In this case, the hardship to FTX Digital if the JPLs cannot adjudicate the Non-U.S. Law Customer Issues in The Bahamas far outweighs the hardship to the U.S. Debtors if the Court lifts the stay. Indeed, FTX Digital's Provisional Liquidation cannot proceed without resolving:

- the identity of the creditors to whom FTX Digital owes (or does not owe) money or assets;
- which money or assets are FTX Digital's;
- how expansive the FTX Digital estate is;
- whether FTX Digital's assets are held in trust on behalf of customers or not;
- who the real party in interest is in prosecuting clawback actions to recover FTX Digital's assets;
- who the real party in interest is when defending against claims brought by customers; and
- whether FTX Digital has any contractual rights against, or owes obligations to, customers who held perpetual futures.

As the Bahamas Court has already ruled, each of these issues is "fundamental" to the JPLs' mandatory duty to reconcile claims against FTX Digital's estate and affects all aspects of the FTX Digital estate. Greaves Decl. Ex. H., Bahamas Lift Stay Order, p. 2.

77. Moreover, a correct, binding determination of the customer questions under Bahamas, English and Antiguan law is critical for this Court to eventually equitably adjudicate FTX Digital's rights in the U.S. Debtors' cases. *See In re SCO Grp., Inc.*, 395 B.R. at 859 ("[W]ithout a ruling on the Liability Issues . . . [the creditor's] rights in these bankruptcy cases remains undetermined and the value of . . . [the creditor's] claim will remain a troubling issue for the Court . . . [the creditor] . . . and [d]ebtors."). Indeed, adjudication of the issues within the Application remains fundamental whether done by this Courtbre or by the Bahamas Court. The only difference is that the Bahamas Court would not normally need experts to apply the laws of its own jurisdiction and the Commonwealth, whereas this Court would necessarily have to hear from hired experts on Bahamas, Antiguan and English law governed issues. There can be little doubt that if this Court adjudicates these issues, the estates will incur millions more in fees for expert testimony and for U.S. lawyers just to learn the outer bounds of non-U.S. law. Accordingly, this factor supports lifting the stay.

3. The Merits Weigh In Favor of Lifting the Stay

78. Finally, the third lift-stay factor considered in the Third Circuit is "[t]he probability of the [movant] prevailing on the merits." *In re SCO Grp., Inc*., 395 B.R. at 857. For this factor, "[t]he required showing is very slight." *Matter of Rexene Prod. Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992). To meet it, the JPLs merely need to show that their claim is not frivolous. *In re Levitz Furniture*, 267 B.R. 516, 523 (Bankr. D. Del. 2000) ("Defendants have met the third prong, since that merely requires a showing that their claim is not frivolous.").

79. The JPLs clearly exceed that bar here, where there is publicly available documentary evidence that: the FTX Group (1) had a plan to move the international operations to the Bahamas,[44] and (2) began to execute on that plan by, among other things, moving the FTX Group's management team to The Bahamas and establishing the headquarters of the FTX Group there. Greaves Decl. ¶ 14. The U.S. Debtors have also admitted that at least some International Customers of FTX Trading migrated to FTX Digital, *Hr'g Tr. November 22, 2022*, 26:13-18 ("With respect to the Dotcom Silo – and this is the international silo . . . approximately 6 percent were customers of FTX Digital Markets Limited"), and billions of dollars of International Customer money ran through multiple FTX entities' bank accounts.[45] Moreover, the U.S. Debtors have conceded that "open" questions exist about whether the migration of other categories of International Customers were completed as a matter of law. *Hr'g Tr. February 15, 2023,* 30:14-18, 20-21 (U.S. Debtors' counsel stating that "things like assets that were in FTX Digital market accounts, or the migration of customers, and things of that sort. Those are all open issues" and that "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues").

B. Considerations of Comity Also Support Lifting or Modifying the Stay

80. Finally, in addition to all of the foregoing, where a non-U.S. judicial regime is in play, courts within and outside the Third Circuit have considered the same factors that justify abstention, including considerations of comity, to justify lifting the automatic stay to allow

[44] *See* Decrypt, "FTX Relocates from Hong Kong to Bitcoin-Friendly Bahamas", Sept. 24, 2021. Accessible at: https://decrypt.co/81834/ftx-relocates-hong-kong-bitcoin-friendly-bahamas

[45] *See* Ray Testimony (1:12:57-1:13:15) (Ray: "Definitely assets of customers in the Dotcom silo were transferred to Alameda, no question."); *see also id.* (43:25-43:30) (Ray: "We can confirm that funds were deposited directly into Alameda as opposed to FTX.com").

litigation to proceed outside the U.S. *See In re Drauschak*, 481 B.R. at 346; *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987) (holding that reasons given by the district court to support abstention constituted sufficient cause for lifting the stay); *In re Spanish Cay Co.*, 161 B.R. at 725 (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."); *see also Int'l Tobacco Partners, Ltd.*, 462 B.R. at 395 (abstaining in favor of a Massachusetts state court proceeding, reasoning that "the interest of justice . . . the interest of comity with State courts [and] respect for State law" tip the scale in favor of abstaining from this matter). Considerations of comity and judicial economy strongly favor lifting the stay.

81. *First*, as discussed above, the Bahamas Court will need to decide the Non-U.S. Law Customer Issues in the context of FTX Digital's Provisional Liquidation–the winding-up or restructuring of FTX Digital will not be possible otherwise because the JPLs will not know what customers and what assets FTX Digital has. This reality – unless addressed through the formation of a cross-border judicial protocol – presents the very real risk for conflicting rulings among this Court, and the Bahamas Court. This would be an inefficient result, and not an equitable one for creditors of FTX Digital or the U.S. Debtors. [46]

[46] *See Arkwright–Boston Mfrs. Mut. Ins. Co. v. City of New York,* 762 F.2d 205, 211 (2d Cir. 1985) (holding that the scales tipped in favor of abstention because the case raised novel issues of state tort and construction law); *see also In re Advanced Cellular Sys.* , 235 B.R. 713, 726-27 (Bankr. D.P.R. 1999) (the court, while ultimately holding that it did not have jurisdiction, observed that it would have to abstain from the adversary proceeding if it had jurisdiction, otherwise it would run the risk of conflicting rulings, piecemeal litigation of the claims, and unequal treatment of claimants); *In re Lafayette Radio Elecs. Corp.*, 8 B.R. 973, 977 (Bankr. E.D.N.Y. 1981) ("[A]bstention avoids the potential conflict and further avoids duplication by the federal court, of the state court procedures.").

82. *Second*, Courts have "frequently underscored the importance of judicial deference to foreign bankruptcy proceedings." *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 207 (citing *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999)) (abstaining in favor of Bahamian liquidation proceedings); *see also Stonington Partners v. Lernout & Hauspie Speech Prods N.V.*, 310 F.3d 118, 126 (3d Cir. 2002) ("The principles of comity are particularly appropriately applied in the bankruptcy context because of the challenges posed by transnational insolvencies"); *In re Cenargo Int'l*, *PLC*, 294 B.R. 571, 592-93 (Bankr. S.D.N.Y. 2003) (noting prior decision in the *Cenargo* matter to dismiss Chapter 11 proceedings in deference to English administration proceedings); *Maxwell Commc'n. Corp. v. Barclays Bank (In re Maxwell Commc'n. Corp.*), 170 B.R. 800, 817-18 (Bankr. S.D.N.Y. 1994) (dismissing avoidance adversary proceeding in favor of Ch. 11 debtor's U.K. bankruptcy proceeding to allow the U.K. court to decide issues of U.K. law where the challenged transfers occurred in England, the debtors were incorporated and executives ran the company out of England, the loans surrounding the transfers were executed in England and English law were to govern any disputes arising out of the transfers. The Court reasoned that, having found that "English law ought govern, [the issue of whether the preferential transfers were avoidable], considerations of comity dictate that these suits be dismissed.").

83. *In re Soundview,* discussed above, is instructive here. In that case, the Court lifted the automatic stay based largely on considerations of comity. *In re Soundview Elite, Ltd.,* 503 B.R. at 595. . Even though the debtors in *Soundview* had pending U.S. bankruptcy proceedings and their principal places of business were in the U.S., the Court ordered the creation of a joint protocol to allow both proceedings to advance cooperatively, balancing the needs of all stakeholders. *Id.* The Court relied on the reasoning of a Cayman decision which embraced "cooperation and

coordination in cross-border insolvency proceedings where the majority of the investigations to be undertaken for the realization of [debtor's] assets are required to be undertaken in the United States, but the claims that the petitioners and … other investors may have against the company will have to be examined and assessed according to the law of the Cayman Islands." *Id.* (internal citations and quotations omitted).

84. The same reasoning applies even more strongly here where FTX Digital does not have a pending Ch. 11 case, and its place of business was always in The Bahamas. Moreover, in this case, extending comity to the Bahamas Court is particularly important because cooperation will be necessary for any chapter 11 plan for the U.S. Debtors to be enforced in The Bahamas. *In re Spanish Cay Co.*, 161 B.R. at 725 (potential for successful chapter 11 reorganization at best questionable because U.S. court orders may be given no effect in Bahamas); *In re Int'l Admin. Servs., Inc.*, 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997) (noting that bankruptcy court lacks the ability to enforce jurisdiction over property located in foreign country without assistance of foreign court).

85. The U.S. Debtors' U.S.-first position goes squarely against these principles. As discussed above, the JPLs have court-appointed duties and obligations to the Bahamas Court. The JPLs' obligation, just like the U.S. Debtors', is to ensure the highest and best recoveries for the recognized creditors of the estate. But the JPLs cannot produce *any* result for their estate without first answering the threshold questions asked in the Application and in this Motion. The U.S. Debtors instead invite this Court to support their refusal to engage at all on the Non-U.S. Law Customer Issues and to disregard completely the Bahamian Court overseeing FTX Digital's Provisional Liquidation. This Court should decline that invitation. The JPLs have done everything to pay deference and respect to the U.S. Debtors' proceedings and this Court (unlike the liquidators

in *Soundview*, for instance), and this Court should require the U.S. Debtors to do the same for the Bahamas Court and the recognized proceedings before it.

86. *Third*, the Bahamas Court offers a more appropriate forum for resolving the Non-U.S. Law Customer Issues than the U.S. because International Customers of both FTX Digital and FTX Trading would have expected that disputes relating to the Terms of Service would be resolved outside the U.S., by a court familiar with the applicable English and Commonwealth laws, and the opportunity to appeal as far as the Privy Council. *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 206 (dismissing chapter 11 cases in light of a provisional liquidation in The Bahamas and observing that "[e]xpectations of various factors –including the expectations surrounding the question of where ultimately disputes will be resolved –are important, should be respected, and not disrupted unless a greater good is to be accomplished").

87. In that regard, the FTX Group conspicuously relocated its headquarters to The Bahamas in 2021, where the nerve center of its operations and its co-founders were located up until the insolvency proceedings. Greaves Decl. ¶18. FTX Trading operated out of The Bahamas before portions of the International Customers were migrated to FTX Digital. *Id.* Moreover, as a Bahamian regulated entity, it was part of the public record that FTX Digital was licensed under the DARE Act, putting third parties on notice that the FTX Group's international exchange business was operated out of The Bahamas, and subject to the SCB's regulatory oversight. By contrast, the FTX International Platform specifically forbade U.S. users from using the platform. Greaves Decl. ¶11. Moreover, neither FTX Digital nor FTX Trading have a significant creditor body in the United States. First Day Declaration ¶ 33.[47]

[47] There appear to have been a handful of U.S. users that were on the platform improperly. *See* Ray Testimony 2:10:23-2:10:35 "There was a limited number of [U.S. Users] that invested on the .com which was not the intended use of that Exchange"; *see also id.* at 1:11:20-12:00 ("We don't have those kind of

88. *Fourth*, the interests of judicial economy would be well-served by lifting the stay where, as here, the alternative is for this Court to decide unsettled, complex and novel issues of Bahamas, English, and Antiguan law, in a proceeding that is already portending to set records for administrative costs. The decision in *Matter of Williams* is instructive on this point. *In re Williams*, 144 F.3d 544 (7th Cir. 1998). In that case, the Seventh Circuit found that a bankruptcy court did not abuse its discretion by modifying the automatic stay to permit state court action to determine the debtor's interest in a lease and therefore determine "whether the lease had any value that could be assumed under her plan," reasoned that "had the bankruptcy court not modified the stay so that the forcible entry case could go forward, likely it would then have to determine the merits to her right of possession." *Id.* at 550. The bankruptcy court had "no particular expertise under this narrow area of state law," so determining the merits of the debtor's right to possession "would not be a particularly efficient use of judicial resources." The court therefore concluded that the bankruptcy court did not abuse its discretion in lifting the stay because, among other things, "in a case like this all roads lead to the state court" and that "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.* Just as in *Williams*, the Non-U.S. Law Customer Issues will need to be decided and, as in *Williams*, requiring this Court to wrestle with unsettled issues of foreign law "would not be a particularly efficient use of judicial resources." *Id*. Here, "all roads lead to" an English-law governed court – and what better than the Bahamas Court, where these issues are already front and center and where both parties can fully participate and be heard. *Id.* And, indeed, just as in *Williams*, "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.*

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numbers on an investor basis, we have it on a customer basis. But you're talking about less than a couple hundred.")

NOTICE

89. The JPLs will provide notice of this Motion to the following parties: (i) counsel to the U.S. Debtors; (ii) Office of the United States Trustee for the District of Delaware; (iii) counsel to the Official Committee of Unsecured Creditors in the Chapter 11 Cases; and (iv) all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002 and Local Rule 4001-1(a). The JPLs submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

90. No previous request for the requested relief has been made to this or any other Court.

CONCLUSION

WHEREFORE, for the reasons stated above, the JPLs ask the Court to enter the Order, substantially in the form attached hereto as **Exhibit 1**.

[*Remainder of page intentionally left blank.*]

Dated: March 29, 2023

/s/ *Kevin Gross*

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Attorneys for the Joint Provisional Liquidators of FTX Digital Markets Ltd. (in Provisional Liquidation)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Obj. Deadline: April 5, 2023 at 4:00 p.m. (ET) **Hearing Date: April 12, 2023 at 1:00 p.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves ("**Joint Provisional Liquidators**"), in their capacity as duly appointed joint provisional liquidators of FTX Digital Markets Ltd. ("**FTX Digital**") and foreign representatives of the Provisional Liquidation of FTX Digital, have today filed the *Motion of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in the Supreme Court of the Commonwealth of the Bahamas Seeking Resolution of Non-US Law and Other Issues* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that objections or responses to the relief requested in the Motion, if any, must be made in writing and filed with the Court on or before **April 5, 2023 at 4:00 p.m. (prevailing Eastern Time)**.

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion, if required, will be held before The Honorable John T. Dorsey, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801, on **April 12, 2023 at 1:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 29, 2023

/s/ Kevin Gross
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Attorneys for the Joint Provisional Liquidators of FTX Digital Markets Ltd. (In Provisional Liquidation)

EXHIBIT 1

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Re: Docket No. ___

ORDER GRANTING MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-U.S. LAW AND OTHER ISSUES

Upon the consideration of the motion (the "**Motion**")[2] of Brian C. Simms KC, Kevin G Cambridge, and Peter Greaves ("**JPLs**"), in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. ("**FTX Digital**") and foreign representatives of the Provisional Liquidation of FTX Digital, seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] Capitalized terms used but not defined herein are to be given the meanings ascribed to them in the Motion.

Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice needs be provided; and the Court having reviewed the Motion, the Greaves Declaration, and the MacMillan-Hughes Declaration; and the Court having determined that the legal and factual bases set forth in the Motion, the Greaves Declaration, and the MacMillan-Hughes Declaration, and on the record made at the hearing (if any) to consider the Motion, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. To the extent applicable, the automatic stay imposed in Chapter 11 Cases by section 362(a) of the Bankruptcy Code is hereby modified to allow the JPLs to seek the relief requested in the Motion.

3. Any relief from the automatic stay shall be effective immediately upon entry of this Order and the 14-day stay provided in Bankruptcy Rule 4001(a)(3) shall not apply.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

EXHIBIT 2

Bahamas Order (Settlement and Cooperation Agreement)

COMMONWEALTH OF THE BAHAMAS 2022

IN THE SUPREME COURT COM/com/00060

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER
(Settlement and Co-Operation Agreement)

Before His Lordship, the Honourable Chief Justice, Sir Ian Winder

Dated the 10th day of **February, A.D., 2023**

UPON THE APPLICATION by Summons filed herein on 6th February 2023 on behalf of the Joint Provisional Liquidations **("the JPLs")** of FTX Digital Markets Ltd. **("FTX DM")**.

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the JPLs and Mr. Robert Adams KC with Mr. Edward Marshall Jr. of Counsel for the Securities Commission of The Bahamas **("SCB")**.

AND UPON READING the Third Affidavit of Brian Simms KC filed herein on 6th February 2023.

IT IS HEREBY ORDERED that: -

1. The Settlement and Co-Operation Agreement dated 6th January 2023 **("the Agreement")** between (i) FTX DM, acting by its JPLs, and (ii) the companies in the FTX group of companies that filed chapter 11 cases in the United States Bankruptcy Court for the District of Delaware **("the US Bankruptcy Court")** on 11th and 14th November 2022 (and whose names are listed in Annex A to the Summons filed 6th February 2023), the effectiveness of which is subject to sanction of this Honourable Court and the US Bankruptcy Court is hereby sanctioned by this Court.

2. The Confidentiality Arrangements Agreement ("the NDA") dated 30th January 2023 is hereby sanctioned.

3. The costs of and occasioned by this application to be paid out of the assets of the FTX DM.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER
(Settlement and Co-Operation Agreement)

2022
COM/com/00060

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Attorneys for the Joint Provisional Liquidators

EXHIBIT 3

In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jun. 29, 2009)
[Docket No. 990]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Nortel Networks Inc., *et al.*,[1]	Case No. 09-10138 (KG)
Debtors.	Jointly Administered
	RE: D.I. 18, 54 + 983

ORDER APPROVING STIPULATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC., ET AL., AMENDING THE CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the stipulation dated June 26, 2009 (the "Stipulation")[2] attached hereto as Exhibit A between Nortel Networks Inc. and its affiliated debtors, as debtors and debtors in possession in the above-captioned cases (the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee") to amend the cross-border court-to-court protocol approved by the Court in the Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [D.I. 54], and good cause appearing for the approval thereof;

IT IS HEREBY ORDERED THAT:

1. The Stipulation is APPROVED.

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567). Addresses for the Debtors can be found in the Debtors' petitions, which are available at http://chapter11.epiqsystems.com/nortel.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stipulation.

2. The Amended Protocol, as attached to the Stipulation as Exhibit 1, is approved in all respects, subject to approval of the same by the Canadian Court.

3. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June 29, 2009
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Nortel Networks Inc., *et al.*,[1]	Case No. 09-10138 (KG)
Debtors.	Jointly Administered
	RE: D.I. 18, 54

STIPULATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC., ET AL., AMENDING THE CROSS-BORDER COURT-TO-COURT PROTOCOL

This stipulation (the "Stipulation") is by and between Nortel Networks Inc. ("NNI") and certain of its affiliates, as debtors and debtors in possession, (collectively, the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee"). The parties hereby stipulate and agree as follows.

Background

1. On January 14, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code").

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567). Addresses for the Debtors can be found in the Debtors' petitions, which are available at http://chapter11.epiqsystems.com/nortel.

3. Also on the Petition Date, the Debtors' ultimate corporate parent Nortel Networks Corporation ("NNC"), NNI's direct corporate parent Nortel Networks Limited ("NNL," and together with NNC and their affiliates, including the Debtors, "Nortel"), and certain of their Canadian affiliates (collectively, the "Canadian Debtors")[2] filed an application with the Ontario Superior Court of Justice (the "Canadian Court") under the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), seeking relief from their creditors (collectively, the "Canadian Proceedings"). The Canadian Debtors continue to manage their properties and operate their businesses under the supervision of the Canadian Court. Ernst & Young Inc., as court-appointed Monitor in the Canadian Proceedings and as foreign representative for the Canadian Debtors (the "Monitor"), has filed petitions in this Court for recognition of the Canadian Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. On January 14, 2009, the Canadian Court entered an order recognizing these chapter 11 proceedings as a foreign proceeding under section 18.6 of the CCAA. On February 27, 2009, this Court entered an order recognizing the Canadian Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. In addition, at 8 p.m. (London time) on January 14, 2009, the High Court of Justice in England placed nineteen of Nortel's European affiliates (collectively, the "EMEA Debtors")[3] into administration under the control of individuals from Ernst & Young LLC (collectively, the "Joint Administrators"). On May 28, 2009, at the request of the Administrators, the Commercial Court of Versailles, France (Docket No. 2009P00492) ordered

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[2] The Canadian Debtors include the following entities: NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation.

[3] The EMEA Debtors include the following entities: Nortel Networks UK Limited, Nortel Networks S.A., Nortel Networks (Ireland) Limited, Nortel GmbH, Nortel Networks France S.A.S., Nortel Networks Oy, Nortel Networks Romania SRL, Nortel Networks AB, Nortel Networks N.V., Nortel Networks S.p.A., Nortel Networks B.V., Nortel Networks Polska Sp. z.o.o., Nortel Networks Hispania, S.A., Nortel Networks (Austria) GmbH, Nortel Networks, s.r.o., Nortel Networks Engineering Service Kft, Nortel Networks Portugal S.A., Nortel Networks Slovensko, s.r.o. and Nortel Networks International Finance & Holding B.V.

the commencement of secondary proceedings in respect of Nortel Networks S.A. ("NNSA"), which consist of liquidation proceedings during which NNSA will continue to operate as a going concern for an initial period of three months. In accordance with the European Union's Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings, the English law proceedings remain the main proceedings in respect of NNSA. On June 8, 2009, Nortel Networks UK Limited ("NNUK") filed petitions in this Court for recognition of the English Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. On June 26, 2009, the Court entered an order recognizing the English Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code.

4. On January 15, 2009, this Court entered an order of joint administration pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") that provided for the joint administration of these cases and for consolidation for procedural purposes only [D.I. 36].

5. On January 26, 2009, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee") pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I.s 141, 142]. An ad hoc group of bondholders holding claims against certain of the Debtors and certain of the Canadian Debtors has also been organized (the "Bondholder Group"). No trustee or examiner has been appointed in the Debtors' cases.

The Cross-Border Court-to-Court Protocol

6. On January 14, 2009, the Debtors filed the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [D.I. 18] (the "Cross-Border Protocol Motion") for the purpose of establishing a cross-border court-to-court

protocol to govern the chapter 11 and Canadian Proceedings (the "First Day Protocol"). On January 15, 2009, the Court entered the Cross-Border Protocol Order [D.I. 54]. Likewise, on January 14, 2009, the Canadian Court issued an order (the "Initial Order") granting the Canadian Debtors various forms of relief, including approval of the First Day Protocol. Initial Order at ¶ 49.

7. Since the Petition Date, the Court has, on six occasions, approved stipulations among the Debtors and the Committee extending the Committee's time to file a motion for reconsideration of the Cross-Border Protocol Order [D.I.s 318, 466, 549, 676, 799, 900] pursuant to Rule 9013-1(m) Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). During this time, the Debtors, the Canadian Debtors and the Committee have engaged in constructive, good faith discussions regarding the terms of the First Day Protocol and possible amendments thereto. The changes reflected in the amended cross-border court-to-court protocol (the "Amended Protocol"), attached hereto as Exhibit 1, are the result of those discussions.

8. In addition to a variety of ministerial changes, the Amended Protocol provides greater clarity on a number of issues including the right to appear and be heard, mutual recognition of the stay of proceedings entered in the U.S. and Canadian Proceedings and the contemplation of a claims protocol. Most importantly, the Amended Protocol clarifies matters for which a joint hearing between the U.S. and Canadian Courts might be necessary and sets forth procedures for obtaining such joint hearings. A blackline reflecting all amendments from the First Day Protocol to the Amended Protocol is attached to the Stipulation as Exhibit 2.

9. As the Court is aware, the Debtors have entered into the Interim Funding and Settlement Agreement dated as of June 9, 2009 (the "Agreement") with the Canadian Debtors

and the EMEA Debtors, excluding Nortel Networks S.A. A joint hearing between this Court and the Canadian Court has been scheduled for June 29, 2009 (to be continued on June 30, 2009 if necessary) regarding the funding of NNL by NNI and other related issues addressed by the Agreement. Obtaining court approval of the amendments to the cross-border protocol constitutes an express condition required for the Agreement to become effective. See Agreement at ¶ 13(a).

Stipulation

NOW, THEREFORE, the Debtors and the Committee hereby stipulate and agree that the First Day Protocol shall be amended to incorporate the changes reflected in the Amended Protocol attached hereto as Exhibit 1 and that the Court should approve the Amended Protocol in all respects.

Dated: June 26, 2009
Wilmington, Delaware

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EXHIBIT 1

Amended Cross-Border Court-to-Court Protocol

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Nortel Networks Inc. ("NNI") is the wholly owned U.S. subsidiary of Nortel Networks Limited ("NNL"), the principal Canadian operating subsidiary of Nortel Networks Corporation ("NNC"). NNC is a telecommunications company headquartered in Toronto, Ontario, Canada. NNI is incorporated under Delaware law and is headquartered in Richardson, Texas.

2. NNI and certain of its affiliates (collectively, the "U.S. Debtors"),[1] have commenced reorganization proceedings (the "U.S. Proceedings") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"), and such cases have been consolidated (for procedural purposes only) under Case No. 09-10138 (KG). The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the U.S. Proceedings. On January 22, 2009,

[1] The Debtors in the U.S. Proceedings (as defined herein) are: NNI, Nortel Networks Capital Corporation, Nortel Altsystems Inc., Nortel Altsystems International Inc., XROS, Inc., Sonoma Systems, QTERA Corporation, CoreTek, Inc., Nortel Networks Applications Management Solutions Inc., Nortel Networks Optical Components Inc., Nortel Networks HPOCS Inc., Architel Systems (U.S.) Corporation, Nortel Networks International Inc., Northern Telecom International Inc. and Nortel Networks Cable Solutions Inc.

the Office of United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors Committee") in the U.S. Proceeding. An ad hoc committee of bondholders (the "Bondholders Committee") has also been organized.

3. On January 14, 2009, the U.S. Debtors' ultimate corporate parent NNC, NNI's direct corporate parent NNL (together with NNC and their affiliates, including the U.S. Debtors, "Nortel"), and certain of their Canadian affiliates (collectively, the "Canadian Debtors")[2] filed an application with the Ontario Superior Court of Justice (the "Canadian Court") under the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), seeking relief from their creditors (collectively, the "Canadian Proceedings"). The Canadian Debtors have obtained an initial order of the Canadian Court (as amended and restated, the "Canadian Order"), under which, inter alia: (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA; (b) Ernst & Young Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the Canadian Order; and (c) a stay of proceedings in respect of the Canadian Debtors has been granted.

4. The Monitor filed petitions and obtained an order in the U.S. Court granting recognition of the Canadian Proceedings under chapter 15 of the Bankruptcy Code (the "Chapter 15 Proceedings"). NNI also filed an application and obtained an order in the Canadian Court pursuant to section 18.6 of the CCAA recognizing the U.S. Proceedings as "foreign proceedings" in Canada and giving effect to the automatic stay thereunder in Canada. None of the U.S. Debtors or Canadian Debtors are applicants in both the U.S. Proceedings and Canadian Proceedings.

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[2] The Canadian Debtors include the following entities: NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation.

5. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "Debtors," (b) the U.S. Proceedings and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and each individually as a "Court."

B. Purpose and Goals

6. Though full and separate plenary proceedings are pending in the United States for the U.S. Debtors and in Canada for the Canadian Debtors, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

a. harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

b. promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Creditors Committee, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

e. facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Subject to the provisions of this Protocol, including, without limitation, those included in paragraph 15 hereof, where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

7. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

8. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

9. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief on an ex parte or "limited notice" basis to the extent permitted under applicable law;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Creditors Committee, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

f. preclude the Debtors, the Creditors Committee, the Monitor, the U.S. Trustee, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

10. The Debtors, the Creditors Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the Canadian Order and other applicable laws.

D. Cooperation

11. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the U.S. Debtors and Canadian Debtors may be creditors of the others'

estates, the Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

12. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Insolvency Proceedings.

b. Where the issue of the proper jurisdiction of either Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the Creditors Committee, the Monitor, the Bondholders Committee (collectively the "Core Parties"), the U.S. Trustee and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings (each a "Joint Hearing") with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a Joint Hearing to be necessary or advisable, or as otherwise provided herein, to, among other things, facilitate or coordinate proper and efficient conduct of the Insolvency Proceedings or the resolution of any particular issue in the Insolvency Proceedings. With respect to any Joint Hearing, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear and/or view the proceedings in the other Court.

(ii) Submissions or applications by any party that are or become the subject of a Joint Hearing (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed in advance of the Joint Hearing with both Courts.

(iii) Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing (collectively, "Evidentiary Materials") shall file or otherwise submit such materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings, being deemed to have appeared in or attorned to the jurisdiction of such Court in which such material is filed, so long as such party does not request any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the Joint Hearing shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, (1) to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts; and (2) to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any joint hearing, with or without counsel present, for the purposes of (1) determining whether consistent rulings can be made by both Courts; (2) coordinating the terms upon of the Courts' respective rulings; and (3) addressing any other procedural or administrative matters.

13. Notwithstanding the terms of the paragraph 12 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) the conduct of the parties appearing in matters presented to such Court; and (b) matters presented to such Court, including, without limitation, the right to determine if matters are properly before such Court.

14. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court, such Court may, without limitation, hear expert evidence of such law or, subject to paragraph 15 herein, seek the written advice and direction of the other Court which advice may in the discretion of the receiving Court, be made available to parties in interest.

15. Notwithstanding anything to the contrary herein contained, to the extent any motion is filed or relief is sought (collectively, "Requested Relief") in either Court relating to: (i) the proposed sale of assets for gross proceeds in excess of U.S. $30 million and where at least one U.S. Debtor and one Canadian Debtor are parties to the related sale agreement or that involves assets owned by at least one U.S. Debtor and one Canadian Debtor; (ii) any motion to allocate sale proceeds which are in the aggregate more than U.S. $30 million and where at least one U.S. Debtor and one Canadian Debtor are parties to the related sale agreement or that involves assets owned by at least one U.S. Debtor and one Canadian Debtor; (iii) matters relating to the advanced pricing agreement involving both the United States and Canadian taxing authorities; (iv) matters regarding transfer pricing methodology relating to an obligation for the transfer of goods and services between one or more U.S. Debtors and one or more Canadian

Debtors; (v) any matter relating to alleged fraudulent conveyance or preference claims in excess of U.S. $30 million and which may have a material impact on both one or more U.S. Debtors and one or more Canadian Debtors; (vi) matters relating to any proposal or approval of a disclosure statement, information circular, plan of reorganization or plan of compromise and arrangements in either the U.S. Proceedings or the Canadian Proceedings; (vii) any motion to appoint a Trustee or Examiner in the U.S. Proceedings, any motion to convert the U.S. Proceedings to a Chapter 7 proceeding, any motion to appoint a Receiver in the Canadian Proceedings, or any motion to convert the Canadian Proceedings to a bankruptcy or proposal proceeding under the Bankruptcy and Insolvency Act (Canada); (viii) any motion to substantively consolidate the Debtors' estates; (ix) matters impacting the material tax attributes of the U.S. Debtors, including the net operating losses of the U.S. Debtors in any prior fiscal year; (x) any motion to amend the terms of any of the Debtors' registered pension plans the effect of which would increase the liability of any Debtor thereunder; (xi) any motion to assume, ratify, reject, repudiate, modify or assign executory contracts having a material impact on the assets, operations, obligations, rights, property or business of both the U.S. and Canadian estates and accounting for annual gross revenue in excess of U.S. $30 million ("Material Contracts"); (xii) any motion seeking relief from the automatic stay in the U.S. Proceedings and/or the stay of proceedings in the Canadian Proceedings (1) involving any Material Contract or (2) to pursue actions having a material impact on the assets, operations, obligations, rights, property or business of at least one U.S. Debtor and one Canadian Debtor and involving damages in excess of U.S. $30 million; (xiii) any motion seeking to create or extend any program, plan, proposal or scheme relating to or authorizing payments to employees where the consideration relates to non-ordinary course incentive performance, retention, severance, termination or such like payments; and (xiv) any

motion regarding any program, plan proposal, scheme or similar course of action related to the wind-down of one or more of the Debtors' businesses;

Then the following procedures shall be followed:

a. unless otherwise consented to by the Core Parties, any and all documents, other than any Monitor's report related to the Requested Relief, shall be filed (as applicable) and served on the Core Parties on not less than seven days notice prior to the proposed hearing date for such Requested Relief in the Court of the forum country where the party seeking the Requested Relief intends the Requested Relief to be heard; *provided, however*, that to the extent the Requested Relief is necessary to avoid irreparable harm to the Debtors and/or the Debtors' bankruptcy estates, as may be determined by the Court of the forum country where the Requested Relief is being sought or such Court otherwise determines, such documents related to the Requested Relief shall be served on the Core Parties on such reasonable notice as such Court may determine;

b. upon notice of such Requested Relief being provided to the Core Parties, each of the Core Parties will have not less than two business days from receipt of such notice (or such shorter period as the Court of the forum country where the Requested Relief is being sought shall determine, as set forth in paragraph 15(a) herein) to request, in writing, that the filing party seek a Joint Hearing for the Requested Relief;

c. if the filing party agrees to seek a Joint Hearing, the Requested Relief shall be heard at a Joint Hearing conducted by the Courts in accordance with the procedures set forth in paragraph 12 herein; and

d. if the filing party does not agree to seek a Joint Hearing, the party seeking to have the Requested Relief heard at a Joint Hearing may file a notice of Joint Hearing dispute in both the Court of the forum country and the Court of the non-forum country and serve notice thereof on the remaining Core Parties, whereupon the respective Courts of the forum country and the non-forum country may consult with one another in accordance with paragraphs 6 and 12 hereof, in order to determine whether a Joint Hearing is necessary or may otherwise consult with the Core Parties prior to any party proceeding with the underlying Requested Relief in the original proposed forum country.

E. Recognition of Stays of Proceedings

16. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the

Bankruptcy Code (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (i) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

17. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the Canadian Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (i) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the United States.

18. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to paragraph 15, herein, motions brought respecting the application of the stay of proceedings with respect to assets or operations of the Canadian Debtors shall be heard and determined by the Canadian Court. Subject to paragraph 15 herein, motions brought respecting the application of the stay of proceedings with respect to assets or operations of the U.S. Debtors shall be heard and determined by the U.S. Court.

F. Rights to Appear and Be Heard

19. The Debtors, the Core Parties, and any other committee that may be appointed by the U.S. Trustee, and the professionals and advisors for each of the foregoing, shall have the right and standing: (i) to appear and to be heard in either the U.S. Court or Canadian Court in the U.S. Proceedings or Canadian Proceedings, respectively, to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or

regulations generally applicable to all parties appearing in the forum; and (ii) to file notices of appearance or other papers with the clerk of the U.S. Court or the Canadian Court in respect of the U.S. Proceedings or Canadian Proceedings, respectively; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that an appearance by the Creditors Committee in the Canadian Proceedings shall not form a basis for personal jurisdiction in Canada over the members of the Creditors Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above, including, inter alia, paragraph 12 above; (i) the Canadian Court shall have jurisdiction over the Chapter 11 Representatives (as defined below) solely with respect to the particular matters as to which the Chapter 11 Representatives appear before the Canadian Court; and (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives (as defined below) solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

20. In connection with any matter in the Canadian Proceedings in which the Creditors Committee seeks to become involved and which would otherwise require the Creditors Committee to execute a confidentiality agreement, the Creditors Committee, its individual members and professionals shall not be required to execute confidentiality agreements but instead the Creditors Committee and its members shall be bound by the confidentiality provisions contained in the Creditors Committee bylaws, and the Creditors Committee's professionals shall be bound by the terms of the confidentiality agreement with the Debtors dated February 2, 2009.

G. Claims Protocol

21. The Debtors anticipate that it will be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing, process,

jurisdiction and applicable governing law to be applied to the resolution of intercompany claims filed by the Debtors' creditors in the Canadian Proceedings and the U.S. Proceedings. In such event, and in recognition of the inherent complexities of the inter-company claims that may be asserted in the Insolvency Proceedings, the Debtors shall use commercially reasonable efforts to negotiate a specific claims protocol, in form and substance satisfactory to the Debtors, the Monitor, and the Creditors Committee, which protocol shall be submitted to the Canadian Court and the U.S. Court for approval. In the event that the Debtors fail to reach agreement among such parties, the Debtors shall file a motion in both the Canadian Court and the U.S. Court seeking approval of such claims protocol as the Debtors shall determine to be in the best interest of the Debtors and their creditors.

H. Retention and Compensation of Estate Representative and Professionals

22. The Monitor, its officers, directors, employees, counsel and agents, wherever located, (collectively the "Monitor Parties") and any other estate representatives appointed in the Canadian Proceedings (collectively, the "Canadian Representatives") shall (subject to paragraph 19) be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Canadian Debtors solely in accordance with the CCAA, the Canadian Order and other applicable

Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S Court.

23. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the Canadian Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the Canadian Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the Canadian Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

24. Any estate representative appointed in the U.S. Proceedings, including without limitation any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "Chapter 11 Representatives") shall (subject to paragraph 19) be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives shall not be required to seek approval of their retention in the Canadian Court and (a) shall be compensated for their services to the U.S. Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek

approval of their compensation for services performed for the U.S. Debtors in the Canadian Court.

25. Any professionals (i) retained by and being compensated solely by, or (ii) being compensated solely by, the Canadian Debtors including in each case, without limitation, counsel and financial advisors (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Such Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the Canadian Order and any other applicable Canadian law or orders of the Canadian Court with respect to services performed on behalf of the Canadian Debtors; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

26. Any professionals (i) retained by, or (ii) being compensated by, the U.S. Debtors including in each case, without limitation, counsel and financial advisors (collectively, the "U.S. Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

27. Subject to paragraph 19 herein, any professional retained by the Creditors Committee, including in each case, without limitation, counsel and financial advisors (collectively, the "Committee Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the

Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court or any other court.

I. Notice

28. Notice of any motion, application or other Pleading or paper (collectively the "Court Documents") filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to the Debtors; the U.S. Trustee; the Monitor; the Creditors Committee; the Bondholders Committee and any other statutory committees appointed in the Insolvency Proceedings and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

29. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 28 above.

J. Effectiveness; Modification

30. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

31. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provisions set forth above.

K. Procedure for Resolving Disputes Under this Protocol

32. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 28 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 12 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

33. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 28 hereof;

d. the Courts may jointly decide to invite the Debtors, the Creditors Committee, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and

e. for clarity, the provisions of this paragraph shall not be construed to restrict the ability of either Court to confer as provided in paragraph 12 above whenever it deems it appropriate to do so.

L. Preservation of Rights

34. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Creditors Committee, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including, without limitation, the Bankruptcy Code the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

EXHIBIT 4

In re Calpine Corp., Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113]

Hearing Date: July 24, 2007 at 2:00 p.m. (EST)
Objection Deadline: July 16, 2007 at 4:00 p.m. (EST)
Reply Deadline: July 20, 2007 at Noon (EST)

KIRKLAND & ELLIS LLP
Citigroup Center
153 East 53rd Street
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Edward O. Sassower (ES 5823)

Counsel for the Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
Calpine Corporation, et al.,	Chapter 11
Debtors.	Case No. 05-60200 (BRL) Jointly Administered

NOTICE OF DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS AND FOR OTHER RELIEF

PLEASE TAKE NOTICE that at **2:00 p.m. (EST)** on **July 24, 2007**, the Debtors, by their counsel, shall appear before the Honorable Judge Burton R. Lifland, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 623, or soon thereafter as counsel may be heard (the "Hearing"), and present the Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Bankruptcy Rule 9019(a) to Approve a Settlement With the Calpine Canadian Debtors and for Other Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court-to-Court Protocol approved by this Court on April 12, 2007 [Docket No. 4309] the Hearing will be a joint

videoconference hearing between Judge Lifland and the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary, Court House, 611 - 4 St. S.W., Calgary, Alberta, presiding over the Canadian insolvency proceedings instituted by certain Calpine subsidiaries and affiliates under the *Companies' Creditors Arrangement Act*.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a subsequent hearing.

PLEASE TAKE FURTHER NOTICE that the Motion may be examined and inspected by interested parties between the hours of 9:00 a.m. and 4:30 p.m. (Prevailing Eastern Time), during the days when the Court is in session, at the offices of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, or viewed online at http://www.nysb.uscourts.gov/.

PLEASE TAKE FURTHER NOTICE that the Motion and related documents may be viewed at www.kccllc.net/calpine/canadasettlement.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at http://www.nysb.uscourts.gov/, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (in either case, with a hard copy delivered directly to Chambers) and shall be

served upon: (a) counsel to the Debtors, Kirkland and Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022, Attn.: Edward Sassower; (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn.: Paul Schwartzberg, (c) counsel to the Unofficial Committee of Second Lien Debtholders, Paul Weiss Rifkind Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attn.: Alan W. Kornberg, Andrew N. Rosenberg, Elizabeth R. McColm; (d) counsel to the Official Committee of Unsecured Creditors, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022-2524, Attn.: Michael S. Stamer, Philip C. Dublin, Alexis Freeman; (e) counsel to the Official Committee of Equity Security Holders, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attn.: Matthew Gluck; (f) Canadian counsel to the Canadian Debtors, Goodmans LLP, 250 Yonge Street, Toronto, Canada M5B 2M6, Attn: Jay A. Carfagnini; and (g) U.S. counsel to the Canadian Debtors, Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, New York 10022, Attn: Philip D. Anker, so as to be received no later than **4:00 p.m. (EST) on July 16, 2007** (the "Objection Date").

Dated: June 28, 2007
New York, New York

Respectfully submitted,

/s/ David R. Seligman

Richard M. Cieri (RC 6062)
Marc Kieselstein (admitted pro hac vice)
David R. Seligman (admitted pro hac vice)
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Edward O. Sassower (ES 5823)

Counsel for the Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
Calpine Corporation, et al.,	)	
	)	Case No. 05-60200 (BRL)
Debtors.	)	Jointly Administered

DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS AND FOR OTHER RELIEF

Calpine Corporation and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "Calpine" or the "Debtors"), hereby file this motion (the "Motion") pursuant to sections 105(a) and 363(b) of the United States Bankruptcy Code (as amended from time to time, the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), for the entry of an order (the "Order"), substantially in the form attached hereto as Exhibit A, approving a settlement by and between the Debtors and Calpine Canada Energy Ltd. and its Canadian subsidiaries or affiliates that are Applicants or CCAA Parties (collectively, the "Canadian Debtors") in Action No. 0501-17864 under the *Companies' Creditors Arrangement Act,* R.S.C.

1985, c. C-36, as amended, the ("CCAA Proceedings") in the Court of Queen's Bench of Alberta (the "Canadian Court"), and for other related relief.[1]

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code, and Rule 9019(a) of the Bankruptcy Rules.

Background

3. Calpine Corporation ("Calpine" and, together with its direct and indirect subsidiaries, the "Company") is involved in the development, construction, ownership and operation of power generation facilities and the sale of electricity and its by-product, thermal energy, primarily in the form of steam, predominantly in North America. The Company operates the largest fleet of natural gas-fired power plants in North America. The Company has ownership interests in, and operates, gas-fired power generation and cogeneration facilities, pipelines, geothermal steam fields and geothermal power generation facilities.

4. The Company owns, leases and operates power plants throughout the United States. The Company also has interests in several plants under active construction. The Company markets electricity produced by its generating facilities to utilities and other third party purchasers while thermal energy produced by the gas-fired power cogeneration facilities is sold primarily to industrial users. The Company offers to third parties energy procurement,

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[1] All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Settlement Outline and ULC1 Settlement (as defined below).

liquidation and risk management services, combustion turbine component parts, engineering and repair and maintenance services.

5. On December 20, 2005 (the "Commencement Date"), the Debtors filed their voluntary petitions for relief (the "U.S. Cases") under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On January 9, 2006, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Creditors Committee") in these U.S. Cases. On May 9, 2006, the United States Trustee appointed an Official Committee of Equity Security Holders (the "Equity Committee"). No trustee or examiner has been appointed in these U.S. Cases.

6. Also on December 20, 2006 nine of Calpine's Canadian subsidiaries and affiliates commenced proceedings in Canada under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "CCAA"). An additional three Calpine Canadian affiliated partnerships were designated as "CCAA Parties" and granted the protection of the stay of proceedings by the Canadian Court. The Canadian Cases are under the supervision of the Court of Queen's Bench of Alberta, Judicial District of Calgary, the Honourable Madam Justice B.E.C. Romaine presiding. The Canadian Court appointed Ernst & Young, Inc. as the monitor (the "Monitor") in the CCAA Proceedings. After the 2005 fiscal year, the Canadian Debtors were deconsolidated from the U.S. Debtors for accounting and financial reporting purposes.

7. In contrast to the U.S. Debtors, a number of the Canadian Debtors are not operating entities, but investment vehicles created to raise funds for, and make investments on behalf of, Calpine and certain of its U.S. subsidiaries in Canada, the United Kingdom, and other foreign jurisdictions.

8. As of the commencement of the CCAA Proceedings, the Canadian Debtors' principal assets were intercompany claims against the U.S. Debtors, cash, and certain subordinated interests in the Calpine Power Income Fund, an entity holding interests in several power generation facilities in Canada. The expected outcome of the CCAA Proceedings is an orderly liquidation, rather than the restructuring of an ongoing business. At present, the Canadian Debtors have only a handful of employees remaining. Even before the commencement of the Canadian Cases, Calpine's Canadian operations were in the process of being wound down.

9. Soon after the commencement of the U.S. Cases and the CCAA Proceedings, the U.S. and Canadian Debtors realized that a host of cross-border issues needed to be addressed, the most significant of which are discussed below:

A. Sale of the ULC1 Bonds

10. One way that Calpine raised funds for its corporate needs was through the issuance of certain debt instruments through indirect, wholly-owned, non-operating Canadian subsidiaries of Calpine. In 2001, Calpine Canada Energy Finance ULC (defined in the Settlement Outline as "ULC1") issued approximately US$2.03 billion and C$200 million of senior notes, in two separate issuances (defined in the Settlement as the "ULC1 Bonds"). Calpine is alleged to have guaranteed these ULC1 Bonds. ULC1 was a non-operating Canadian "unlimited liability company" incorporated for the purpose of raising funds for Calpine and its subsidiaries, and did not have its own funding sources. The reason for raising funds through the creation of Canadian unlimited liability companies (rather than through U.S. subsidiaries) was to obtain certain favorable tax treatment in multiple jurisdictions. In July 2005, in connection with the repayment of certain intercompany loans associated with a preferred stock offering triggered by the sale of Calpine's Saltend Energy Centre in the UK, Calpine and certain U.S. subsidiaries

transferred approximately $360 million of repurchased ULC1 Bonds to Calpine Canada Resources Company ("CCRC"), now one of the Canadian Debtors. That put CCRC in the position of having both claims against ULC1, the issuer of the bonds and another of the Canadian Debtors, as well as guarantee claims against Calpine, one of the U.S. Debtors, and the alleged guarantor of these bonds.

11. Because these repurchased ULC1 Bonds represented perhaps the Canadian Debtors' single largest asset, the Canadian Debtors desired to sell and monetize them. However, the U.S. Debtors believed that the transfer of the ULC1 Bonds to CCRC may have been avoidable under the Bankruptcy Code. In July 2006, the Canadian Debtors instituted a process to have the Canadian Court determine CCRC's rights in the repurchased ULC1 Bonds (the "Bond Differentiation Process"). In late 2006 the Canadian and U.S. Debtors attempted to negotiate an arrangement whereby the ULC1 Bonds held by CCRC could be sold while preserving any rights of the U.S. Debtors to the proceeds; however, the bond sale did not proceed at that time.

12. Later, the U.S. Debtors filed their Partial Objection to Proof of Claim No. 5742 [Docket No. 3667], which, *inter alia*, asserts Section 502(d) defenses against certain claims held by CCRC based on the repurchased ULC1 Bonds. CCRC responded to the partial claims objection [Docket No. 3863], and the U.S. Debtors filed a reply [Docket No. 4275]. This partial claims objection (the "ULC1 Bond Objection") is still pending before this Court. CCRC's desire to determine its rights to, and sell, the repurchased ULC1 Bonds in the CCAA Proceedings, as well as Calpine's ULC1 Bond Objection in the U.S. Cases, raise complicated and difficult cross-border jurisdictional issues that, unless resolved, could result in time-consuming, expensive, and

uncertain litigation that could seriously delay the resolution of both the CCAA Proceedings and the U.S. Cases.

B. The Saltend Proceeds

13. As referenced above, in 2005 Calpine sold the Saltend Energy Centre. On the Petition Date, the net proceeds from the Saltend sale were held in the bank account of a wholly-owned indirect UK subsidiary of CCRC, a Canadian Debtor. The U.S. Debtors believe that they also may have claims to the Saltend proceeds, based on avoidance actions stemming from the transfer of the repurchased ULC1 Bonds discussed above. However, the Canadian Debtors disagreed and desired to "repatriate" the Saltend proceeds to CCRC to advance the liquidation of the CCAA estates.

14. Thus, in 2006 the U.S. Debtors and the Canadian Debtors cooperated to "repatriate" the Saltend proceeds to CCRC, on condition that the proceeds would be held by CCRC subject to any claims of the U.S. Debtors that might be established in the claims process (and subject to any defenses of the Canadian Debtors thereto). The disposition of the Saltend proceeds also created complex and difficult cross-border jurisdictional issues that potentially could involve the laws of the U.S., Canada, the U.K., Luxembourg, and Jersey (Channel Islands), and that, absent consensual resolution, could result in time-consuming, expensive and uncertain litigation in multiple jurisdictions that could delay the administration of both the U.S. Cases and the CCAA Proceedings.

C. Claims of the ULC1 Bondholders and Others

15. The corporate and financing structure underlying the original ULC1 Bond issuance is extremely complex and has resulted in multiple multi-billion dollar claims being asserted in the U.S. Cases that have complicated both the U.S. Cases and the CCAA

Proceedings. Not only were the ULC1 Bonds issued by ULC1, but in addition a "hybrid note structure" was created that added two additional contractual layers to facilitate the payment of interest and principal on the ULC1 Bonds. These contractual layers included "subscription agreements" and "share purchase agreements," under which (among other things) Quintana Canada Holdings, LLC ("QCH," a Calpine U.S. subsidiary and a U.S. Debtor) essentially agreed to purchase shares of Calpine Canada Energy Ltd. ("CCEL," a Canadian Debtor). Both the subscription agreements and the share purchase agreements were allegedly guaranteed by Calpine Corporation.

16. This "hybrid note structure" was further supplemented by certain related debentures between CCEL and ULC1, a subordinated debenture between CCRC and CCEL, and certain related promissory notes between CCRC and CCEL. This "hybrid note structure" ultimately caused the filing of multiple multi-billion dollar claims by multiple parties on account of what the U.S. Debtors believed should be characterized as one underlying obligation – *i.e.*, the defaulted principal and interest on the ULC1 Bonds. For example, CCEL filed Claim No. 3730 against QCH for US$2.56 billion based on the subscription agreements, and also filed Claim No. 4512 against Calpine Corporation for US$2.56 billion based on Calpine's guarantee of the subscription agreements. In addition, ULC1 filed Claim No. 4513 against QCH for US$2.56 billion based on the subscription agreements, and also filed Claim No. 4515 against Calpine Corporation for US$2.56 billion based on the subscription agreements guarantee. Similarly, ULC1 filed Claim No. 4514 against QCH in an unliquidated amount based on the share purchase agreement, and also filed Claim No. 4511 against Calpine Corporation for unliquidated amounts based on the share purchase agreement guarantee. Claims were also filed in both the Canadian Proceedings and the U.S. Cases by the Indenture Trustee and other parties related to the ULC1

Bonds and "hybrid note structure." Although the U.S. Debtors believe that they have good arguments that all of these claims on account of the ULC1 Bonds are duplicative and/or redundant, other parties (including the Canadian Debtors) disagree. The issue is not free from doubt and to litigate these multi-billion dollar issues would be time-consuming, costly, and uncertain. Given their size, failure to resolve these claims on account of the ULC1 Bonds could threaten to seriously delay and hamper the prompt and efficient administration of both the U.S. Cases and the CCAA Proceedings.

D. Claims of the ULC2 Bondholders

17. Calpine also had raised approximately $553.7 million[2] through another Canadian subsidiary ("ULC2") by issuing bonds (the "ULC2 Bonds") that were also allegedly guaranteed by Calpine Corporation. Even though the ULC2 Bonds lacked the complex "hybrid note" structure of the ULC1 Bonds, claims were filed by ULC2 bondholders both in the CCAA Proceedings against ULC2 and in the U.S. Cases based on Calpine's alleged guarantee obligations. Again, the U.S. Cases and the CCAA Proceedings were hampered by the complex primary and secondary obligation issues involved in the adjudication of multiple claims in multiple jurisdictions on account of the same bonds in both the CCAA Proceedings and the U.S. Cases.

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2 This figure was calculated using the principal of the ULC2 Bonds (which were denominated in pounds sterling and Euros), and applying the exchange rates as of the Petition Date.

E. The Greenfield Litigation

18. Before the Petition Date, Calpine had entered into a joint venture with a unit of Mitsui Corporation to develop the Greenfield Energy Centre, a large (1,005 MW) power plant project under development in Ontario. In late 2006, a Canadian Debtor, Calpine Canada Natural Gas Partnership, filed a fraudulent conveyance action in the Canadian Court against Calpine Greenfield Commercial Trust (a Canadian trust controlled by U.S. Calpine entities, "CGCT") alleging that a 2005 transfer of Calpine's limited partnership interest in the project to CGCT was avoidable under Canadian law. The pendency of this action initially delayed certain third-party financing of the Greenfield project, but the U.S. and Canadian Debtors ultimately reached a partial settlement whereby the Canadian Debtors essentially agreed to waive all claims against Greenfield-related entities in exchange for the U.S. Debtors' agreement to allow an administrative claim against Calpine's estate for any liquidated judgment obtained in the avoidance action. However, even with this interim settlement, unresolved complex, time-consuming and potentially expensive litigation still remained.

F. Claims of the Calpine Power Income Fund

19. In 2002 Calpine concluded a series of complex transactions that created the Calpine Power Income Fund (the "Fund"), a Canadian entity that enjoys favorable tax treatment, which held interests in four power plants formerly owned by Calpine. As part of the transaction Calpine allegedly guaranteed certain obligations by its Canadian subsidiaries to the Fund. The Fund has filed claims in both the CCAA Proceedings and the U.S. Cases related to the breach of two of these agreements, based on (respectively) the underlying contractual obligation and Calpine's guarantees of those obligations. The U.S. Debtors believe that the claims asserted by the Fund are in the hundreds of millions of dollars. The guarantee claims filed in these Chapter

11 Cases were in unliquidated amounts. The existence of such guarantee claims also has created complex cross-border jurisdictional issues that, if not resolved, could result in time-consuming, expensive, and uncertain litigation in multiple jurisdictions.

G. Intercompany "Books and Records" Claims

20. Currently, the Canadian Debtors have filed approximately $1.1 billion of claims against the U.S. Debtors, and the U.S. Debtors have filed approximately $250 million of claims against the Canadian Debtors, both based on intercompany amounts shown on both sets of companies' books and records. The Canadian and U.S. Debtors and their advisors have worked intensely with the Monitor over a period of months to reconcile these claims and reduce them to agreed amounts. Even though the amounts were reconciled, complex jurisdictional and cross-border issues of setoff, priorities and allowance still remained to be resolved.

The Settlement

21. After struggling with these issues for almost a year, the U.S. and Canadian Debtors realized that the only way to break the various intertwining logjams and unlock the values of the estates on both sides of the border was by investing time and effort in intense negotiations, focusing on the goal of a consensual resolution. The Canadian and U.S. Debtors realized that absent a consensual resolution, the two estates could be litigating for years, and with no end in sight given the fact at least two jurisdictions were involved. Therefore, the Canadian and U.S. Debtors engaged in intensive settlement discussions over a period of more than five months, involving their legal, financial and other advisors, all laboring to reach a mutually beneficial result.

22. The U.S. and Canadian Debtors are pleased that they have reached a comprehensive consensual and global resolution of virtually all major cross-border issues (the

"Settlement").[3] The U.S. and Canadian Debtors and their financial and legal professionals have spent many hours negotiating this complex and comprehensive Settlement. Ernst & Young, Inc., appointed by the December 20, 2005 Initial Order of the Canadian Court as the Monitor in the CCAA Proceedings, has participated in the negotiation of the Settlement and will recommend approval of the Settlement to the Canadian Court. The Settlement resolves, among other things, all the major issues discussed above, and creates a clear path forward by addressing how the remaining unresolved issues will be addressed. The Settlement allows the Canadian Debtors to move forward with the CCAA Proceedings, and allows the U.S. Debtors to resolve the claims and other pending litigation and turn their attention to their plan confirmation and exit process. The Settlement therefore creates significant value for both estates, and should be viewed as a major accomplishment.

23. The Settlement (and the incorporated ULC1 Settlement) are carefully crafted and were heavily negotiated to balance numerous issues among a group of debtors, creditors and stakeholders. The Settlement is a comprehensive whole, in that every element is related to, and affects, every other element in a cohesive, comprehensive manner, thereby striking a delicate consensual balance among multiple competing interests. The Settlement is an integrated resolution with no "one off" issues. Simply put, the Settlement is like a jigsaw puzzle – remove any one piece, and the whole is incomplete.

24. The Settlement is embodied in a settlement agreement, substantially in the form attached hereto as Exhibit B (the "Settlement Agreement"). The U.S. and Canadian Debtors are currently finalizing the Settlement Agreement, and the definitive Settlement Agreement will be

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[3] To the extent there are any inconsistencies between the Motion and the Settlement Agreement (defined below), the terms of the Settlement Agreement shall govern.

filed with this Court and posted at the web site of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine/canadasettlement no later than fourteen (14) days prior to the Hearing. The U.S. and Canadian Debtors believe that the Settlement, as embodied in the Settlement Agreement, is highly beneficial to the Debtors, their estates, creditors and other stakeholders, will resolve virtually all major cross-border issues, allow the removal of a large number of claims from the Debtors' claims register, and allow the dismissal of all currently-pending cross-border litigation.

25. The highlights of the Settlement include:

(i) All intercompany claims between the U.S. and Canadian Debtors will be resolved and the amounts fixed – this will eliminate more than $841 million of unsecured claims from the U.S. Debtors' claims register.

(ii) The Greenfield Litigation against the U.S. Debtors will be dismissed with prejudice. This will allow Calpine and Mitsui to proceed with the third party financing, development and completion of the Greenfield Energy Centre.

(iii) The ULC1 Bond Objection will be withdrawn with prejudice. The ULC1 Bonds held by CCRC will then be sold and the proceeds will flow to the Canadian Debtors to be distributed to their creditors, in accordance with the Settlement Agreement, thereby allowing the CCAA Proceedings to move forward.[4]

(iv) The Canadian and U.S. Debtors have agreed on a procedure by which certain third-party claims filed in the CCAA Proceedings and the related guarantee claims filed in the U.S. Cases will be resolved. The interests of the U.S. Debtors and their estates will be protected by allowing the U.S. Debtors and their official committees the right to fully participate in any settlement or adjudication of these claims.

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[4] Notwithstanding the consent of the U.S. Debtors to the sale of the CCRC Senior Notes, the U.S. Debtors shall not be deemed to have any responsibility whatsoever for any securities law liability arising from the sale by the Canadian Debtors of the CCRC ULC1 Senior Notes.

(v) Well over $10.5 billion in claims filed by third parties in both the CCAA Proceedings and the U.S. Cases are also resolved by the Settlement and will be withdrawn or deemed to have no value.

(vi) Approximately $15 million in proceeds from the 2006 sale of Calpine subsidiary Thomassen Turbine Systems, B.V., which have been in an escrow account since the sale, will be split evenly among the U.S. and Canadian Debtors, thereby avoiding lengthy separate negotiations or possible litigation.

26. The Settlement also incorporates a settlement previously announced on April 19, 2007 between the U.S. Debtors and an ad hoc group of ULC1 bondholders (the "ULC1 Settlement").[5] Highlights of the ULC1 Settlement are:

(i) Approximately $12 billion of claims filed in the U.S. Cases are reduced to a maximum third party obligation of approximately $3.5 billion (the actual amount of the Debtors' obligation under the hybrid note structure will essentially be capped at the principal amount of the ULC1 Bonds, plus interest, certain costs, and fees);

(ii) The distribution under the Debtors' plan of reorganization on account of the ULC1 Settlement will be accorded the same treatment as the plan treatment of certain Calpine senior notes (as defined in the ULC1 Settlement), capped as indicated in subparagraph (i) above;

(iii) The Debtors are given the flexibility on how the ULC1 Indenture Trustee's claims are classified in its plan of reorganization; and

(iv) The "marker" claims filed in both the U.S. Cases and Canadian Proceedings by the ULC1 Indenture Trustee will be disallowed.[6]

27. The success of the ULC1 Settlement in fact relies on the resolution of the global Settlement with the Canadian Debtors, because the ULC1 Settlement is based on the U.S. Debtors obtaining the cooperation of the Canadian Debtors in winding up the "hybrid note structure" and the claims relating thereto. An ad hoc committee of ULC1 bondholders – which

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5 *See* Calpine Corporation Form 8-K, filed on April 19, 2007.

6 In the event of any discrepancy between the description of the ULC1 Settlement herein and the Settlement Agreement, the terms of the Settlement Agreement control.

may be one of the largest bondholder groups in the U.S. Cases – endorsed the larger global Settlement with the Canadian Debtors, and the ad hoc committee has presented the Indenture Trustee for the ULC1 Bonds (the "ULC1 Indenture Trustee") with the form of a letter from holders of a majority in aggregate principal amount of the ULC1 Bonds, directing the ULC1 Indenture Trustee to enter into the Settlement, and to take all such actions necessary or appropriate to consummate the Settlement, and offering the ULC1 Indenture Trustee an indemnity pursuant to the ULC1 Trust Indenture.[7]

28. The Settlement and execution, delivery and implementation of the Settlement Agreement will resolve globally virtually all major cross-border issues and will clearly confer a substantial benefit on, and are in the best interests of, the Debtors' estates, their creditors and stakeholders.

Relief Requested

29. By this Motion, the Debtors seek the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (a) approving and authorizing the Settlement, including the ULC1 Settlement, (b) as part of the Settlement, authorizing the Debtors to cooperate in the Canadian Debtors' sale of the ULC1 Bonds held by CCRC, and (c) authorizing the Debtors to execute, deliver and implement the Settlement Agreement.[8]

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7 However, as of the date of the Motion, the ULC1 Indenture Trustee has not yet accepted the terms of this direction and indemnity letter. The proposed Order (attached hereto as Exhibit A) contains language providing for findings concerning the form and manner of notice given to the holders of the ULC1 Bonds of this Motion, the Settlement, Settlement Agreement and the ULC1 Settlement. The proposed Order also contains provisions to protect HSBC in its capacity as Indenture Trustee in the actions it is taking in connection with the ULC1 Settlement.

8 The Canadian Debtors are simultaneously filing a motion, with supporting affidavits, in the Canadian Court seeking approval of the Settlement (the "Canadian Approval Motion)." The Canadian Approval Motion will be filed with this Court pursuant to Section 13(d)ii of the Cross-Border Insolvency Protocol
(footnote continued)

Basis for Relief

30. Compromises and settlements are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Bankruptcy Rule 9019 requires bankruptcy court approval of compromises entered into by a debtor. Bankruptcy Rule 9019(a) provides in pertinent part that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The decision whether to accept or reject a compromise lies within the sound discretion of the Bankruptcy Court. *See Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id*. at 122. The court may consider the opinions of the debtor in possession and its counsel that the settlement is fair and reasonable. *Id.; see In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *Shugrue*, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

31. Section 363 of the Bankruptcy Code is the statutory vehicle for considering approval of the Settlement under Bankruptcy Rule 9019. *In re Myer*, 91 F.3d 389, 395 n.2 (3d Cir. 1996); *In re Sparks*, 190 B.R. 842, 845 (Bankr. N.D. Ill. 1996) *aff'd* 1997 WL 156488 (N.D. Ill. 1997); *In re Dow Corning Corp.*, 198 B.R. 214, 246 (Bankr. E.D. Mich. 1996). Section

for Calpine Corporation and its Affiliates (*see* Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [Docket No. 4309], the "Protocol"). The 23rd Report of the Monitor in support of the Settlement will also be filed with this Court pursuant to the Protocol.

363(b) of the Bankruptcy Code provides in relevant part that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A court can authorize a debtor to use property of the estate pursuant to Section 363(b)(1) of the Bankruptcy Code when such use is an exercise of the debtor's sound business judgment and when the use of the property is proposed in good faith. *In re Delaware & Hudson R.R. Co.*, 124 BR. 169, 176 (D. Del. 1991). The debtor has the burden to establish that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor articulates a valid business justification, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. *See In re Integrated Resources, Inc.*, 147 BR. 650, 656 (Bankr. S.D.N.Y. 1992). The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. *Id.; see In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor's management decisions").

32. To approve a compromise and settlement under Section 363 and Bankruptcy Rule 9019, a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable and in the best interests of the debtor's estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994) (citations omitted); *In re Enron Corp.*, 2003 WL 230838, *2 (S.D.N.Y. 2003). More specifically, "[i]n making this comparison the bankruptcy judge should consider the litigation's probable costs and probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay." *In re Miller*, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992) (internal citation omitted).

33. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *In re W.T. Grant Co*., 699 F.2d 599, 608 (2d Cir. 1983). In deciding whether a particular settlement falls within the "range of reasonableness," courts consider the following factors:

(i) the probability of success in the litigation;

(ii) the difficulties associated with collection;

(iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and

(iv) the paramount interests of creditors.

Purofied Down Prods. at 522 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1989)); *Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp.*, 286 B.R. 236, 248 n.13 (S.D.N.Y. 2002), *see also In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992).

34. The court need not conduct a 'mini-trial' to determine the merits of the underlying dispute; rather, the court need only consider those facts that are necessary to enable it to evaluate the settlement and to make an informed and independent judgment about the settlement. *Purofied Down Prods.*, 150 B.R. at 522; *Energy Cooperative*, 886 F.2d at 924-25 (7th Cir. 1989).

The Settlement Should Be Approved

35. The Debtors submit that the Settlement is beneficial to their estates and creditors and that therefore good cause exists for approval. The Settlement is fair and equitable, and falls well within the range of reasonableness. More specifically, the Settlement will resolve virtually all major cross-border issues between the U.S. and Canadian Debtors. Not only will the

Settlement cause the dismissal of all currently-pending cross-border litigation, which is complex, costly, time-consuming and uncertain, but the Debtors will receive a US$75 million first ranking administrative charge against the net proceeds realized by the Canadian Debtors from the sale of the CCRC ULC1 Senior Notes. The Settlement will cause the elimination of billions of dollars of claims against the Debtors' estates, and help crystallize the claims register as the Debtors are seeking confirmation of their plan of reorganization. As a result of the Settlement, the Debtors will be able to proceed with the Greenfield Energy Centre project without the spectre of the overhanging litigation filed by the Canadian Debtors. All intercompany "books and records" claims will be resolved and their amounts fixed, and most claims against the Canadian Debtors and the U.S. Debtors will be resolved. Although the Settlement does not resolve the guarantee claims by the Fund against the U.S. Debtors, the Settlement nonetheless creates a process for resolving those claims in a manner that fully protects the interests of the Debtors, their estates and their stakeholders. The Settlement provides for an equitable division between the U.S. and Canadian Debtors of the proceeds from last year's sale of Calpine's subsidiary Thomassen Turbine Systems, currently held in escrow, eliminating the necessity of lengthy separate negotiations or possible litigation. Finally, as a result of the Settlement, among other things, there is a possibility that the U.S. Debtors may receive a distribution in the CCAA Proceedings on account of their equity interests in certain of the Canadian Debtors. The Debtors therefore respectfully request that this Court approve the Settlement and the ULC1 Settlement in their entirety.

Injunction Protecting the ULC1 Indenture Trustee

36. As referenced above,[9] the proposed Order attached hereto as Exhibit A requests certain protections for HSBC Bank USA, acting in its capacity ULC1 Indenture Trustee, in the actions it is taking in connection with the ULC1 Settlement. Included in those protections is an injunction in favor of the ULC1 Indenture Trustee, prohibiting current, former and future holders and beneficial holders of the ULC1 Bonds from commencing or continuing any action or proceeding against the ULC1 Indenture Trustee arising out of, relating to or in connection with the ULC1 Indenture Trustee's support of the Settlement and the ULC1 Settlement and the execution, delivery and implementation by the ULC1 Indenture Trustee of the Settlement Agreement and the Ancillary Documents, if any.

37. Section 105(a) of the Bankruptcy Code grants broad authority to this Court to issue "any order, process or judgment that is necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). "In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization." *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992). As in *Drexel*, the Settlement is a major accomplishment and an essential element of the Debtors' reorganization, and the requested injunction is a key component of the Settlement Agreement, because it assures the ULC1 Indenture Trustee's participation. The Second Circuit in *Drexel* approved a similar injunction because "the directors and officers [protected by the injunction] would be less likely to settle." 960 F.2d at 293. In the present case, this threshold is not only met, but exceeded, because without the injunction the ULC1 Indenture Trustee would not only

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9 *See* footnote 5.

"be less likely to settle," but its very willingness to participate in the Settlement would be called into question. Without the ULC1 Indenture Trustee's participation, the Settlement could not be consummated. Therefore, the Debtors suggest that Section 105(a) gives this Court the requisite authority to issue the limited injunction requested in the Order, and respectfully request that the Court grant the injunction.

Memorandum of Law

38. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

39. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the Creditors Committee; (c) counsel to the administrative agents for the Debtors' prepetition secured lenders; (d) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the Debtors' secured indentures; (f) counsel to the Debtors' postpetition lenders; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the United States Department of Justice; (j) counsel to the Equity Committee; and (k) all parties that have requested notice pursuant to Bankruptcy Rule 2002. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine.

40. Moreover, in connection with the ULC1 Settlement, the Debtors intend to provide notice of the proposed Settlement to all interested parties, including the record holders and beneficial holders of the ULC1 Bonds, by:

(i) Delivering the Motion and the Canadian Approval Motion to all ULC1 bondholders of record as of June 20, 2007, to enable the record holders to distribute the Approval Motions to the beneficial holders of the ULC1 Bonds. Pursuant to the provisions of 17 C.F.R. § 240.14b-1(b)(2) and § 240.14b-2(b)(3), the record holders are required to forward the Motions to said beneficial holders no later than five days after the date each record holder received the Motions;

(ii) Publication of a notice (the "Notice," substantially in the form attached hereto as Exhibit C) in The Wall Street Journal, The Financial Times, Investor's Business Daily, The Globe & Mail (Canada) and the National Post (Canada);

(iii) Posting of the Notice on the Legal Notice System (LENS) of the Depositary Trust Company;

(iv) Posting of the Notice, the Motion and the Canadian Approval Motion at http://www.kccllc.net/calpine/canadasettlement; and

(v) Issuing a press release notifying ULC1 bondholders and others of the hearing on the Settlement and providing the necessary information to electronically access the Motion and the Settlement Agreement.

In light of the nature of the relief requested herein, the Debtors submit that the foregoing notice is sufficient and appropriate under the circumstances and that no other or further notice is required.

No Prior Request

41. No prior Motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors request the Court to enter an order, substantially in the form attached hereto as Exhibit A (a) approving and authorizing the Settlement, including the ULC1 Settlement, (b) authorizing the Debtors to execute, deliver and implement the Settlement Agreement, (c) authorizing the Debtors to cooperate in the Canadian Debtors' sale of the ULC1 Bonds held by CCRC as provided in the Settlement Agreement, and (c) granting such other and further relief as is just and proper.

Dated: June 28, 2007
New York, New York

Respectfully submitted,

/s/ David R. Seligman

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<u>EXHIBIT A</u>

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
Calpine Corporation, et al.,	)	
	)	Case No. 05-60200 (BRL)
Debtors.	)	Jointly Administered

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS

Upon the Motion (the "Motion")[1] of the above-captioned debtors (collectively, the "U.S. Debtors") for entry of an Order pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a); it appearing that the relief requested is in the best interest of the U.S. Debtors' estates, their creditors and other parties in interest; it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that notice of the Motion and the opportunity for a hearing on the Motion were appropriate under the particular circumstances and that no other or further notice need be given; the Motion having been heard by way of joint video conference by this Court and the Honourable Madam Justice B.E.C. Romaine of the Canadian Court pursuant to the Cross-Border Insolvency Protocol for Calpine Corporation and its Affiliates; and after due deliberation and sufficient cause appearing therefor;

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion, or, if not defined therein, in the Settlement Agreement.

The Court, having considered the relief requested in the Motion and being duly advised of the premises, hereby finds that:[2]

A. On April 25, 2001, ULC1 issued US$1,500 million of 8.5% senior notes due May 1, 2008 (the "8.5% ULC1 Senior Notes") under an indenture dated as of April 25, 2001 between ULC1 and Wilmington Trust Company, as predecessor trustee (as amended by an Amended and Restated Indenture dated October 16, 2001, the "ULC1 Indenture").

B. On October 16, 2001, ULC1 issued an additional US$530 million of 8.5% ULC1 Senior Notes under the ULC1 Indenture (the April 25, 2001 issuance and the October 16, 2001 issuance are collectively referred to as the "8.5% ULC1 Senior Notes").

C. On October 18, 2001, ULC1 issued approximately C$200 million of 8.75% senior notes due October 15, 2007 (the "8.75% ULC1 Senior Notes," and collectively with the 8.5% ULC1 Senior Notes, the "ULC1 Bonds").

D. HSBC Bank USA, National Association is the successor indenture trustee under the ULC1 Indenture (the "Indenture Trustee").

E. On December 20, 2005 (the "Commencement Date"), the U.S. Debtors filed their voluntary petitions for relief (the "U.S. Cases") under chapter 11 of the Bankruptcy Code. The U.S. Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

F. The U.S. Debtors and the Ad Hoc ULC1 Noteholders Committee (as defined in the ULC1 Settlement) engaged in good faith, arm's-length negotiations culminating in their

[2] To the extent necessary, findings of fact shall be deemed conclusions of law, and conclusions of law shall be deemed findings of fact.

execution and delivery, as of April 13, 2007, of a Preliminary Settlement Outline (defined in the Motion as the "ULC1 Settlement").

G. The U.S. Debtors and the Canadian Debtors engaged in good faith, arm's-length negotiations and on May 13, 2007 reached a comprehensive consensual and global resolution of virtually all major cross-border issues (defined in the Motion as the "Settlement"). The Settlement incorporates the ULC1 Settlement.

H. The Settlement and the ULC1 Settlement, as definitively embodied in the Settlement Agreement, are fair, reasonable, and represent a sound exercise of the U.S. Debtors' business judgment, and are in the best interests of the U.S. Debtors' estates, creditors, and other stakeholders.

I. On June 28 2007 the Canadian Debtors filed a motion (the "Canadian Approval Motion" and together with the Motion, the "Approval Motions") seeking, among other things, approval of the Settlement Agreement, which definitively embodies the Settlement and the ULC1 Settlement described in the Motion.

J. This Court has core jurisdiction over the Cases, this Motion and the parties and property affected hereby pursuant to 28 U.S.C. Sections 157 (b) and 1334.

K. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the Creditors Committee; (c) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the U.S. Debtors' secured indentures; (e) counsel to the U.S. Debtors' postpetition lenders; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the United States Department of Justice; (i) counsel to the Equity Committee; and (j) all parties that have requested notice pursuant to Bankruptcy Rule

2002. A copy of the Motion has been also made available on the website of the U.S. Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine.

L. The U.S. Debtors provided notice of the proposed Settlement to all interested parties, including all record holders of the ULC1 Bonds (the "Holders"), by:

(a) Delivering the Motion and the Canadian Approval Motion to all Holders of the ULC1 Bonds as of June 20, 2007, to enable such Holders to distribute the Approval Motions to the beneficial holders of the ULC1 Bonds. Pursuant to the provisions of 17 C.F.R. § 240.14b-1(b)(2) and § 240.14b-2(b)(3), the record holders are required to forward the Motions to said beneficial holders no later than five days after the date each record holder received the Motions;

(b) Publication of a notice (the "Notice," substantially in the form attached to the Motion as Exhibit C) in The Wall Street Journal, The Financial Times, Investor's Business Daily, The Globe & Mail (Canada) and the National Post (Canada);

(c) Posting of the Notice on the Legal Notice System (LENS) of the Depositary Trust Company; and

(d) Posting of the Notice, the Motion and the Canadian Approval Motion at http://www.kccllc.net/calpine/canadasettlement.

(e) Issuing a press release dated July 9, 2007 notifying the Holders and others of the hearing on the settlement and providing the necessary information to electronically access the Motion and the Settlement Agreement.

M. As described in the Motion, a draft of the Settlement Agreement was attached as Exhibit B to the Motion. Also as specified in the Motion, the U.S. Debtors posted the Settlement Agreement at http://www.kccllc.net/calpine/canadasettlement on [July 9], 2007, at least fourteen (14) days before July 24, 2007, the date of the joint hearing held in this matter. Due and adequate notice of the Settlement Agreement has been provided to all parties in interest.

N. The statutory bases for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

It is hereby ORDERED

1. The Motion is approved in its entirety.

2. The Settlement Agreement is approved in its entirety.

3. The settlements and compromises set forth in the Settlement and the ULC1 Settlement, as embodied in the Settlement Agreement, are approved, and the U.S. Debtors and HSBC are authorized and directed to enter into, execute, deliver and implement the Settlement Agreement, conditional upon the Canadian Court granting an order (the "Canadian Approval Order" and together with this Order, the "Approval Orders") approving the Settlement and authorizing the Canadian Debtors to enter into the Settlement Agreement and to carry out the transactions contemplated by the Settlement Agreement.

4. The U.S. Debtors and each party to the Settlement Agreement are authorized, from time to time, to enter into such other and further documents, agreements and instruments (collectively, the "Ancillary Documents"), and take such other actions, as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of the Settlement Agreement or to perform its or their respective obligations under the Settlement Agreement and the transactions contemplated thereby.

5. Other than paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 22, 27, 28, 29, 30, 32, 33 and 34 of this Order, which paragraphs are effective upon the entry of this Order, and other than paragraph 26 which is effective on the date of the sale of CCRC Senior Notes, the balance of the paragraphs of this Order shall only be effective upon the date the Canadian Debtors, the U.S. Debtors and the ULC1 Indenture Trustee have executed and filed a certificate with this Court advising that all of the conditions in the Settlement Agreement have been either waived or satisfied (including, without limitation, the condition that the sale of the CCRC Senior Notes (described below) be completed), and advising of the Effective Date (as defined in the Settlement Agreement).

6. The notice of the Motion and the Settlement Agreement given by the U.S. Debtors is approved, both in form and content, and was timely, fair, and adequate, sufficient and appropriate under the circumstances to (a) apprise interested parties of the Motion, the Canadian Approval Motion and the respective hearings scheduled thereon, and the Settlement Agreement and (b) to afford them an opportunity to present any objections, and no other or further notice is or was required.

7. This Order is binding and effective upon the Holders, as well as all current, former, and future beneficial holders of the ULC1 Bonds (the "Beneficial Holders"), and all indenture trustees for the ULC1 Bonds, or predecessors or successors thereto (solely in their capacity as indenture trustees with respect to the ULC1 Bonds and not in any other capacity, including, but not limited to, their capacity as the holder of any claim against the U.S. Debtors or as indenture trustees with respect to any other securities related to the U.S. Debtors or their affiliates).

8. The compromises and settlements embodied in the Settlement Agreement are fair and reasonable to the U.S. Debtors, the Holders, the Beneficial Holders, and the Indenture Trustee.

9. The execution, delivery and implementation by the Indenture Trustee of the Settlement Agreement, and the Ancillary Documents, if any, are authorized and approved and are determined to be consistent with and in furtherance of the Indenture Trustee's duties and responsibilities under the ULC1 Indenture, and not prejudicial to the rights of the Holders or the Beneficial Holders of the ULC1 Bonds.

10. In consenting to and supporting the Settlement and the ULC1 Settlement, and in executing and delivering the Settlement Agreement and the Ancillary Documents, if any, the

Indenture Trustee is exercising reasonably, prudently and in good faith its rights and powers vested in it under the ULC1 Indenture and is using the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

11. Without further order of this Court, and without further action by the parties to the Settlement Agreement, the Indenture Trustee shall be, and hereby is, exculpated and fully, finally and irrevocably released and discharged by all persons and entities, including, without limitation, the Holders and all current, former and future Beneficial Holders, from, and shall not have or incur any liability for, any and all claims, causes of action and other assertions of liability arising out of, relating to, or in connection with the Indenture Trustee's support of the Settlement and the ULC1 Settlement and its execution, delivery and implementation of the Settlement Agreement and the Ancillary Documents, if any. To implement the exculpation provided herein, all Persons and entities, including, without limitation, the Holders and all current, former and future Beneficial Holders, shall be, and hereby are, permanently and irrevocably enjoined from commencing or continuing in any manner any action or proceeding against the Indenture Trustee arising out of, relating to or in connection with the Indenture Trustee's support of the Settlement and the ULC1 Settlement and its execution, delivery and implementation of the Settlement Agreement and the Ancillary Documents, if any.

12. The Canadian Debtors, for themselves and their successors, assigns, affiliates (other than the U.S. Debtors or their affiliates), and anyone claiming through them (including, without limitation, creditors of the Canadian Debtors claiming through the Canadian Debtors) (each in their capacity as such) shall and are deemed to have irrevocably, fully, finally, and forever waived, released, and discharged any and all Claims against the U.S. Debtors and their

affiliates (other than the Canadian Debtors and Calpine's Canadian affiliates), successors and assigns, and estates, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, save and except only as specifically provided for otherwise in the Settlement Agreement.

13. Except only as specifically provided for otherwise in the Settlement Agreement, distributions on all of the Claims listed on Exhibit A and Exhibit B of the Settlement Agreement shall only be made after distributions have been made on account of all other Claims against the applicable Canadian Debtor or U.S. Debtor.

14. All claims (other than those specifically provided for in the Settlement Agreement) by the U.S. Debtors and Canadian Debtors, and their respective successors, assigns, applicable affiliates, and anyone claiming through them (including without limitation creditors of the respective Canadian and U.S. Debtors) (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, including claims for oppression or similar statutory or common law relief, are hereby barred forever.

15. In the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to ULC2 Accrued Interest, fees incurred in the Harbert Litigation, and/or to a "make whole amount," has not been resolved by the date distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, if any, as may be subsequently determined by this Court to be payable in accordance with the terms of the ULC2 Indenture and related agreements.

16. The claims included in Exhibit G to the Settlement Agreement are hereby dismissed with prejudice or deemed to have been withdrawn with prejudice.

17. All of the HSBC U.S. Marker Claims and all of the HSBC Canadian Marker Claims are hereby dismissed with prejudice or deemed to have been withdrawn with prejudice.

18. The U.S. Debtors are authorized and directed to take any and all steps to perform any and all acts necessary or reasonably requested by CCRC to implement or assist CCRC in the sale of the ULC1 Bonds held by CCRC (the "CCRC Senior Notes"), provided, however, that no such acts shall cause or be deemed to cause the sale of the CCRC Senior Notes to be, or have been done, "by" any of the U.S. Debtors for purposes of any applicable securities laws, nor shall any U.S. Debtor be deemed to be a participant, issuer or control person with respect to the sale of the CCRC Senior Notes for purposes of any applicable securities laws.

19. Without limiting the generality of the preceding paragraph, Calpine Corporation is specifically authorized and directed in connection with CCRC's sale of the CCRC Senior Notes to:

(i) execute the Guarantee attached to the 144A Global Security; and

(ii) execute the Guarantee attached to the Regulation S Global Security;

provided, however, that any obligations of Calpine Corporation under the Guarantees shall remain prepetition liabilities, and such execution, even though occurring after the Petition Date, shall not convert Calpine Corporation's prepetition liabilities under the Guarantees into postpetition liabilities, administrative expense claims under section 503 of the Bankruptcy Code, or administrative claims or restructuring claims under the CCAA.

20. Calpine Corporation's prepetition obligations under the Guarantee Agreement are hereby affirmed, including in respect of the 144A Global Security, the Regulation S Global Security and the CCRC Senior Notes.

21. All persons and entities are forever barred, estopped and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding, with respect to any claim or cause of action against any of the U.S. Debtors in relation to or arising from the sale of the CCRC Senior Notes by CCRC, and any of the transactions associated therewith, including without limitation, the authentication and delivery of the Guarantees attached to the 144A Global Security and the Regulation S Global Security.

22. The Intercompany Claims outlined in Exhibit D to the Settlement Agreement are deemed allowed, general, non-subordinated, unsecured claims against the applicable Canadian Debtor(s) in the CCAA proceedings and U.S. Debtor(s) in the U.S. Cases, as the case may be, and shall be treated the same as all other allowed non-subordinated, general, unsecured claims against the applicable Canadian Debtor(s) or U.S. Debtor(s), as the case may be, under any plan of arrangement sanctioned in the CCAA Proceedings ("POA") or plan of reorganization in the U.S. Cases ("POR"), provided, however, that Claim No. 4448 of CCRC against QCH, set forth on Exhibit D of the Settlement Agreement, which includes CCRC's claim against the U.S. Debtors in respect of the liability of CCRC for applicable non-resident withholding taxes related to the intercompany advance that is the basis of Claim No. 4448, shall be satisfied through the granting to CCRC of an allowed non-subordinated general unsecured Claim (not subject to setoff, counterclaim or defense) against QCH in the amount of U.S.$232 million (the "CCRC Claim"), which shall be guaranteed in full by Calpine Corporation ("CORPX"). The CCRC Claim is hereby granted and allowed; provided further that in no event shall distributions to CCRC under the POR on account of the CCRC Claim (or any guarantee thereof) exceed C$181,431,000 (plus an amount equal to the aggregate of all liabilities and obligations of CCRC

for tax penalties and interest, if any, arising from the non-resident withholding taxes described in Section 2.3(c)(iii) of the Settlement Agreement).

23. The CCRC Claim shall be calculated for distribution purposes in U.S. dollars in an amount yielded by the conversion from Canadian dollars at the noon spot rate effective as of the date of confirmation of the POR for Canadian currency posted at Scotiabank and such conversion shall be calculated and performed in consultation with the Monitor.

24. The rights of the U.S. Debtors with respect to the treatment of any allowed Intercompany Claims of the U.S. Debtors under any POA (including with respect to any possible substantive consolidation of some or all of the Canadian Debtors) and the rights of the Canadian Debtors with respect to the treatment of any allowed Intercompany Claims of the Canadian Debtors under any POR (including, with respect to any possible substantive consolidation of some or all of the U.S. Debtors) are fully preserved.

25. The ULC2 Indenture Trustee shall be granted one allowed, general unsecured claim in the U.S. Proceedings against CORPX in the amount of U.S.$361,660,821.40, which equals the principal and unpaid accrued interest due in respect of the ULC2 Senior Notes as of December 20, 2005 (the "ULC2 Indenture Trustee's Allowed Guarantee Claim"). Any recovery by the ULC2 Indenture Trustee shall come first from distributions from ULC2 in the CCAA Proceedings and, to the extent of any deficiency, second from distributions in the U.S. Proceedings. Any recovery by the ULC2 Indenture Trustee from ULC2 will be applied as follows: first, to Reasonable Costs; second, to accrued and unpaid interest on the ULC2 Senior Notes at the contract rate (including interest accrued and unpaid after the commencement of the CCAA Proceedings and through the date on which the Allowed ULC2 Indenture Trustee Claim is satisfied in full (including interest compounded semi–annually)); and third, to principal owing

in respect of the ULC2 Senior Notes. Any recovery received by the ULC2 Indenture Trustee from ULC2 will not reduce the amount of the ULC2 Indenture Trustee's Allowed Guarantee Claim and there shall be no reallocation of payments received in the CCAA Proceedings of Reasonable Costs or interest to payment of principal in respect of the Allowed ULC2 Indenture Trustee Claim; provided, however, the ULC2 Indenture Trustee shall not be entitled to actually receive any distributions under or through the POR in excess of any portion of the ULC2 Indenture Trustee's Allowed Guarantee Claim that remains unpaid after any distributions are made on the Allowed ULC2 Indenture Trustee Claim in the CCAA Proceedings (and after such distributions are allocated as provided in the first paragraph of the Settlement Agreement), unless the POR provides for the payment of postpetition interest on similarly situated claims, in which case the ULC2 Indenture Trustee's Allowed Guarantee Claim shall include a claim in respect of postpetition interest.

26. In accordance with the Settlement Agreement, the U.S. Debtors' Partial Objection to Proof of Claim No. 5742, relating to the CCRC Senior Notes [Docket No. 3667], is withdrawn with prejudice, and the U.S. Debtors are hereby deemed to have irrevocably waived their right to assert any other claims and/or defenses in respect of the CCRC Senior Notes against CCRC or any prior or subsequent owner of the CCRC Senior Notes (including, without limitation, any Bond Differentiation Claims).

27. In accordance with the Settlement Agreement, (a) the U.S. Debtors waive the right to challenge any alleged guarantee of the Guaranteed Claims (as that term is defined in the Settlement Agreement); (b) this Court shall grant comity to the determination by the Canadian Court (and any Canadian appellate court) of the validity and quantum of any Guaranteed Claim; and (c) claims filed in the U.S. Cases on account of any Guaranteed Claims will be allowed, as

general unsecured non-subordinated claims against the U.S. Debtor that is the guarantor, in the U.S. Cases in the amount of the Guaranteed Claim as determined by the Canadian Court, without any further claim adjudication process or order of this Court and without any right of any party in interest to challenge the validity or quantum of such allowed Guaranteed Claims; provided, however, that holders of the Guaranteed Claims shall not be entitled to actually receive any distributions under or through the POR (as that term is defined in the Settlement Agreement) in excess of any actual unpaid portion of such Guaranteed Claims, unless the POR provides for the payment of postpetition interest on other general unsecured non-subordinated claims, in which case the Guaranteed Claims shall include postpetition interest.

28. CORPX is empowered and authorized by each of the entities of Calpine U.S. to act on their behalf in connection with the execution of the Settlement Agreement and the performance of the terms, conditions and obligations of the Settlement Agreement, and shall remain so empowered and authorized for the duration of the Settlement Agreement.

29. The U.S. Debtors and the Canadian Debtors are hereby relieved of any further duties or obligations to negotiate and/or present to this Court a "Canada-U.S. Claims-Specific Protocol" (as that term is defined in the Motion of Canadian Debtors for Entry of an Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [Docket No. 4242]); provided, however, that the U.S. Debtors and Canadian Debtors shall confer in good faith to determine whether any remaining claims unresolved by the Settlement Agreement warrant the approval of a claims-specific protocol by this Court and the Canadian Court.

30. Except as may be specifically provided herein, the Canadian Debtors shall retain any administrative expense priority claims that have been, or may in the future be, asserted against the U.S. Debtors in the U.S. Cases pursuant to Section 503(b) or any other applicable

provision of the Bankruptcy Code for postpetition goods or services rendered to the U.S. Debtors ("U.S. Administrative Claims"); provided, however, that the U.S. Debtors reserve their rights with respect to the allowance of any such U.S. Administrative Claims.

31. The Stipulation and Agreed Order Approving Interim Resolution of Certain Disputes Relating to the Greenfield Energy Centre [Docket No. 4345] (the "U.S. Interim Resolution Order") is hereby amended to provide that the terms of the Settlement Agreement shall constitute full satisfaction of the Administrative Claim (as that term is defined in the U.S. Interim Resolution Order) and that no further amounts shall be due and owing now or in the future under the U.S. Interim Resolution Order.

32. The failure to mention any provision of the Settlement, the ULC1 Settlement, or the Settlement Agreement in this Order shall not impair its efficacy, it being the intent and effect of this Order that the Settlement, the ULC1 Settlement, and the Settlement Agreement are approved in all respects and all relief contemplated by the Settlement, the ULC1 Settlement and the Settlement Agreement is hereby granted.

33. This Order is granted in conjunction with, is complementary to and is a companion Order to the Order of the Court of Queen's Bench granted in the CCAA Proceedings and is to be read and interpreted in a manner that is not inconsistent with, and in furtherance of, the provisions of such Court of Queen's Bench Order. Any determination by either this Court or the Canadian Court contemplated by the Settlement Agreement shall be given comity by the other Court.

34. Except as may be specifically provided herein, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

35. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

36. The requirement set forth in Rule 9013-1(b) of the Local Rules that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

37. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

38. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Dated: _____, 2007

_____
United States Bankruptcy Judge

EXHIBIT B

SETTLEMENT AGREEMENT

●, 2007

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "**Agreement**") dated as of _____, 2007

AMONG:

CALPINE CORPORATION ("**CORPX**"), on behalf of itself and on behalf of its U.S. subsidiaries (collectively with CORPX, "**Calpine U.S.**")

OF THE FIRST PART

- and -

CALPINE CANADA ENERGY LTD. ("CCEL"), CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC ("ULC1"), CALPINE ENERGY SERVICES COMPANY LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC ("ULC2"), CALPINE NATURAL GAS SERVICES LIMITED, 3094479 NOVA SCOTIA COMPANY, CALPINE ENERGY SERVICES CANADA PARTNERSHIP, CALPINE CANADA NATURAL GAS PARTNERSHIP AND CALPINE CANADIAN SALTEND LIMITED PARTNERSHIP (collectively, the "**Canadian Debtors**")

OF THE SECOND PART

- and -

HSBC BANK USA, NATIONAL ASSOCIATION, as successor indenture trustee under the ULC1 Indenture, as such trustee may be amended, replaced or succeeded from time to time (solely in its capacity as indenture trustee, the **"ULC1 Indenture Trustee"** and, together with Calpine U.S. and the Canadian Debtors, the **"Parties"**)

OF THE THIRD PART

R E C I T A L S:

A. On December 20, 2005 (the "**Petition Date**"), the U.S. Debtors filed the U.S. Proceedings in the U.S. Bankruptcy Court, and are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

B. On the Petition Date, the Canadian Debtors commenced the CCAA Proceedings in the Canadian Court;

C. Pursuant to the terms of a certain Indenture (the "**Original ULC1 Indenture**") dated as of April 25, 2001, between ULC1 and Wilmington Trust Company, as indenture trustee, as amended by that certain Amended and Restated Indenture (the "**Amended ULC1 Indenture**") dated as of October 16, 2001, between ULC1 and Wilmington Trust company (the Original ULC1 Indenture, as amended and restated by the Amended ULC1 Indenture, the "**ULC1 Indenture**"), ULC1 issued (i) those certain 8-3/4% Senior Notes due October 15, 2007, issued on October 18, 2001 in the original, aggregate principal amount of C$200,000,000 (the "**Canadian ULC1 Notes**"), (ii) those certain 8-1/2% Senior Notes due May 1, 2008, issued on April 25, 2001 in the original, aggregate principal amount of US$1,500,000,000, and/or (iii) those certain 8 1/2% Senior Notes due May 1, 2008, issued on October 16, 2001 in the original aggregate principal amount of US$530,000,000 (the notes described in clauses (i), (ii) and (ii), collectively, the "**ULC1 Notes**");

D. The ULC1 Indenture Trustee has received a written and binding letter from holders of a majority in aggregate principal amount of each of the two series of the ULC1 Notes directing the ULC1 Indenture Trustee to enter into this Agreement, and to take all such further actions necessary or appropriate to consummate the transactions contemplated by this Agreement;

E. Certain holders (the "**Ad Hoc ULC1 Noteholders**") are members of an informal committee of unaffiliated holders of the ULC1 Notes (the "**Ad Hoc ULC1 Noteholders Committee**") formed for the purposes of protecting their interests in the U.S. Proceedings and the CCAA Proceedings and exploring and negotiating with CORPX a potential settlement regarding the treatment of the Claims evidenced by the ULC1 Notes, and certain Claims and guarantees related thereto, filed in the U.S. Proceedings and the CCAA Proceedings, as the case may be;

F. CORPX and the Canadian Debtors entered into a Global Settlement Outline for Certain Claims Between and Relating to Calpine U.S. and Calpine Canada (the "**Global Settlement Outline**"), dated as of May 13, 2007, which, among other things, set forth various agreements among CORPX and the Canadian Debtors relating to the resolution of certain Claims and other matters;

G. CORPX and the Ad Hoc ULC1 Noteholders entered into a Preliminary Settlement Outline dated as of April 13, 2007 Regarding Claims Held by Members of the Ad Hoc ULC1 Noteholders Committee (the "**Preliminary ULC1 Settlement Outline**"), which is incorporated in and attached as Exhibit C to the Global Settlement Outline and which, among other things, sets forth various agreements among CORPX and the Ad Hoc ULC1 Noteholders Committee concerning the following Claims:

(i) the ULC1 Indenture Trustee Notes Guarantee Claim;

(ii) the CCEL Subscription Agreement Claim;

(iii) the CCEL Subscription Agreement Guarantee Claim;

(iv) the ULC1 Common "B" Share Purchase Agreement Claim;

(v) the ULC1 Common "B" Share Purchase Agreement Guarantee Claim;

(vi) the ULC1 Indenture Trustee Notes Claim;

(vii) the HSBC Canadian Marker Claims;

(viii) the HSBC U.S. Marker Claims; and

(ix) the Claims of CCEL against CCRC;

H. On April 18, 2007, CORPX filed with the SEC a report on Form 8-K disclosing that CORPX and the Ad Hoc ULC1 Noteholders Committee had entered into the Preliminary ULC1 Settlement Outline, a copy of which was annexed to such Form 8-K as an exhibit; and

I. On May 14, 2007 CORPX filed with the SEC a report on Form 8-K disclosing that CORPX and the Canadian Debtors had entered into the Global Settlement Outline, a copy of which was annexed to such Form 8-K as an exhibit.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereto agree as follows:

ARTICLE I – INTERPRETATION

1.1 Definitions

"Ad Hoc Committee Fees" has the meaning set forth in Section 3.3(a)(ii)(C);

"Ad Hoc ULC1 Noteholders" has the meaning set forth in Recital E;

"Ad Hoc ULC1 Noteholders Committee" has the meaning set forth in Recital E;

"Agreement", "Settlement Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions refer to this Agreement and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto;

"Allowed ULC2 Claim" has the meaning set forth in Section 2.3(e)(ii);

"Allowed ULC2 Indenture Trustee Claim" has the meaning set forth in Section 2.3(e)(i);

"**Allowed U.S. Administrative Charge**" has the meaning set forth in Section 2.4(e);

"**Amended ULC1 Indenture**" has the meaning set forth in Recital C;

"**Applicable Law**", in respect of any Person, property, transaction or event, means all laws, statutes, regulations, treaties, judgments and decrees of any Governmental Authority applicable to that Person, property, transaction or event which have the force of law, all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having authority over that Person, property, transaction or event and which have the force of the law**;**

"Approval Date" means the date on which the last of the Approval Orders has been entered on the relevant court's docket;

"Approval Orders" means orders of the Canadian Court and the U.S. Bankruptcy Court, respectively, in substantially the forms attached hereto as Schedules II and III, respectively;

"Bankruptcy Code" means the *United States Bankruptcy Code*, 11 U.S.C. §§ 101, et seq.;

"**Bond Differentiation Claim**" has the meaning set forth in the Order of the Canadian Court dated September 11, 2006;

"**British Pounds Sterling**" and "**£**" each means lawful currency of the United Kingdom;

"**Business Day**" has the meaning set forth in Section 5.6;

"**CCAA Proceedings**" means the proceedings pending in the Canadian Court bearing Action No. 0501-17864;

"CCEL" has the meaning set forth in the preamble of this Agreement;

"**CCEL Member Liability Claim**" means any claim against, liability of, or indebtedness of CCEL on account of it being the member of CCRC;

"**CCEL Subscription Agreement Claim**" means Claim No. 3730 of CCEL against QCH listed in Exhibit A;

"**CCEL Subscription Agreement Guarantee Claim**" means Claim No. 4512 of CCEL against CORPX listed in Exhibit A;

"CCEL-ULC1 Term Debentures" means those three Term Debentures issued by CCEL to ULC1, each as amended by a separate Amending Agreement dated as of March 8, 2002;

"CCNGP" means Calpine Canada Natural Gas Partnership;

"CCNGP Action" means the action No. 0601 14198 entitled *Calpine Canada Natural Gas Partnership v. Calpine Energy Services Canada Partnership and Lisa Winslow* commenced in the Canadian Court on December 14, 2006;

"CCRC" means Calpine Canada Resources Company;

"**CCRC Claim**" has the meaning set forth in Section 2.3(c)(iii);

"CCRC Partnership Claims" means any Claims against CCRC on account of it being a partner in CESCA or CCNGP, to the extent there is a shortfall at CESCA or CCNGP, including any Claims of Calpine Power, L.P. against CCRC;

"**CCRC ULC1 Notes**" means the 8½% ULC1 Notes due 2008 in the principal amount of US$359,770,000 held by CCRC on the date hereof;

"**CCRC ULC1 Notes Sale**" has the meaning set forth in Section 2.4(a);

"CESCA" means Calpine Energy Services Canada Partnership;

"**CORPX"** has the meaning set forth in the preamble of this Agreement;

"**CORPX Notes Guarantee**" means that certain Guarantee Agreement dated as of April 25, 2001 executed by CORPX, as amended by a certain First Amendment to Guarantee Agreement dated as of October 16, 2001, executed by CORPX;

"**CORPX Releasors**" has the meaning set forth in Section 3.7;

"**CORPX Subscription Agreement Guarantee**" means the Guarantee dated as of March 8, 2002, executed by CORPX in favor of CCEL;

"**Calpine Senior Notes**" means, collectively, the 10.5% Senior Notes due 2006, the 7.625% Senior Notes due 2006, the 8.75% Senior Notes due 2007, the 7.875% Senior Notes due 2008 and the 7.75% Senior Notes due 2009, issued in each case by CORPX;

"**Calpine U.S.**" has the meaning set forth in the preamble of this Agreement;

"**Canadian Administrative Claims**" has the meaning set forth in Section 2.3(d)(ii)(B);

"**Canadian Affiliates**" means any affiliates under the Control of the Canadian Debtors;

"Canadian Court" means the Court of Queen's Bench of Alberta;

"**Canadian Debtors**" has the meaning set forth in the preamble of this Agreement;

"**Canadian Dollars**" and "**C$**" each means lawful money of Canada;

"**Canadian Guaranteed Claims Determination Order**" has the meaning set forth in Section 2.8(a)(iv);

"**Canadian Order**" has the meaning set forth in Section 2.8(a);

"**Canadian ULC1 Notes**" has the meaning set forth in Recital C;

"**Canadian ULC1 Notes Sale Order**" has the meaning set forth in Section 2.4(b)(ii);

"**Claim**" means any right of a first Person against a second Person in connection with any indebtedness, liability or obligation of any kind of the second person in existence at the Petition Date and any interest accrued thereon and costs payable in respect thereof to and including the

Petition Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety, insurance deductible or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Petition Date;

"**Claims Procedure Order**" means the Order of the Canadian Court dated April 10, 2006, as amended by Order of the Canadian Court dated September 11, 2006;

"**Committees**" has the meaning set forth in Section 2.8(a)(iv);

"**Common "B" Share Purchase Agreements**" means those three share purchase agreements, each dated as of March 8, 2002, between ULC1 and QCH;

"**Control**" of a Person by another Person means that the second Person directly or indirectly possesses the power to direct or cause the direction of the management and policies of the first Person, whether through the ownership of securities or by contract;

"**Direct Claims Against CCRC**" means, collectively, (i) the Allowed ULC2 Claim, and (ii) all Claims against CCRC other than: (A) the CCRC Partnership Claims, and (B) all Claims of CCEL against CCRC;

"Effective Date" means the first Business Day following the date on which the last of the conditions set forth in Section 2.9 shall have been satisfied or complied with, or shall have been waived in accordance with this Agreement;

"**Euros**" and "**€**" each means lawful money of certain countries of the European Union;

"Filed Amount" means US$2,124,356,213.11, the stated amount of the ULC1 Indenture Trustee Notes Guarantee Claim, as of the Petition Date, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim**;**

"Final Order" means an order of a court of competent jurisdiction in respect of which the applicable appeal periods have expired without an appeal having been filed, or if an appeal has been filed, which order has been affirmed by a final order not subject to further appeal or review;

"**Global Settlement Outline**" has the meaning set forth in Recital F;

"**Governmental Authority**" means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority lawfully exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government**;**

"Greenfield" means Greenfield Energy Centre;

"**Greenfield Dismissal Order"** has the meaning set forth in Section 2.3(g);

"**Guaranteed Claims**" means those Claims set forth in Exhibit F;

"Harbert Litigation" means the proceedings in the Nova Scotia Supreme Court entitled *Harbert Distressed Investment Master Fund, Ltd. and Wilmington Trust Company v. Calpine Canada Energy Finance II ULC, et al.*, Docket S.H. 245975;

"HSBC" means HSBC Bank USA, National Association;

"HSBC Canadian Marker Claims" means, collectively, Claims No. 2-006, 3-018, 4-004, 5-032, 6-004, 7-012, 8-004, 9-002, 10-002, 11-004 and 12-031 set forth in Exhibit G;

"HSBC U.S. Marker Claims" means all claims referenced in Claim No. 5740 set forth in Exhibit G;

"**Intercompany Claims**" means the Claims between the Canadian Debtors and the U.S. Debtors, other than the Claims set forth in Exhibit E;

"KERP" means the Key Employee Retention Plan approved by order of the Canadian Court dated July 12, 2006;

"Monitor" means Ernst & Young Inc., the monitor of the Canadian Debtors during the CCAA Proceedings appointed by the Canadian Court;

"Non-Approval Date" shall mean the date that the Parties, acting together, mutually agree that one or more of the conditions set forth in Section 2.9 has not been and shall not be satisfied or waived on or prior to the Outside Date;

"Original ULC1 Indenture" has the meaning set forth in Recital C;

"Outside Date" means November 1, 2007, or such other date as may be mutually agreed to in writing by the Parties;

"Parties" has the meaning set forth in the preamble;

"**Person**" means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association**;**

"Petition Date" has the meaning set forth in Recital A;

"POA" means a plan of arrangement sanctioned in the CCAA Proceedings;

"POR" means a plan of reorganization confirmed in the U.S. Proceedings;

"POR Effective Date" has the meaning set forth in Section 3.7;

"**Postpetition Interest**" has the meaning set forth in Section 3.3(a)(ii)(B);

"**Preliminary ULC1 Settlement Outline**" has the meaning set forth in Recital G;

"Proven Claim" means the amount of a Claim as conclusively determined, or deemed to have been determined, in accordance with the Claims Procedure Order, this Agreement or the CCAA;

"QCH" means Quintana Canada Holdings, LLC;

"**Reasonable Costs**" has the meaning set forth in Section 2.3(e)(i)(D);

"Restructuring Claim" means any right of any Person against one or more of the CCAA Debtors in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation or termination by the CCAA Debtors after the Petition Date of any contract, lease or other agreement, whether written or oral;

"Saltend Corporate Entities" means, collectively, Calpine European Finance, LLC, Calpine Finance (Jersey) Limited, Calpine European Funding (Jersey) Holdings Ltd., Calpine (Jersey) Holdings Limited, Calpine (Jersey) Limited, Calpine European Funding (Jersey) Limited, Calpine Energy Finance Luxembourg S.A.R.L., and Calpine UK Holdings Limited;

"SEC" means the Securities and Exchange Commission;

"**Subscription Agreements**" means those three Subscription Agreements executed by CCEL and QCH, each as amended by a separate Amending Agreement dated as of March 8, 2002;

"**ULC1**" has the meaning set forth in the preamble of this Agreement;

"**ULC1 Common "B" Share Purchase Agreement Claim**" means Claim No. 4514 of ULC1 against QCH listed on Exhibit A;

"**ULC1 Common "B" Share Purchase Agreement Guarantee Claim**" means Claim No. 4511 of ULC1 against CORPX listed on Exhibit A;

"**ULC1 Hybrid Note Structure**" means the contractual relationship among CORPX, QCH, ULC1 and CCEL, evidenced by, among other things, the Subscription Agreements, the Common "B" Share Purchase Agreements and the CCEL-ULC1 Term Debentures;

"**ULC1 Indenture**" has the meaning set forth in Recital C;

"**ULC1 Indenture Trustee**" has the meaning set forth in the preamble of this Agreement;

"**ULC1 Indenture Trustee Fees**" has the meaning set forth in Section 3.3(a)(ii)(D);

"**ULC1 Indenture Trustee Notes Claim**" means the Claim of the ULC1 Indenture Trustee, on behalf of itself and the ULC1 Noteholders, against ULC1 arising under the ULC1 Indenture;

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim**" has the meaning set forth in Section 3.3(a)(i);

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount**" has the meaning set forth in Section 3.3(b)(ii);

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment**" has the meaning set forth in Section 3.3(b)(ii);

"**ULC1 Indenture Trustee Notes Guarantee Claim**" means the Claim of the ULC1 Indenture Trustee, on behalf of all ULC1 Noteholders, against CORPX, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim, arising under the CORPX Notes Guarantee;

"**ULC1 Indenture Trustee Notes Guarantee Proof of Claim**" means the proof of claim No. 5742 filed in the U.S. Proceedings, in the Filed Amount, as of the Petition Date;

"**ULC1 Noteholders**" means all holders of the ULC1 Notes;

"**ULC1 Releasees**" has the meaning set forth in Section 3.7:

"**ULC1 Security Interest**" means the valid, duly-perfected, first-priority security interest granted by CCEL to ULC1 pursuant to the CCEL-ULC1 Term Debentures, which security interest encumbers, among other things, the rights, interests and benefits of CCEL under the CORPX Subscription Agreement Guarantee, including the CCEL Subscription Agreement Guarantee Claim, and the proceeds thereof;

"**ULC1 Notes**" has the meaning set forth in Recital C;

"**ULC2**" has the meaning set forth in the preamble of this Agreement;

"**ULC2 Accrued Interest"** has the meaning set forth in Section 2.3(e)(vi);

"**ULC2 Indenture**" means that certain Indenture dated as of October 18, 2001 between ULC2 and Wilmington Trust Company;

"**ULC2 Indenture Trustee**" means Manufacturers and Traders Trust Company, solely in its capacity as indenture trustee under the ULC2 Indenture;

"**ULC2 Indenture Trustee's Allowed Guarantee Claim**" has the meaning set forth in Section 2.3(e)(iii);

"**ULC2 Senior Notes**" means (i) £200 million 8.875% Senior Notes due October 15, 2011 issued by ULC2 on October 18, 2001, and (ii) €175 million 8.375% Senior Notes due October 15, 2008 issued by ULC2 on October 18, 2001;

"**United States Dollars**", "**US Dollars**" and "**US$**" each means lawful money of the United States of America;

"**U.S. Administrative Claims**" has the meaning set forth in Section 2.3(d)(i);

"U.S. Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York;

"**U.S. Debtors**" means, collectively, CORPX and those of its U.S. subsidiaries that are debtors in the U.S. Proceedings;

"**U.S. Order**" has the meaning set forth in Section 2.8(b);

"**U.S. Guaranteed Claims Determination Order**" has the meaning set forth in Section 2.8(b)(v);

"**U.S. Proceedings**" means the proceedings pending in the U.S. Bankruptcy Court under Case No. 05-60200, in Re: Calpine Corporation, et al.

1.2 Headings

The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to "**Articles**", "**Sections**" or "**Schedules**" are to articles or sections of, or schedules to, this Agreement.

1.3 Gender and Number

In this Agreement, unless the context indicates otherwise, words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa.

1.4 Day Not a Business Day

In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action will be required to be taken on or before the requisite time on the next succeeding day that is a Business Day.

1.5 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.6 Construction

The words "including" and "includes" where used in this Agreement will be deemed to mean "including, without limitation" and "includes, without limitation", respectively.

ARTICLE II
SETTLEMENT BETWEEN THE U.S. DEBTORS AND CANADIAN DEBTORS

2.1 Mutual Release of Claims.

Except as otherwise is specifically provided herein, as of the Effective Date:

(a) the Canadian Debtors, for themselves, their successors, assigns, and the Canadian Affiliates, and anyone claiming through them (including, without limitation, creditors of the Canadian Debtors claiming through the Canadian Debtors) (each in their capacity as such) hereby irrevocably, fully, finally, and forever waive, release, and discharge any and all Claims against all of the entities constituting Calpine U.S. and their successors, assigns, affiliates (other than the Canadian Debtors and Canadian Affiliates) and estates, in law, equity or otherwise, including all Claims filed by the Canadian Debtors in the U.S. Proceedings, all of which shall be withdrawn with prejudice; and

(b) all of the entities constituting Calpine U.S. for themselves and their successors, assigns, affiliates (other than the Canadian Debtors and the Canadian Affiliates, but including the estates of the U.S. Debtors established under the Bankruptcy Code), and anyone claiming through them (including, without limitation, creditors of the U.S. Debtors claiming through the U.S. Debtors) (each in their capacity as such) hereby irrevocably, fully, finally, and forever waive, release, and discharge any and all Claims against the Canadian Debtors and their successors, assigns and the Canadian Affiliates, in law, equity or otherwise, including all Claims filed by the U.S. Debtors in the CCAA Proceedings (including any Claims relating to the sales proceeds of the sale of the Saltend Energy Centre), all of which shall be withdrawn with prejudice,

provided that the Parties do not intend for this Section 2.1 to constitute, and in no event shall this Section 2.1 be deemed to be a release by the Canadian Debtors or by Calpine U.S., as the case may be, of any of the Claims listed on Exhibit D and Exhibit E.

2.2 Release of Claims Listed on Exhibit A and Exhibit B

(a) Notwithstanding the introductory language of Section 2.1, the parties hereby agree that, for the purposes of the Claims listed on Exhibit A and Exhibit B, the releases and withdrawals of such Claims, as prescribed by Section 2.1, shall become effective on a date as mutually agreed in writing by the Canadian Debtors and the U.S. Debtors but in no event later than the POR Effective Date, provided, however, that the Canadian Debtors and the U.S. Debtors may, by mutual written agreement entered into on or prior to the POR Effective Date:

(i) elect to delay the effectiveness of the release and withdrawal of one or more of the Claims listed on Exhibit A and Exhibit B to a date that is subsequent to the POR Effective Date, or

(ii) elect to exclude one or more of the Claims listed on Exhibit A or Exhibit B from the release and withdrawal prescribed by Section 2.1, in which event such excluded Claims shall remain subject to the treatment set forth in Section 2.2(b).

(b) With effect as of the Effective Date, and pending any release and/or withdrawal contemplated by Section 2.2(a), the Canadian Debtors and the U.S. Debtors hereby agree that any distributions on any of the Claims listed in Exhibit A and Exhibit B shall only be made after distributions have been made on account of all other Claims against the applicable Canadian Debtor or U.S. Debtor, provided, however, that the Canadian Debtors and the U.S. Debtors may, by mutual written agreement, elect to exclude one or more of the Claims listed on Exhibit A or Exhibit B from the treatment contemplated by this Section 2.2(b).

(c) For the avoidance of doubt, the Canadian Debtors and the U.S. Debtors hereby acknowledge and agree that this Section 2.2 shall not cause the settlement or extinguishment of any Claims listed in Exhibit A and Exhibit B prior to the POR Effective Date, unless such Claims are satisfied in full.

2.3 Settlements and other Resolutions of Claims.

(a) Delay for Distribution of CCEL Claims. With effect as of the Effective Date, CCEL hereby agrees that distributions, if any, on all of the Claims of CCEL against CCRC including any Claims arising from the ULC1 Hybrid Note Structure, shall only be made after distributions have been made on account of the Claims against CCRC in the priority set forth in Section 2.9(e).

(b) Settlement of CCRC ULC1 Notes Claim.

(i) Subject to Article IV, with effect as of the CCRC ULC1 Notes Sale, the U.S. Debtors shall withdraw, with prejudice, their partial objection filed in the U.S. Proceedings to Proof of Claim No. 5742 relating to the CCRC ULC1 Notes [Docket No. 3667].

(ii) Subject to Article IV, with effect as of the CCRC ULC1 Notes Sale, the U.S Debtors hereby irrevocably waive their right to assert any other Claims and/or defences in respect of the CCRC ULC1 Notes against CCRC or any prior or subsequent owner of the CCRC ULC1 Notes (including any Bond Differentiation Claims and/or any Claims and/or defences with respect to the sales proceeds from the sale of the Saltend Energy Centre) and any discovery rights in relation to any such Claims and/or defences.

(c) Settlement of Canada and U.S. Intercompany Claims. As of the Effective Date:

(i) the dollar amount of all Intercompany Claims is as set forth in Exhibit D attached hereto;

(ii) the Intercompany Claims in the dollar amounts set forth in Exhibit D will be allowed, general non-subordinated unsecured Claims against the applicable debtor(s) in the U.S. Proceedings or the CCAA Proceedings, as the case may be, that will be treated the same as all other allowed non-subordinated general unsecured Claims against the applicable Debtor(s) under any POR or under any POA, as the case may be;

(iii) Claim No. 4448 of CCRC against QCH set forth on Exhibit D, which includes CCRC's Claim against the U.S. Debtors in respect of the liability of CCRC for applicable non-resident withholding taxes related to the intercompany advance that is the basis of Claim No. 4448, shall be satisfied through the granting to CCRC in the U.S. Proceedings of an allowed non-subordinated general unsecured Claim (not subject to set-off, counterclaim or defence) against QCH, in the amount of US$232 million (the "**CCRC Claim**"), which CCRC Claim shall be guaranteed in full by CORPX;

(iv) in no event shall distributions to CCRC under the POR on account of the CCRC Claim (or any guarantee thereof) exceed an amount equal to C$181,431,000 (plus an amount equal to the aggregate of all liabilities and obligations of CCRC for tax penalties and interest, if any, arising from the non-resident withholding taxes described in Section 2.3(c)(iii)). The CCRC Claim shall be calculated for distribution purposes in U.S. dollars in an amount yielded by the conversion from Canadian dollars at the noon spot rate effective as of the date of confirmation of the POR for Canadian currency of Scotiabank, and such conversion shall be calculated and performed in consultation with the Monitor. Unless otherwise prohibited by order in the U.S. Proceedings or the CCAA Proceedings, QCH shall pay or make distributions on account of interest at the rate set out in the promissory note supporting Claim No. 4448; and

(v) except as otherwise specifically provided in this Section 2.3(c), the Parties acknowledge and agree that the rights of the Canadian Debtors with respect to the treatment under any POR of any allowed Intercompany Claims of the Canadian Debtors (including with respect to any possible substantive consolidation of some or all of the U.S. Debtors and their estates), and the rights of the U.S. Debtors with respect to the treatment under any POA of any allowed Intercompany Claims of the U.S. Debtors (including with respect to any possible substantive consolidation of some or all of the Canadian Debtors), shall be fully preserved.

(d) Post-Petition Claims.

(i) The Canadian Debtors shall retain any administrative expense priority claims that have been, or may in the future be, asserted against the U.S. Debtors in the U.S. Proceedings pursuant to Section 503(b) or any other applicable provisions of the Bankruptcy Code relating to goods or services rendered by any Canadian Debtor to one or more of the U.S. Debtors

following the Petition Date (the "**U.S. Administrative Claims**"), provided, however, that the U.S. Debtors reserve their rights with respect to the allowance of any such U.S. Administrative Claims.

(ii) The U.S. Debtors shall retain:

(A) any Restructuring Claims that have been, and may in the future be, asserted against the Canadian Debtors in the CCAA Proceedings, and

(B) any claims for unpaid costs and expenses pursuant to paragraphs 9(a) and 18(a) of the Initial Order of the Canadian Court, relating to goods or services rendered by any U.S. Debtor to one or more of the Canadian Debtors following the Petition Date ("**Canadian Administrative Claims**"), including:

(1) goods or services provided by any U.S. Debtor to any Canadian Debtor in connection with that certain Transition Agreement between Calpine Canada Power Ltd. and HCP Acquisition Inc. dated February 13, 2007;

(2) any amounts in CESCA bank accounts owing to U.S. Debtors relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(3) any amounts in CESCA bank accounts owing to the U.S. Debtors relating to Canadian Goods and Services Tax refunds relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(4) the U.S. Debtors' share of any U.S. posted refundable deposits in CESCA bank accounts relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(5) any reasonable attorneys' fees and reasonable costs incurred in connection with the dissolution of the Saltend Corporate Entities and/or the liquidation of the assets of the Saltend Corporate Entities; and

(6) any other appropriate and supportable Canadian Administrative Claims;

provided, however, that the Canadian Debtors reserve their rights with respect to allowance of any such Restructuring Claims and Canadian Administrative Claims.

(e) Settlement of ULC2 Claims.

As of the Effective Date:

(i) the ULC2 Indenture Trustee, in its capacity as such and on behalf of the ULC2 Noteholders, is hereby afforded one allowed general unsecured Claim in the CCAA Proceedings against ULC2 in an amount in Canadian Dollars equivalent to the following amounts and in respect of the following components:

(A) for outstanding principal amount of the ULC2 Senior Notes, £121,409,000 and €117,360,000;

(B) for accrued and unpaid interest until the Petition Date, £1,975,426 and €1,801,965;

(C) for accrued and unpaid interest from December 21, 2005 through the date of distribution, £14,037,494 and €12,804,873 as of April 15, 2007, plus a per diem amount equal to £29,931 and €27,303 to and including the date of distribution;

(D) an amount equal to the reasonable professional fees, costs and expenses of the Ad Hoc ULC2 Noteholders Committee and the ULC2 Indenture Trustee, including the reasonable professional fees, costs and expenses of their respective U.S. and Canadian counsel incurred in connection with the U.S. Proceedings and CCAA Proceedings (collectively, the "**Reasonable Costs**") through to the date of distribution in the CCAA Proceedings;

all on account of the ULC2 Senior Notes (collectively, the "**Allowed ULC2 Indenture Trustee Claim**"). The Parties hereby acknowledge and agree that the components of the Allowed ULC2 Indenture Trustee Claim are and will be denominated in United States Dollars, Euros and/or British Pounds Sterling (as applicable), and that any such amounts as may be payable by a Canadian Debtor hereunder, or as may be allowed as a Claim in the CCAA Proceedings, shall be paid or allowed, as the case may be, in Canadian Dollars in an amount yielded by the conversion from United States Dollars, Euro and/or British Pounds Sterling (as applicable) at the noon spot rate effective on the date of distribution for Canadian currency of Scotiabank, and such conversion shall be calculated and performed in consultation with the Monitor;

(ii) ULC2 is hereby afforded one general, unsecured Proven Claim in the CCAA Proceedings against CCRC (the "**Allowed ULC2 Claim**") in an amount not less than an amount equal to the aggregate of the Allowed ULC2 Indenture Trustee Claim plus all other Proven Claims against ULC2.

(iii) the ULC2 Indenture Trustee is hereby granted one allowed, general unsecured Claim in the U.S. Proceedings against CORPX in an amount equal to US$361,660,821.40 (the "**ULC2 Indenture Trustee's Allowed Guarantee Claim**");

(iv) the U.S. and Canadian Debtors hereby acknowledge and agree that:

(A) any recovery by the ULC2 Indenture Trustee pursuant to this Section 2.3(e) shall come first from distributions from ULC2 in the CCAA Proceedings and, to the extent of any deficiency, second from distributions in the U.S. Proceedings, and

(B) any recovery by the ULC2 Indenture Trustee from ULC2 pursuant to this Section 2.3(e) will be applied as follows: first, to Reasonable Costs; second, to interest calculated in accordance with Section 2.3(e)(i)(B) and(C); and third, to principal owing in respect of the ULC2 Senior Notes.

(v) the U.S. Debtors hereby acknowledge and agree that any recovery received by the ULC2 Indenture Trustee from ULC2 pursuant to this Section 2.3(e) will not reduce the amount of the ULC2 Indenture Trustee's Allowed Guarantee Claim and that there shall be no reallocation of payments received in the CCAA Proceedings of Reasonable Costs or interest to payment of principal in respect of the Allowed ULC2 Indenture Trustee Claim; provided, however, that the ULC2 Indenture Trustee shall not be entitled to receive any distributions under or through the POR in excess of any portion of the ULC2 Indenture Trustee's Allowed Guarantee Claim that remains unpaid after any distributions are made on the Allowed ULC2 Indenture Trustee Claim in the CCAA Proceedings (and after such distributions are allocated as provided in the first paragraph of this Section 2.3(e)(v)), unless the POR provides for the payment of interest accruing from and after the Petition Date on similarly situated claims, in which case the ULC2 Indenture Trustee's Allowed Guarantee Claim shall include a Claim in respect of such accrued interest; and

(vi) the U.S. Debtors and the Canadian Debtors hereby acknowledge and agree that the ULC2 Indenture Trustee may assert, in the CCAA Proceedings and/or the U.S. Proceedings, on their own behalf or on behalf of the ULC2 Noteholders, that it is entitled to payment of amounts beyond those encompassed in the Allowed ULC2 Indenture Trustee Claim and/or the ULC2 Indenture Trustee's Allowed Guarantee Claim, including interest accrued on amounts of unpaid interest due and owing from April 15, 2006 to the date of distribution ("**ULC2 Accrued Interest**"), fees incurred in the Harbert Litigation, and/or a "make-whole amount". The U.S. Debtors and the Canadian Debtors reserve all of their respective rights to contest any such assertion.

(f) Settlement of Claims against Canadian Debtors with related CORPX Guarantees.

(i) Forthwith following the date of this Agreement, the U.S. and Canadian Debtors shall request that the U.S. Bankruptcy Court and Canadian Court, respectively, set aside any orders outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol. Following the date of this Agreement, the U.S. and Canadian Debtors hereby agree to confer in good faith to determine whether any remaining Claims unresolved by this Agreement warrant the approval of a claims specific protocol by the U.S. Bankruptcy Court and the Canadian Court.

(ii) Forthwith following the date of this Agreement, the Canadian Debtors shall seek and consent to a Canadian Guaranteed Claims Determination Order. The Canadian Debtors hereby agree that the U.S. Debtors and Committees will be entitled to the same document production, written and oral discovery, evidence presentation and appeal rights as any other full party in interest in the CCAA Proceedings with respect to the adjudication of Guaranteed Claims.

(iii) From the date of this Agreement, the Canadian Debtors shall not commence the process for the delivery of further notices of revision or notices of disallowance by the Monitor pursuant to paragraph 23 of the Claims Procedure Order, nor seek any determination with respect to any Guaranteed Claim, without the written consent of the U.S. Debtors; provided, however, that nothing herein shall be construed as limiting the Canadian Court from continuing to exercise its jurisdiction over such process.

(iv) From the date of this Agreement, no Guaranteed Claim shall be settled or otherwise consensually resolved by the Canadian Debtors or the Monitor without the written consent of the U.S. Debtors.

(v) From the date of this Agreement, the U.S. Debtors and the Canadian Debtors shall cooperate with each other in sharing with and otherwise making available to each other such documents, information and witnesses relating to the Guaranteed Claims and the position of each with respect thereto, all in accordance with the terms of a common interest privilege agreement to be negotiated and agreed upon by both Parties, acting reasonably.

(vi) Forthwith following the date of this Agreement, the U.S. Debtors shall seek and consent to a U.S. Guaranteed Claims Determination Order.

(vii) Nothing herein shall be interpreted or construed so as to prevent the U.S. Debtors from collecting from the Canadian Debtors any guarantee fee to which the U.S. Debtors are contractually entitled.

(g) Settlement of Greenfield Litigation.

(i) Forthwith following the date of this Agreement, CCNGP shall apply to the Canadian Court to request that the CCNGP Action be dismissed with prejudice and without costs and shall consent to such dismissal, with such dismissal to be effective as of the Effective Date (the "**Greenfield Dismissal Order**").

(ii) The U.S. Bankruptcy Court's order approving this Agreement shall contain language amending that certain Stipulation and Agreed Order Approving Interim Resolution of Certain Disputes Relating to the Greenfield Energy Centre [Docket No. 4345], dated April 12, 2007, to make it consistent with the terms of this Agreement.

(h) TTS Allocation.

Upon the Effective Date, the sale proceeds from the sale of Thomassen Turbine Systems, B.V. held under the Escrow Agreement dated as of September 15, 2006 among CCRC, Power Systems MFG., LLC, Calpine European Finance, LLC, Calpine Unrestricted Holdings, LLC and CORPX shall be distributed 50% to CCRC and 50% to CORPX, net of escrow fees and other reasonable administrative expenses to be shared equally by CCRC and CORPX, pursuant to the terms of such Escrow Agreement. CCRC, in its sole discretion, may elect to not share in the TTS sale proceeds and, in so doing, CCRC will reduce the amount payable pursuant to the Allowed U.S. Administrative Charge by the amount CCRC would have received from the TTS sale proceeds had CCRC not so elected to not share in the TTS sale proceeds.

2.4 Sale of CCRC ULC1 Notes and Charge Upon the Proceeds in Favor of the U.S. Debtors.

(a) Forthwith following the date of this Agreement, CCRC shall commence a process for the sale of the CCRC ULC1 Notes (the "**CCRC ULC1 Notes Sale**") so as to be in a position, as soon as practicable following the Approval Date, to pursue and complete the CCRC ULC1 Notes Sale, subject to the provisions of Section 2.4(b) below.

(b) As soon as reasonably practicable following the Approval Date, CCRC shall, subject to the provisions of this Section 2.4(b), conclude the CCRC ULC1 Notes Sale, which CCRC ULC1 Notes Sale:

(i) shall be at a price and on other terms satisfactory to CCRC in its sole discretion acting reasonably, and with the consent of the Monitor, and consistent with CCRC's duties to maximize value for its stakeholders; and

(ii) shall be pursuant to an order of the Canadian Court (the "**Canadian ULC1 Notes Sale Order**") that:

(A) shall be in substantially the form attached hereto as Schedule IV; and

(B) shall be acceptable to the U.S. Debtors acting reasonably.

(c) From the Approval Date until the closing of the CCRC ULC1 Note Sale, the Canadian Debtors and the Monitor will consult with the Canadian Debtors' stakeholders, including the U.S. Debtors, about the CCRC ULC1 Notes Sale terms and process as it develops. The Canadian Debtors and the Monitor shall report to the Canadian Court on the progress of the CCRC ULC1 Notes Sale if such sale has not closed by a date that is 30 days after the Approval Date.

(d) From the Approval Date until the closing of the CCRC ULC1 Note Sale, the U.S. Debtors shall provide any and all administrative cooperation required by the Canadian Debtors to effect the CCRC ULC1 Notes Sale pursuant to authority provided by an order of the U.S. Bankruptcy Court, which order shall be acceptable to the Canadian Debtors acting reasonably and shall be part of the U.S. Order.

(e) CORPX shall be granted, and the Canadian Debtors shall seek and consent to, an allowed first ranking charge (the "**Allowed U.S. Administrative Charge**") against CCRC on the net proceeds from the CCRC ULC1 Notes Sale in the amount of US$75 million, without interest, with priority of distribution over any distributions made by CCRC on account of: (i) the Direct Claims Against CCRC, and (ii) the CCRC Partnership Claims.

(f) As soon as practicable after closing of the CCRC ULC1 Notes Sale and the occurrence of the Effective Date, the Canadian Debtors shall apply for and use their commercially reasonable efforts to obtain an order of the Canadian Court authorizing an immediate distribution of cash from CCRC to CORPX on account of the Allowed U.S. Administrative Charge and to pay all of the Direct Claims Against CCRC in full.

2.5 Allocation of Costs.

The payment of any amounts under this Agreement shall be subject to the Monitor and the Canadian Debtors being reasonably satisfied that, following such payment, the Canadian Debtors shall retain sufficient funds to pay the following amounts in full, when such amounts become due and payable:

(a) the amounts payable pursuant to the KERP. Without limiting the foregoing, the Parties hereby agree that the amount of the Pool 4 payments payable pursuant to the KERP is equal to C$1,331,000.

(b) the professional costs of the Canadian Debtors and Monitor, as may be allocated by the Monitor, acting reasonably.

2.6 Mutual Tax Benefits.

The U.S. and Canadian Debtors shall use commercially reasonable efforts to cooperatively implement, perform and execute the terms of the Agreement in a manner that is tax advantageous for both the U.S. Debtors and the Canadian Debtors while retaining the same

economic benefits of the Agreement. Such efforts (which may occur before the Effective Date) may include, without limitation:

(a) taking steps so as to change the tax classification of any of the U.S. Debtors or Canadian Debtors, including the making of any elections necessary to change such classification;

(b) the issuance of stock by CORPX to any direct or indirect subsidiaries of CORPX as a capital contribution or in exchange for shares of the subsidiary;

(c) the reduction of capital in any direct or indirect subsidiary of CORPX;

(d) the payment or the repayment of any indebtedness in order to avoid withholding tax;

(e) the delivery or transfer of CORPX stock in payment of any intercompany indebtedness;

(f) the transfer of contractual rights against a Canadian Debtor from one U.S. Debtor to a different U.S. Debtor; or

(g) the implementation of Section 2.2.

2.7 Plan Matters

(a) The Parties acknowledge and agree that the Claims between the Canadian Debtors and the U.S. Debtors listed in Exhibit E shall be subject to treatment under any POR, provided that the U.S. Debtors hereby reserve all rights with respect to the allowance of such Claims, and the Canadian Debtors hereby reserve all rights to argue that such Claims should be allowed in such amounts that they believe are appropriate, and reserve all rights with respect to the treatment of such Claims.

(b) The U.S. Debtors hereby covenant that they shall not propose or support any POR that is inconsistent with the terms of this Agreement.

(c) The Canadian Debtors hereby covenant that they shall not propose or support any POA that is inconsistent with the terms of this Agreement.

2.8 Court Approval Process.

(a) Forthwith following the date of this Agreement, the Canadian Debtors shall seek and consent to an order, in substantially the form attached hereto as Schedule II (the "**Canadian Order**"), from the Canadian Court approving this Agreement, which order shall include:

(i) an order barring forever all Claims (except as otherwise specifically provided in this Agreement) by the Canadian Debtors and U.S. Debtors, and their respective successors, assigns, applicable affiliates, and anyone (including creditors of the respective Canadian and U.S. Debtors) claiming

through them (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, including Claims for oppression or similar statutory or common law relief;

(ii) a provision whereby, in the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to the ULC2 Accrued Interest, fees they incurred in the Harbert Litigation, and/or to a "make-whole amount", has not been resolved by the date upon which distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, as may be subsequently determined by the U.S. Bankruptcy Court to be payable in accordance with the terms of the Indenture and related agreements, which are governed by New York law;

(iii) a provision whereby CORPX shall be granted, and the Canadian Debtors agree to seek and consent to, the Allowed U.S. Administrative Charge against CCRC on the net proceeds from the CCRC ULC1 Notes Sale in the amount of US$75 million, without interest, with priority of distribution over any distributions made by CCRC on account of (i) the Direct Claims Against CCRC, and (ii) any CCRC Partnership Claims;

(iv) an order made under paragraph 29 of the Claims Procedure Order (the "**Canadian Guaranteed Claims Determination Order**"), which grants to the U.S. Debtors, and the official statutory committees appointed in the U.S. Proceedings (the "**Committees**"), full standing in any claims determination hearing process held by the Canadian Court (and any Canadian appellate court) in respect of the Guaranteed Claims. Without limiting the generality of the foregoing, the U.S. Debtors and the Committees will be entitled to all document production, written and oral discovery, evidence presentation and appeal rights as any other full party in interest. The Canadian Guaranteed Claims Determination Order will also provide for the manner of participation in the judicial claims determinations of Guaranteed Claims by guarantors who have admitted their guarantee obligations to ensure that such guarantors have all of their rights of participation preserved, including the right to raise and have fully determined any defences that the Canadian Debtor or Monitor could have raised to the creditor's claims notwithstanding any statements of the Canadian Debtors' positions in any notices of revision that they have issued to date;

(v) an order that any orders of the Canadian Court outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol be set aside; and

(vi) an order releasing CCEL from all CCEL Member Liability Claims, and barring forever all CCEL Member Liability Claims.

(b) Forthwith following the date of this Agreement, the U.S. Debtors shall seek and consent to an order, in substantially the form attached hereto as Schedule III (the "**U.S. Order**"), from the U.S. Bankruptcy Court approving this Agreement which order shall include:

(i) an order barring forever all Claims (except as otherwise specifically provided in this Agreement) by the Canadian Debtors and U.S. Debtors, and their respective successors, assigns, applicable affiliates, and anyone (including creditors of the respective Canadian and U.S. Debtors) claiming through them (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, including Claims for oppression or similar statutory or common law relief;

(ii) a provision whereby, in the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to ULC2 Accrued Interest, fees they incurred in the Harbert Litigation, and/or to a "make-whole amount", has not been resolved by the date upon which distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, as may be subsequently determined by the U.S. Bankruptcy Court to be payable in accordance with the terms of the Indenture and related agreements, which are governed by New York law;

(iii) a provision detailing all administrative cooperation required by the Canadian Debtors to effect the CCRC ULC1 Notes Sale;

(iv) an order that any orders of the U.S. Bankruptcy Court outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol be set aside.

(v) an order (the "**U.S. Guaranteed Claims Determination Order**"), which shall:

(A) waive the U.S. Debtors' right to challenge any alleged guarantee of the Guaranteed Claims;

(B) grant comity to the determination by the Canadian Court (and any Canadian appellate court) of the validity and quantum of any Guaranteed Claim; and

(C) provide that Claims filed in the U.S. Proceedings on account of any Guaranteed Claims will be allowed, as general unsecured non-subordinated claims against the U.S. Debtor that is the guarantor, in the U.S. Proceedings in the amount of the Guaranteed Claim as determined by the Canadian Court, without any further claim adjudication process or order of the U.S. Bankruptcy Court and

without any right of any party in interest to challenge the validity or quantum of such allowed Guaranteed Claims;

provided, however, that the holders of the Guaranteed Claims shall not be entitled to actually receive any distributions under or through the POR in excess of any actual unpaid portion of such Guaranteed Claims, unless the POR provides for the payment of postpetition interest on other general unsecured non-subordinated Claims, in which case the Guaranteed Claims shall include postpetition interest.

2.9 Conditions to Settlement between the U.S. Debtors and the Canadian Debtors

Except as otherwise specifically provided for in this Agreement, the obligations of each of the Parties to complete the transactions contemplated in Article II of this Agreement are subject to the satisfaction of, or compliance with, on or prior to the Outside Date, each of the following conditions, provided that the U.S Debtors and the Canadian Debtors may mutually agree in writing to waive, one or more of the following conditions or any term or condition thereof (and in the case of waiver of any of the conditions specified in Section 2.9(b)(i), 2.9(b)(ii) or 2.9(f), such mutual written agreement shall include the ULC1 Indenture Trustee):

(a) Compliance with and Performance of Covenants. Each party will have fulfilled or complied in all material respects with all covenants and obligations set forth in the following provisions of this Settlement Agreement, to be fulfilled or complied with by it at or prior to the Effective Date:

(i) Section 2.3(b);

(ii) Section 2.3(f);

(iii) Section 2.3(g);

(iv) Section 2.4;

(v) Section 2.5;

(vi) Section 2.6; and

(vii) Section 2.8.

(b) Court Approvals. The following orders will have been granted and be in full force and effect:

(i) the U.S. Order will have been entered by the U.S. Bankruptcy Court.

(ii) the Canadian Order will have been entered by the Canadian Court.

(iii) the Canadian Guaranteed Claims Determination Order will have been entered by the U.S. Court.

(iv) the U.S. Guaranteed Claims Determination Order will have been entered by the Canadian Court.

(v) the Canadian ULC1 Notes Sale Order will have been entered by the Canadian Court.

(c) Sale of CCRC ULC1 Notes. CCRC shall have sold the CCRC ULC1 Notes (the "**CCRC ULC1 Notes Sale**") in accordance with Section 2.4.

(d) Withdrawal of Certain Non Debtor Claims. The Claims set forth on Exhibit G shall have been withdrawn with prejudice or dismissed with prejudice.

(e) Settlement of Priorities at CCRC. The Canadian Court shall have ordered, as part of the Canadian Order, that the priorities of Claims against CCRC shall be as follows:

(i) all Direct Claims Against CCRC are to be paid before any CCRC Partnership Claims; and

(ii) all CCRC Partnership Claims are to be paid before any of CCEL's Claims against CCRC.

(f) Settlement Between the U.S. Debtors and the ULC1 Indenture Trustee. The conditions set forth in Section 3.8 shall have been satisfied or waived in writing by the Parties on or prior to the Effective Date.

ARTICLE III
SETTLEMENT BETWEEN THE U.S. DEBTORS AND THE ULC1 INDENTURE TRUSTEE

3.1 Representations and Warranties Relating to the ULC1 Indenture Trustee.

The ULC1 Indenture Trustee, for itself, represents and warrants to CORPX and the Canadian Debtors as follows:

(a) Organization, Existence, Good Standing and Authority. The ULC1 Indenture Trustee is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute this Agreement and to consummate the transactions contemplated hereby.

(b) Corporate Power. The ULC1 Indenture Trustee has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (A) have been duly and validly authorized by it and (B) are not in contravention of its organization documents or any material agreement specifically applicable to it. Without limiting the foregoing, the ULCI Indenture Trustee hereby represents and warrants that it has received a written and binding direction from holders of a majority in aggregate principal amount of each of the two series of the ULC1

Notes to enter into this Agreement, and to take all such further actions necessary or appropriate to consummate the transactions contemplated by this Agreement.

(c) Enforceability. Subject to the entry of the U.S. Order, this Agreement constitutes the legal, valid and binding obligation of the ULC1 Indenture Trustee, enforceable against it in accordance with its terms.

(d) No Violation. The execution, delivery and performance of this Agreement does not and will not (i) violate any law, rule, regulation or court order to which the ULC1 Indenture Trustee is subject; or (ii) conflict with or result in a breach of the organizational or governing documents of the ULC1 Indenture Trustee or any agreement or instrument to which it is a party or by which it or its properties are bound.

(e) No Proceedings Adversely Affect Agreement. No proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against the ULC1 Indenture Trustee which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

3.2 Withdrawal of Marker Claims.

With effect as of the Effective Date:

(a) the HSBC U.S. Marker Claims shall be withdrawn with prejudice or dismissed with prejudice; and

(b) the HSBC Canadian Marker Claims shall be withdrawn with prejudice or dismissed with prejudice.

3.3 Allowance, Treatment and Classification of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim.

(a) Allowance. The U.S. Debtors and the ULC1 Indenture Trustee hereby acknowledge and agree that:

(i) as of the Effective Date, the ULC1 Indenture Trustee, on behalf of the ULC1 Noteholders, shall be afforded one allowed, general, unsecured Claim against CORPX's estate in the amount of US$3,505,187,751.63 (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim**") based upon the ULC1 Notes, which amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim is equal to the product of 1.65 times the Filed Amount[1];

[1] Approximately $134 million of ULC1 Notes are held by CORPX and $10 million of ULC1 Notes are held by QCH. For the avoidance of doubt, in addition to the ULC1 Notes held by parties other than the U.S. Debtors, the

(ii) the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall include the following components, each of which shall be deemed allowed:

(A) a claim for the outstanding principal balance of the ULC1 Notes, together with accrued and unpaid interest thereon, as of the Petition Date, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim;

(B) a claim for the accrued and unpaid interest on the Filed Amount at the contract rate from the Petition Date up to and including the date on which the ULC1 Indenture Trustee Notes Guarantee Allowed Claim (including interest compounded semi-annually) ("**Postpetition Interest**") is satisfied in full, to the extent provided in Section 3.3(b)(ii);

(C) a claim for the reasonable fees, costs and expenses of the Ad Hoc ULC1 Noteholders Committee, including the reasonable fees, costs and expenses of its U.S. and Canadian counsel and its financial adviser, incurred, and to be incurred, by the Ad Hoc ULC1 Noteholders Committee in connection with the U.S. Proceedings and the CCAA Proceedings (all such reasonable fees, costs and expenses, collectively, the "**Ad Hoc Committee Fees**"), in an amount not to exceed US$8 million; and

(D) a claim for the reasonable fees, costs and expenses of the ULC1 Indenture Trustee, including the reasonable fees, costs and expenses of its U.S. and Canadian counsel, incurred, and to be incurred, by the ULC1 Indenture Trustee in connection with the U.S. Proceedings and the CCAA Proceedings (all such reasonable fees, costs and expenses, collectively, the "**ULC1 Indenture Trustee Fees**").

(b) Treatment of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim under a POR.

(i) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that the ULC1 Indenture Trustee Notes Guarantee Claim (and the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, as a multiple of the Filed Amount of the ULC1 Indenture Trustee Notes Guarantee Claim) are substantially similar to the claims held by holders of the Calpine Senior Notes.

(ii) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that any POR to be filed, confirmed and consummated by CORPX and/or

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ULC1 Notes held by CORPX and QCH are also subject to the settlement embodied in this Agreement and shall have the same rights and benefits as other holders of ULC1 Notes under the Agreement.

the U.S. Debtors in the U.S. Proceedings shall afford to the ULC1 Indenture Trustee Notes Guarantee Allowed Claim the same treatment (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment**") as shall be afforded to the claims filed against CORPX that arise from the Calpine Senior Notes; provided, however, that the distribution to be made by CORPX in respect of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim pursuant to such POR shall not exceed an amount (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount**") equal to the aggregate of (i) the Filed Amount, (ii) the Postpetition Interest, (iii) the Ad Hoc Committee Fees, and (iv) the ULC1 Indenture Trustee Fees, in each of the foregoing instances, subject to the foreign exchange adjustment described in Section 3.3(b)(iii).

(iii) It is acknowledged that certain components of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim and the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount are denominated in Canadian Dollars. Without limitation, the indebtedness evidenced by the Canadian ULC1 Notes, including principal, accrued and unpaid interest thereon, and portions of the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees relating to the services of Canadian professionals) are and will be denominated in Canadian dollars. Such amounts of such components shall be allowed in the U.S. Proceedings and distributions under the POR shall be calculated in U.S. Dollars in an amount yielded by the conversion from Canadian Dollars at the noon spot rate effective on the fifth Business Day prior to the date of distribution under the POR for U.S. currency of Scotiabank, and such conversion shall be performed by CORPX and subject to the approval of the ULC1 Indenture Trustee.

(iv) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that the POR shall provide that the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees shall be paid in full from the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount, on the effective date of the POR, in the same currency as is distributed in respect of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, unless CORPX, in consultation with its official unsecured creditors committee, has determined to pay the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees in full, in cash, on the effective date of the POR as a "substantial contribution" administrative expense under Section 503(b) of the Bankruptcy Code. Notwithstanding anything herein to the contrary, for all purposes under a POR other than distributions (for example, voting), the amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall be deemed to be the Filed Amount.

(c) Classification of ULC1 Indenture Trustee Notes Guarantee Allowed Claim under POR.

CORPX, in its discretion, may classify the ULC1 Indenture Trustee Notes Guarantee Allowed Claim under a POR (i) separately in its own class; (ii) in a class that includes other Claims arising from senior, unsecured, funded indebtedness of CORPX; or (iii) otherwise, consistent with the provisions of the Bankruptcy Code, the Bankruptcy Rules and other applicable law; provided, however, that, in any of the foregoing cases, subject to the provisions of Section 3.3(b)(ii) hereof, the POR shall provide that the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall receive the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment.

3.4 CORPX Support for Substantial Contribution Claim Application.

In the event that, as a prerequisite to the allowance of the Ad Hoc Committee Fees and/or the ULC1 Indenture Trustee Fees, as provided for in Section 3.2, the U.S. Bankruptcy Court requires or requests that the Ad Hoc ULC1 Noteholders Committee and/or the ULC1 Indenture Trustee, as the case may be, file an application with the U.S. Bankruptcy Court seeking an order allowing the Ad Hoc Committee Fees and/or the ULC1 Indenture Trustee Fees as an administrative expense for "substantial contribution" under Section 503(b) of the Bankruptcy Code, CORPX shall support such application(s) filed by the Ad Hoc ULC1 Noteholders Committee and/or the ULC1 Indenture Trustee and urge the U.S. Bankruptcy Court to grant it (or them) and enter such order.

3.5 Application of Distributions Under POR.

CORPX, on behalf of itself and the U.S. Debtors, agrees that any distribution received by the ULC1 Indenture Trustee or an agent of CORPX making distributions under the POR, as the case may be, on behalf of the ULC1 Indenture Trustee and/or the ULC1 Noteholders, pursuant to a POR shall be applied as follows: first, to the ULC1 Indenture Trustee Fees and the Ad Hoc Committee Fees, second, to Postpetition Interest, and third, to the Filed Amount. The portion of any such distribution that is allocable to the Ad Hoc Committee Fees shall be remitted by the ULC1 Indenture Trustee, or an agent of CORPX making distributions under the POR, as the case may be, to those ULC1 Noteholders who paid such fees in the first instance in accordance with written instructions to be delivered to the ULC1 Indenture Trustee, or such agent, as the case may be, by counsel to the Ad Hoc ULC1 Noteholders Committee.

3.6 Effect of Settlement Agreement on Proposal of POR and Voting by ULC1 Noteholders.

For the avoidance of doubt, nothing herein constitutes a "lock-up" of the votes of the Ad Hoc ULC1 Noteholders or any other ULC1 Noteholder for a POR. Nothing herein shall limit the ability of CORPX to propose a POR or the right of the ULC1 Indenture Trustee or the ULC1 Noteholders to vote to accept or reject such POR, contest confirmation of such POR, or take any other action that they deem appropriate in the U.S. Proceedings or the CCAA Proceedings that is not inconsistent with the Settlement. Nevertheless, the Parties agree that the amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, the ULC1 Indenture Trustee Notes

Guarantee Allowed Claim Plan Treatment, and the right of the ULC1 Indenture Trustee, on behalf of the ULC1 Noteholders, to receive, subject to the provisions of Section 3.3(b)(ii) hereof, a distribution under a POR up to the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount shall be irrevocably resolved for all purposes in accordance with the provisions of this Agreement.

3.7 Release of ULC1 Noteholders Under POR.

CORPX hereby agrees and covenants that any POR to be filed, confirmed and consummated by CORPX and/or the U.S. Debtors in the U.S. Proceedings shall provide that, provided that the POR is accepted by (a) at least two-thirds in amount of the outstanding aggregate principal amount of the ULC1 Notes held by ULC1 Noteholders that vote to accept or reject a POR and (b) more than one-half in number of the ULC1 Noteholders that vote to accept or reject a POR, as of the effective date (the "**POR Effective Date**") of such POR, to the fullest extent permissible under applicable law, CORPX, as debtor and debtor in possession, for itself and its officers, directors, employees, members, partners, representatives, attorneys, financial advisors, subsidiaries, affiliates, successors and assigns (other than the Canadian Debtors and the Canadian Affiliates, but including the estates of the U.S. Debtors established under the Bankruptcy Code), each in their capacity as such (collectively, the "**CORPX Releasors**"), shall be deemed absolutely, unconditionally and irrevocably, to release and forever discharge the ULC1 Indenture Trustee and the ULC1 Noteholders, together with their respective officers, directors, employees, members, partners, representatives, attorneys, financial advisors, subsidiaries, affiliates, successors and assigns, each in their capacity as such (collectively, the "**ULC1 Releasees**"), of and from any and all claims, demands, allegations, actions, causes of action, suits, debts, sums of money, accounts, reckonings, controversies, losses, damages, judgments, agreements, and warranties of any nature whatsoever, from the beginning of time through and including the POR Effective Date, whether fixed or contingent, asserted or unasserted, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, anticipated or unanticipated, which the CORPX Releasors, or any of them, have, had, claim to have had or hereafter claim to have against the ULC1 Releasees, or any of them, by reason of any act or omission on the part of the ULC1 Releasees, or any of them, occurring on or prior to the POR Effective Date and relating to or arising from the ULC1 Notes, the U.S. Proceedings, the CCAA Proceedings, the POR, the disclosure statement related to the POR, or the preparation, solicitation, confirmation, consummation and implementation of the POR.

3.8 Conditions to Effectiveness of the Settlement Agreement Between the U.S. Debtors and the ULC1 Indenture Trustee.

Except as otherwise specifically provided for in this Agreement, the obligations of each of the Parties to complete the transactions contemplated in Article III of this Agreement is subject to the satisfaction of, or compliance with, on or prior to the Outside Date, each of the following conditions, provided that the Parties may mutually agree in writing to waive, one or more of the following conditions (or any term or condition thereof):

(a) Withdrawal or Dismissal of HSBC U.S. Marker Claims. The HSBC U.S. Marker Claims shall have been withdrawn with prejudice or dismissed with prejudice.

(b) Withdrawal or Dismissal of HSBC Canadian Marker Claims. The HSBC Canadian Marker Claims shall have been withdrawn with prejudice or dismissed with prejudice.

(c) Withdrawal of Marker Claims. The marker claims filed by the Canadian Debtors against the U.S. Debtors that in any way are on account of, relate to, or arise from the transactions giving rise to, the ULC1 Notes shall have been withdrawn with prejudice or dismissed with prejudice.

(d) Settlement Between the U.S. Debtors and the Canadian Debtors. The conditions set forth in Section 2.9 shall have been satisfied or waived in writing, by the Parties on or prior to the Effective Date.

ARTICLE IV – FAILURE TO BECOME EFFECTIVE

In the event that: (i) any of the conditions set forth in Sections 2.9 and 3.8 are not satisfied (or, if permitted pursuant to this Agreement, are not waived by the relevant Parties pursuant to the terms of this Agreement) on or prior to the Outside Date, or (ii) the Parties, acting reasonably, mutually agree that one or more of the conditions set forth in Sections 2.9 and 3.8 will not be satisfied (or, if permitted pursuant to this Agreement, will not be waived by the relevant Parties pursuant to the terms of this Agreement) on or prior to the Outside Date, then the Parties hereto shall be returned to their respective positions as they existed before they executed this Settlement Agreement**.**

ARTICLE V
MISCELLANEOUS PROVISIONS APPLICABLE TO THIS SETTLEMENT AGREEMENT

5.1 Retention of U.S. Debtors' Equity Interests.

Notwithstanding any term or provision of this Agreement, the U.S. Debtors shall retain their equity interests in the Canadian Debtors, including for purposes of distributions in the CCAA Proceedings.

5.2 Further Assurances.

The Parties, and each of them, covenants to, from time to time, execute and deliver such further documents and instruments and take such other actions as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of this Agreement or to perform its obligations under this Agreement and the transactions contemplated thereby.

5.3 Benefit of Agreement.

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any Person other than the Parties hereto and their respective successors and assigns any legal or equitable benefit, right, remedy, cause of action or claim of any kind under or by reason of this Agreement or any covenant, condition or stipulation hereof.

5.4 Integration.

This Agreement, together with the exhibits and schedule hereto, constitutes the entire agreement and understanding among the Parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements, representations and understandings between or among any of the Parties hereto relating to such subject matter. In entering into this Agreement, the Parties and each of them acknowledge that they are not relying on any statement, representation, warranty, covenant or agreement of any kind made by any other party hereto or any employee or agent of any other party hereto, except for the representations, warranties, covenants and agreements of the Parties expressly set forth herein. For greater certainty, the Parties acknowledge and agree that the Global Settlement Outline and the Preliminary ULC1 Settlement Outline have been superseded in all respects by the provisions of this Agreement.

5.5 Counterparts; Facsimile Signatures.

This Agreement may be executed in any number of counterparts and by different Parties to this Agreement on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by any of the Parties by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement, shall be deemed to be an original signature hereto, and shall be admissible as such in any legal proceeding to enforce this Agreement.

5.6 Notices.

Any notice, demand, request, consent, approval, declaration or other communication under this Agreement shall be in writing and shall be given or delivered by personal delivery, by facsimile, by registered or certified mail (first class postage prepaid) or by a nationally recognized private overnight courier service addressed as indicated in Schedule I annexed hereto or to such other address (or facsimile number) as such party may indicate by a notice delivered to the other Parties hereto in accordance with the provisions hereof. Any notice, demand, request, consent, approval, declaration or other communication under this Agreement delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if sent by mail, on the earlier of the date of actual receipt or the fifth (5th) Business Day (as defined herein) after deposit in the United States mail, if delivered personally, on the date of such delivery, or, if sent via facsimile, on the date of the transmission of the facsimile, provided that the sender thereof receives confirmation that the facsimile was successfully delivered to the intended recipient. As used herein, the term "**Business Day**" means a day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

5.7 Amendment.

Except as otherwise specifically provided in this Agreement, no amendment, modification, rescission, waiver or release of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Canadian Debtors and U.S. Debtors. To the

extent any such amendment affects any other Party to this Agreement, the Canadian Debtors and U.S. Debtors shall obtain that Party's written consent to such amendment.

5.8 Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles.

5.9 Assignment.

No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other Parties hereto, and any attempted assignment without such prior consent shall be null and void. No assignment of any obligations hereunder shall relieve any of the Parties hereto liable therefore of any such obligations.

5.10 Waiver.

Except as otherwise specifically provided in this Agreement, any provision of this Agreement may be waived only by a written instrument signed by the Party against whom enforcement of such waiver is sought.

5.11 Headings.

The descriptive headings of the sections of this Agreement are included for convenience of reference only and do not constitute a part of this Agreement.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

CALPINE CORPORATION, on behalf of itself and on behalf of each of its U.S. subsidiaries

Per: _____

Name:
Title:

CALPINE CANADA ENERGY LTD.

Per: _____

Name:
Title:

CALPINE CANADA POWER LTD.

Per: _____

Name:
Title:

CALPINE CANADA ENERGY FINANCE ULC

Per: _____

Name:
Title:

CALPINE ENERGY SERVICES CANADA LTD.

Per: _____

Name:
Title:

CALPINE CANADA RESOURCES COMPANY

Per: _____

Name:
Title:

CALPINE CANADA POWER SERVICES LTD.

Per: _____

Name:
Title:

CALPINE CANADA ENERGY FINANCE II ULC

Per: _____

Name:
Title:

CALPINE NATURAL GAS SERVICES LIMITED

Per: _____

Name:
Title:

3094479 NOVA SCOTIA COMPANY

Per: _____

Name:
Title:

CALPINE ENERGY SERVICES CANADA PARTNERSHIP

Per: _____

Name:
Title:

CALPINE CANADA NATURAL GAS PARTNERSHIP

Per: _____

Name:
Title:

CALPINE CANADIAN SALTEND LIMITED PARTNERSHIP

Per: _____

Name:
Title:

HSBC BANK USA, N.A., solely in its capacity as ULC1 Indenture Trustee.

Per: _____

Name:
Title:

SCHEDULE I

List of Addresses and Facsimile Numbers for Purposes of Notice

If to Calpine Corporation:

50 West San Fernando Street
San Jose, California 95113
Fax: (408) 995-0505
Attn: Gregory J. Doody

With a copy to:

Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601-6636
Attn: David R. Seligman
Fax: 312-861-2200

If to CCEL and the Canadian Debtors:

Calpine Canada Energy Ltd.
c/o Ernst & Young Inc.
1000, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9
Attention: Toby Austin
Fax: (403) 206-5075

With a copy to:

Goodmans LLP
250 Yonge Street, Suite 2400
Toronto ON M5B 2M6
Canada
Attn: Jay A. Carfagnini
Fax: (416) 979-1234

If to the Monitor:

Ernst & Young Inc.
1000, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9
Attention: Neil Narfason
Fax: (403) 206-5075

With a copy to:

Borden Ladner Gervais LLP
1000 Canterra Tower
400 Third Avenue S.W.
Calgary, Alberta, Canada
T2P 4H2
Attention: Pat McCarthy
Fax: (403) 266-1395

If to HSBC Bank USA, N.A.:

With a copy to:

Kelley Drye & Warren LLP
200 Kimball Drive
Parsippany, New Jersey 07054
Attn: Geoffrey W. Castello
Fax: (973) 503-5950

and

Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Attn: Richard F. Casher
Fax: 212-500-3413

SCHEDULE II

Canadian Order

SCHEDULE III

U.S. Order

SCHEDULE IV

Canadian ULC1 Notes Sale Order

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A

CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount ($US)**	**Debtor**	**Basis for Claim**	**Type**
I.	**Intercompany Claims**							
1.	7/27/2006	4489	Calpine Canada Natural Gas Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$591,005.28	CPN Energy Services G.P., Inc. 05-60209	Money loaned	Unsecured
2.	7/27/2006	4445	Calpine Energy Services Canada Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$495,405.98	Calpine Corporation 05-60200	Money loaned	Unsecured
3.	8/1/2006	5413	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$11,622,456.59	Calpine Corporation 05-60200	Money loaned; contributions to employee benefit plan [amends by claim #4486]	Unknown
4.	7/27/2006	4446	Calpine Energy Services Canada Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$70,873,420.62	CPN Energy Services G.P., Inc. 05-60209	Goods sold	Unsecured
5.	7/27/2006	4421	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,571,674.66	Quintana Canada Holdings, LLC 05-60400	Subsidiary's deficiency	Unsecured
6.	7/27/2006	4420	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,174,058.41	Calpine ULC1 Holdings, LLC	Subsidiary's deficiency	Unsecured

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CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount ($US)	Debtor	Basis for Claim	Type
I.	**Intercompany Claims**							
7.	7/27/2006	4419	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,174,058.41	Quintana Canada Holdings, LLC	Subsidiary's deficiency	Unsecured
Total Amount of Intercompany Claims:					$90,502,079.95			

CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount**	**Debtor**	**Basis for Claim**	**Type**
II.	**Oppression Marker Claims**							
6.	7/27/2006	MASTER CLAIM #4418 (also #14344 - 17879 and #18424 - 18435)	Calpine Canada Energy Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Investigation of intercompany and third party transactions between CCEL and CORPX	Unknown
7.	4/30/2007	6283	Calpine Canada Energy Ltd. and each of its affiliates	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation and each of the other Debtor entities	Investigation of intercompany and third party transactions between CCEL and CORPX	Unknown
III.	**Hybrid Note Structure Claims**							
8.	7/27/2006	3730	Calpine Canada Energy Ltd. (“CCEL”)	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Quintana Canada Holdings, LLC 05-60400	Subscription agreements	Unsecured
9.	7/27/2006	4513	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Quintana Canada Holdings, LLC 05-60400	Subscription agreements	Unsecured

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
10.	7/27/2006	4512	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Calpine Corporation 05-60200	Guarantee (subscription agreements)	Unsecured
11.	7/27/2006	4515	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Calpine Corporation 05-60200	Guarantee (subscription agreements)	Unsecured
12.	7/27/2006	4511	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Guarantee (share purchase agreements)	Unsecured
13.	7/27/2006	4514	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Share purchase agreements	Unsecured
14.	N/A	N/A	Calpine Canada Energy Finance ULC		Unknown	Quintana Canada Holdings, LLC	All Claims arising pursuant to the ISDA Master Agreement dated April 25, 2001	Unsecured

EXHIBIT B

Claims by U.S. Debtors against Canadian Debtors Subject to Section 2.2

	Claim No.	Creditor	Debtor	Amount	Matter
1.		U.S. Calpine Group entities (Master Proof of Claim)	CCAA Debtors	USD$TBD	The U.S. Calpine Group entities claim against the CCAA Debtors for any and all obligations that the CCAA Debtors owe, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
2.	2-005	U.S. Calpine Group entities (Master Proof of Claim)	CCEL	USD$TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Limited for any and all obligations that Calpine Canada Energy Limited owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code. This Claim is made for all cash and non cash transfers pursuant to all applicable bankruptcy and insolvency legislation in the U.S. and Canada, for transfers from any of the U.S. Calpine Group to Calpine Canada Energy Limited in the relevant period prior to the filing.
3.	12-030	U.S. Calpine Group entities (Master Proof of Claim)	CCNG	TBD	The U.S. Calpine Group entities claim against Calpine Canada Natural Gas Partnership for any and all obligations that Calpine Canada Natural Gas Partnership owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.

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	Claim No.	Creditor	Debtor	Amount	Matter
4.	3-015	U.S. Calpine Group entities (Master Proof of Claim)	CCPL	TBD	The U.S. Calpine Group entities claim against Calpine Canada Power Ltd. for any and all obligations that Calpine Canada Power Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
5.	5-030	U.S. Calpine Group entities (Master Proof of Claim)	CCRC	(1) TBD (2) TBD (3) TBD (4) USD$2,199,917.20	(1) The U.S. Calpine Group entities claim against Calpine Canada Resources Company for any and all obligations that Calpine Canada Resources Company owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code. (2) The U.S. Calpine Group entities also claim in respect of claims for avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code in respect of the proceeds of the sale of Saltend. Pursuant to agreement with the Canadian Applicants, these claims may also relate to transfers, including claims for avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code, involving entities in the Saltend chain but are asserted against CCRC. (3) This Claim is made for all cash and non cash transfers pursuant to all applicable bankruptcy and insolvency legislation in the U.S. and Canada, for transfers from any of the U.S. Debtors to CCRC in the relevant period prior to the filing. (4) Calpine Corporation claims amounts pursuant to letter of credit 0117/04. Contingent exposure relating to CCRC

	Claim No.	Creditor	Debtor	Amount	Matter
					on the remaining credit is $2,199,917.20.
6.	4-003	U.S. Debtors	CCPS	TBD	The U.S. Calpine Group entities claim against Calpine Canada Power Services Ltd. for any and all obligations that Calpine Canada Power Services Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
7.	7-006	Calpine Corporation	CESCL	(1) USD$371 (2) $2,199,917.20	(1) This Claim relates to the practice of allocating costs of corporate overhead on an intercompany basis. (2) Calpine Corporation claims amounts pursuant to letter of credit 0117/04. Contingent exposure relating to CESCL on the remaining credit is $2,199,917.20.
8.	7-007	U.S. Calpine Group entities (Master Proof of Claim)	CESCL	TBD	The U.S. Calpine Group entities claim against Calpine Energy Services Canada Ltd. for any and all obligations that Calpine Energy Services Canada Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
9.	8-007	Calpine Corporation	CESCP	USD$22,911,000	Calpine Corporation claims amounts pursuant to letters of credit issued to third parties. Currently outstanding drawdowns total $18,361,082.80 and contingent exposure on remaining credit totals $4,549,917.20.
10.	8-008	Calpine Energy Management L.P.	CESCP	USD$16,745,830	This Claim represents intercompany accounts receivable owing relating to gas purchases and sales between Calpine Energy Management L.P. and CESCP as of the date of filing.

	Claim No.	Creditor	Debtor	Amount	Matter
11.	8-009 (not including Restruct-uring Claims)	Calpine Energy Services L.P.	CESCP	USD $2,934,650	This is a claim for services provided by Calpine Energy Services L.P. to CESCP which have not been billed.
12.	8-010	U.S. Calpine Group entities (Master Proof of Claim)	CESCP	TBD	The U.S. Calpine Group entities claim against Calpine Energy Services Canada Partnership for any and all obligations that Calpine Energy Services Canada Partnership owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
13.	11-003	U.S. Calpine Group entities (Master Proof of Claim)	CNGSL	TBD	The U.S. Calpine Group entities claim against Calpine Natural Gas Services Ltd. for any and all obligations that Calpine Natural Gas Services Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
14.	1-007	U.S. Calpine Group entities (Master Proof of Claim)	ULC1	TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Finance ULC for any and all obligations that Calpine Canada Energy Finance ULC owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.

	Claim No.	Creditor	Debtor	Amount	Matter
15.	6-002	Calpine Corporation	ULC2	£315,375,000 €226,296,875	ULC2 issued £200,000,000 of 8.875% Senior Notes due October 15, 20011 and €175,000,000 of 8.375% Senior Notes due October 15, 2008 (the "ULC2 Senior Notes") pursuant to an Indenture dated October 18, 2001 between ULC and Wilmington Trust supplemented by the First Supplemental Indenture dated October 18, 2001. The ULC2 Senior Notes have been guaranteed by Calpine Corporation pursuant to a Guarantee Agreement dated October 18, 2001 as amended by the First Amendment dated October 18, 2001. The Applicants and the Monitor are in possession of copies of the Indenture and the Guarantee. If additional copies are required, please advise. Calpine Corporation claims as against ULC2 for any claims made against Calpine Corporation on the guarantee. Calpine Corporation specifically reserves its right to dispute, deny or other otherwise challenge the guarantees on any basis, including without limitation, avoidance of preferential and fraudulent transfers. The amount of the claim is the face of amount of the notes £200,000,000 at 8.875% to October 15, 20011 being £115,375,000 (approximate present value of interest £83,418,174) and €175,000,000 at 8.375% to October 15, 2008 being €51,296,875 (approximate present value of interest €42,418,639) plus interest on any outstanding amounts to the date of distribution plus any costs payable or other amounts due or other liabilities under the Indenture.
16.	6-003	U.S. Calpine Group entities (Master Proof of Claim)	ULC2	TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Finance II ULC for any and all obligations that Calpine Canada Energy Finance II ULC owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy

	Claim No.	Creditor	Debtor	Amount	Matter
					Code.
17.	(Letter of April 30, 2007)	U.S. Calpine Group Entities	CCAA Debtors	MISC.	Particularization of Marker Claims 1. King City Cogen LLC claims against CCPL, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee provided by King City Cogen LLC under a Guaranty and Security Agreement dated May 19, 2004. 2. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 provided by Calpine Corporation under a Tolling Agreement dated August 29, 2002. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 5390 filed in the U.S. Proceedings by Calpine Power L.P. with respect to the August 29, 2002 guarantee. 3. Calpine Corporation claims against ULC1, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee of share purchase agreements dated April 25, August 14 and August 23, 2001 and amendments dated March 8, 2002. 4. Calpine Corporation claims against CCEL, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee of subscription agreements dated April 25, August 14 and August 23, 2001 and amendments dated March 8, 2002. 5. Calpine Corporation claims against CCPL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 in respect of an Electricity Purchase Agreement dated September 29, 1998 and an Island Contribution Agreement dated August 29, 2002 (the “Heat Rate Guarantee”). Calpine Corporation claims against CCPL for any and all liability of Calpine Corporation in respect of claim number 5390 filed in the U.S. Proceedings by

Claim No.	Creditor	Debtor	Amount	Matter
				Calpine Power L.P. with respect to the August 29, 2002 guarantee. 6. Calpine Corporation claims against CCPL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 in respect of an Electricity Purchase Agreement dated September 29, 1998, an Amended and Restated EPA Fee Agreement dated April 10, 2002 and an Island Contribution Agreement dated August 29, 2002 (the "EPA Fee Guarantee"). Calpine Corporation claims against CCPL for any and all liability of Calpine Corporation in respect of claim number 5389 filed in the U.S. Proceedings by Calpine Power L.P. with respect to the August 29, 2002 guarantee. 7. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated June 1, 2002 in respect of a Transportation Agreement dated March 4, 1999. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 6215 filed in the U.S. Proceedings by Alliance Pipeline L.P. with respect to the June 1, 2002 guarantee. 8. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated June 1, 2002 in respect of a Transportation Agreement dated March 4, 1999. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 2507 filed in the U.S. Proceedings by Alliance Pipeline Limited Partnership with respect to the June 1, 2002 guarantee. 9. Calpine Corporation claims against CCRC, CESCP and CESCL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated October 23, 2001 in respect of TransCanada PipeLine Ltd and NOVA Gas Transmission Ltd.

	Claim No.	Creditor	Debtor	Amount	Matter
					Agreements. Calpine Corporation claims against CCRC, CESCP and CESCL in respect of claim numbers 5192, 5325, 5553, 5605, and 5641 filed in the U.S. Proceedings. **US Claims with respect to CANAL Entity** 10. Calpine Corporation claims against CCNG, CCPL and/or CCRC arising from unpaid amounts relating to allocation of overhead expenses by the U.S. Debtors to the CANAL and CANAL2 business units. **Saltend** 11. The U.S. Calpine Group entities claim against CCRC in respect of preference claims over the proceeds of the sale of Saltend. Pursuant to agreement with the Canadian Applicants, these claims may also relate to transfers involving entities in the Saltend chain but are asserted against CCRC **Avoidance Actions** 12. The U.S. Debtors may bring avoidance actions on behalf of certain payor U.S. Debtor entities against certain corresponding payee Canadian Debtor entities, as shown on Exhibit A, attached hereto and incorporated herein, seeking the return of preferential payments made within 90 days of the filing of the U.S. Debtor's bankruptcy petition.
18.	(Letter of April 30, 2007)	U.S. Calpine Group Entities	CCAA Debtors	TBD	Particularization of BDCs – Four claims particularized by attachment to letter dated April 30, 2007.
19.	N/A	Quintana Canada Holdings, LLC	Calpine Canada Energy Finance ULC	TBD	All Claims arising pursuant to the ISDA Master Agreement dated April 25, 2001.

EXHIBIT C

[There is no Exhibit C to this Settlement Agreement]

EXHIBIT D

Intercompany Claims (in US Dollars)

CCAA Claim No.	US Bankruptcy Claim No.	US Entity	Canadian Entity	Due From (T) CCAA Debtors
3-008		C*Power Inc.	Calpine Canada Power Ltd.	6,430
3-009		Calpine Central L.P.	Calpine Canada Power Ltd.	48,178
	4444	Calpine Construction Mgmt Co, Inc.	Calpine Energy Services Canada Ltd.	(767,443)
1-006	4443	Calpine Corporation	Calpine Canada Energy Finance ULC	181,150,425 *
2-004		Calpine Corporation	Calpine Canada Energy Ltd.	121,343
12-028	4488	Calpine Corporation	Calpine Canada Natural Gas Partnership	1,501,965
3-014	4486	Calpine Corporation	Calpine Canada Power Ltd.	(9,555,629)
12-029	4490	Calpine Energy Services L.P.	Calpine Canada Natural Gas Partnership	1,656,545
	4491	Calpine International Holdings, Inc.	Calpine Canada Natural Gas Partnership	(1,250)
	4487	Calpine International Holdings, Inc.	Calpine Canada Power Ltd.	(1,066,149)
7-008		Calpine International LLC	Calpine Energy Services Canada Ltd.	43
	4492	Calpine International, LLC	Calpine Canada Energy Ltd.	(115,498)
	4485	Calpine International, LLC	Calpine Canada Power Ltd.	(392,954)

D-2

CCAA Claim No.	US Bankruptcy Claim No.	US Entity	Canadian Entity	Due From (T) CCAA Debtors
	4440	Calpine Power Services, Inc.	Calpine Canada Energy Ltd.	(1,606)
	4447	Calpine Energy Services, LP	Calpine Energy Services Canada Partnership	(70,873,421)
1-011*	4442	Quintana Canada Holdings LLC	Calpine Canada Energy Finance ULC	(337,947,146)
	4441	Quintana Canada Holdings, LLC	Calpine Canada Energy Finance II ULC	(11,626)
	4493	Quintana Canada Holdings, LLC	Calpine Canada Energy Ltd.	(494,746,367)*
	4448	Quintana Canada Holdings, LLC	Calpine Canada Resources Company	(155,569,695)
	4447	Calpine Energy Services, LP	Calpine Energy Services Canada Partnership	(23,584,600)**

* Claims subject to the ULC1 Settlement.

** Represents an estimated contribution claim based on certain non-resident withholding tax liability, contingent on (i) it becoming an allowed claim in the CCAA Proceedings, (ii) it not being satisfied by distributions in the U.S. Proceedings, and (iii) there being insufficient funds to satisfy it from CESCA. Amount is converted at current rate of exchange (US$1 = C$1.1024).

EXHIBIT E

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount**	**Debtor**	**Basis for Claim**	**Type**
I.	**Directors' and Officers' Indemnity Claims**							
1.	7/27/2006	4412	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
2.	7/27/2006	4411	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
3.	7/27/2006	4415	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
4.	7/27/2006	4414	Toby Austin, in his capacity as director and officer of Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
5.	7/27/2006	4417	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
6.	7/27/2006	4416	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
7.	7/27/2006	4469	Calpine Energy Service Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
8.	7/27/2006	4413	Toby Austin, in his capacity as director and officer of Calpine Energy Service Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
9.	7/27/2006	4467	Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street	Unknown	Calpine Corporation 05-	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		60200	Indemnity	
10.	7/27/2006	4468	Toby Austin, in his capacity as director and officer of Calpine Canada Resources Company.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
11.	7/27/2006	4465	Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
12.	7/27/2006	4466	Toby Austin, in his capacity as director and officer of Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
13.	7/27/2006	4463	Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Attn: Jay Carfagnini				
14.	7/27/2006	4464	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
15.	7/27/2006	4510	Calpine Natural Gas Service Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
16.	7/27/2006	4462	Toby Austin, in his capacity as director and officer of Calpine Natural Gas Service Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
17.	7/27/2006	4508	3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
18.	7/27/2006	4509	Toby Austin, in his capacity as director and officer of 3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
19.	7/27/2006	4506	Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
20.	7/27/2006	4507	Toby Austin, in his capacity as director and officer of Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
21.	7/27/2006	4504	Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
22.	7/27/2006	4505	Toby Austin, in his capacity as director and officer of	c/o Goodmans LLP 250 Yonge Street	Unknown	Calpine Corporation 05-	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
			Calpine Canada Whitby Holdings Company	Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		60200	Indemnity	
23.	7/27/2006	4502	Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
24.	7/27/2006	4503	Toby Austin, in his capacity as director and officer of Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
25.	7/27/2006	4500	Calpine Canada Energy Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Quintana Canada Holdings, LLC 05-60400		
26.	7/27/2006	4501	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B	Unknown	Quintana Canada Holdings, LLC		

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				2M6 Attn: Jay Carfagnini		05-60400		
27.	7/27/2006	4498	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		Unsecured
28.	7/27/2006	4499	Toby Austin, in his capacity as director and officer of Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
29.	7/27/2006	4496	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
30.	7/27/2006	4497	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
31.	7/27/2006	4438	Calpine Energy Services Canada Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
32.	7/27/2006	4439	Toby Austin, in his capacity as director and officer of Calpine Energy Services Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
33.	7/27/2006	4436	Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
34.	7/27/2006	4437	Toby Austin, in his capacity as director and officer of Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
35.	7/27/2006	4434	Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street	Unknown	Quintana Canada	Directors' and Officers'	Unsecured

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN								
I.	**Directors' and Officers' Indemnity Claims**							
				Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Holdings, LLC 05-60400	Indemnity	
36.	7/27/2006	4435	Toby Austin, in his capacity as director and officer of Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
37.	7/27/2006	4432	Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
38.	7/27/2006	4433	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
39.	7/27/2006	4429	Calpine Natural Gas Services Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Attn: Jay Carfagnini				
40.	7/27/2006	4431	Toby Austin, in his capacity as director and officer of Calpine Natural Gas Services Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
41.	7/27/2006	4428	3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
42.	7/27/2006	4430	Toby Austin, in his capacity as director and officer of 3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
43.	7/27/2006	4426	Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured

Claims Which Are Not Released or Withdrawn

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
44.	7/27/2006	4427	Toby Austin, in his capacity as director and officer of Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
45.	7/27/2006	4424	Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
46.	7/27/2006	4425	Toby Austin, in his capacity as director and officer of Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
47.	7/27/2006	4422	Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
48.	7/27/2006	4423	Toby Austin, in his capacity as director and officer of	c/o Goodmans LLP 250 Yonge Street	Unknown	Quintana Canada	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
			Calpine Greenfield Ltd.	Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Holdings, LLC 05-60400	Indemnity	

Total Amount of D&O Indemnity Claims: Unknown

EXHIBIT F

Claims Filed In CCAA Proceedings That Have Been Guaranteed By U.S. Debtors

Claim No.	Creditor	Debtor	Amount As Filed (in Cdn Dollars)
5-028	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Canada Resources Company	52,755,275.86
5-041	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Canada Resources Company	40,980,017.36
7-004	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Energy Services Canada Ltd.	40,980,017.36
7-005	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Energy Services Canada Ltd.	52,755,275.86
8-005	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Energy Services Canada Partnership	40,980,017.36
8-006	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Energy Services Canada Partnership	52,755,275.86
2-007	NOVA Gas Transmission Ltd.	Calpine Canada Energy Limited	36,205,274.42
5-035	NOVA Gas Transmission Ltd.	Calpine Canada Resources Company	36,205,274.42
7-015	NOVA Gas Transmission Ltd.	Calpine Energy Services Canada Ltd.	36,205,274.42
8-012	NOVA Gas Transmission Ltd.	Calpine Energy Services Canada Partnership	36,205,274.42

F-2

Claim No.	Creditor	Debtor	Amount As Filed (in Cdn Dollars)	
2-008	TransCanada Pipelines Limited	Calpine Canada Energy Limited	81,129,548.10	
5-039	TransCanada Pipelines Limited	Calpine Canada Resources Company	81,129,548.10	
7-016	TransCanada Pipelines Limited	Calpine Energy Services Canada Ltd.	81,129,548.10	
8-014	TransCanada Pipelines Limited	Calpine Energy Services Canada Partnership	81,129,548.10	
5-031	Calpine Power, L.P.	Calpine Canada Resources Company	769,064,345.51	Toll
7-009	Calpine Power, L.P.	Calpine Energy Services Canada Ltd.	769,064,345.51	Toll
8-011	Calpine Power, L.P.	Calpine Energy Services Canada Partnership	769,064,345.51	Toll
3-012	Calpine Power, L.P. and Calpine Power Income Fund	Calpine Canada Power Ltd.	TBD	Trans Fee
3-013	Calpine Power, L.P.	Calpine Canada Power Ltd.	TBD	Heat Rate

EXHIBIT G

Third Party Claims To Be Withdrawn Or Dismissed On A With Prejudice Basis

Claim No	Creditor	Debtor	Amount As Filed	
2-006	HSBC Bank USA, National Association	Calpine Canada Energy Ltd.	TBD	ULC1
3-018	HSBC Bank USA, National Association	Calpine Canada Power Ltd.	TBD	ULC1
4-004	HSBC Bank USA, National Association	Calpine Canada Power Services Ltd.	TBD	ULC1
5-032	HSBC Bank USA, National Association	Calpine Canada Resources Company	TBD	ULC1
6-004	HSBC Bank USA, National Association	Calpine Canada Energy Finance II ULC	TBD	ULC1
7-012	HSBC Bank USA, National Association	Calpine Energy Services Canada Ltd.	TBD	ULC1
8-004	HSBC Bank USA, National Association	Calpine Energy Services Canada Partnership	TBD	ULC1
9-002	HSBC Bank USA, National Association	3094479 Nova Scotia Company	TBD	ULC1
10-002	HSBC Bank USA, National Association	Calpine Canadian Saltend Limited Partnership	TBD	ULC1
11-004	HSBC Bank USA, National Association	Calpine Natural Gas Services Ltd.	TBD	ULC1
12-031	HSBC Bank USA, National Association	Calpine Canada Natural Gas Partnership	TBD	ULC1
1-012	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Finance ULC	TBD	2nd Lien
2-009	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Ltd.	US $ 3,025,758,604.24 plus TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
2-010	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Ltd.	TBD	2nd Lien
3-019	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Power Ltd.	TBD	2nd Lien
4-005	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Power Services Ltd.	TBD	2nd Lien
5-040	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Resources Company	TBD	2nd Lien
6-006	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Finance II ULC	TBD	2nd Lien
7-017	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Energy Services Canada Ltd.	TBD	2nd Lien
8-015	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Energy Services Canada Partnership	TBD	2nd Lien
9-003	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	3094479 Nova Scotia Company	TBD	2nd Lien
10-003	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canadian Saltend Limited Partnership	TBD	2nd Lien
11-005	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Natural Gas Services Ltd.	TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
12-034	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Natural Gas Partnership	TBD	2nd Lien
7-011	Greenfield Energy LP	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-013	MIT Power Canada LP Inc.	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-014	MIT Power Canada Investments Inc.	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-018	CM Greenfield Power Corp	Calpine Energy Services Canada Ltd.	TBD	Greenfield
5-033	Manufacturers and Traders Trust Company, as Indenture Trustee for the 8 7/8% Senior Notes due 2011 and the 8 3/8% Senior Notes due 2008, and on behalf of Calpine Canada Energy Finance II ULC.	Calpine Canada Resources Company	C$ 639,044,000	ULCII
4056	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 8.75% Second Priority Senior Secured Notes Due 2013	Quintana Canada Holdings LLC	US $933,958,967.18	2nd Lien
4057	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 9.875% Second Priority Senior Secured Notes Due 2011	Quintana Canada Holdings LLC	US $402,137,369.40	2nd Lien
4059	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 8.5% Second Priority Senior Secured Notes Due 2010	Quintana Canada Holdings LLC	US $1,192,139,522.73	2nd Lien
4061	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation Second Priority Senior Secured Floating Rate Notes Due 2007	Quintana Canada Holdings LLC	US $497,539,218.43	2nd Lien
4388	Wilmington Trust Company, as Indenture Trustee for the Holders of Calpine Corporation's Second Priority Senior Secured Notes for	Quintana Canada Holdings LLC	TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
	certain Unliquidated Claims			
3793	Wilmington Trust Company, as Indenture Trustee for the Holders of Calpine Corporation's Second Priority Senior Secured Notes for certain Unliquidated Claims	Calpine ULC I Holding, LLC	TBD	2nd Lien
5740	HSBC Bank USA, National Association, solely in its capacity as the Successor Indenture Trustee under the Indenture and the Senior Notes (as such terms are defined in the attachment to the Proof of Claim (the "Attachment")) issued by Calpine Canada Energy Finance ULC ("ULC 1"), on behalf of (a) the Indenture Trustee and holders of Senior Notes, and (b) ULC 1	Calpine Corporation and each of its affiliate Debtors (as defined in the Attachment to the proof of claim)	TBD	ULC1
5742	HSBC Bank USA, National Association, solely in its capacity as the Successor Indenture Trustee under the Indenture and the Senior Notes (as such terms are defined in the attachment to the Proof of Claim (the "Attachment")) issued by Calpine Canada Energy Finance ULC	Calpine Corporation	US $2,124,356,213.11	ULC1
4074	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation and on behalf of Calpine Canada Energy Finance II ULC	Calpine Corporation	US $549,362, 988.80	ULC2
4221	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation and on behalf of Calpine Canada Energy Finance II ULC	Quintana Canada Holdings LLC	US $549,362,988.80	ULC2

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Claim No	Creditor	Debtor	Amount As Filed	
4222	Manufacturers and Traders Trust Company, as Indenture Trustee, for the Holders of the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation	Calpine Corporation	US $213,421,508.67	ULC2
4223	Manufacturers and Traders Trust Company, as Indenture Trustee, for the Holders of 8 7/8% Senior Notes Due 2011 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation	Calpine Corporation	US $357,995,076.25	ULC2
4224	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation, for its own fees, costs, and expenses	Calpine Corporation	US $838,637.41	ULC2

EXHIBIT C

UNITED STATES BANKRUPTCY COURT **SOUTHERN DISTRICT OF NEW YORK**		
In re:	:	**Chapter 11** **Case No. 05-60200 (BRL)**
CALPINE CORPORATION, et al.,	:	**(Jointly Administered)**
Debtors.	:	

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

TO ALL HOLDERS OF CALPINE CANADA ENERGY FINANCE ULC SENIOR NOTES (collectively, the "Bonds")**:**

Interest Rate	Maturity Date	CUSIP No.
8.500%	5/1/2008	13134VAA1
8.750%	10/15/2007	13134VAB9

SETTLEMENT

PLEASE TAKE NOTICE that Calpine Corporation ("Calpine") and certain of its U.S. subsidiaries and affiliates filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on December 20, 2005 (the "Chapter 11 Cases"). On the same date, certain of Calpine's Canadian subsidiaries and affiliates (the "Canadian Debtors") filed applications under the *Companies' Creditors Arrangement Act* in the Court of Queen's Bench in Calgary, Alberta (the "CCAA Cases"). On June 28, 2007 Calpine filed a motion in the Chapter 11 Cases (the "U.S. Settlement Motion"), and the Canadian Debtors filed a motion in the CCAA Cases (the "Canadian Settlement Motion"), to approve a settlement relating to, among other things, the Bonds (the "Settlement"). If approved, the Settlement will resolve all claims the indenture trustee for the Bonds (the "Trustee") and/or holders of the Bonds ("Bondholders") may have against Calpine and/or Calpine Canada Energy Finance ULC ("ULC1," one of the Canadian Debtors) in connection with the Bonds.

HOW TO OBTAIN INFORMATION CONCERNING THE SETTLEMENT

Copies of the U.S. Settlement Motion, the related proposed order, and the formal documents evidencing the terms and conditions of the Settlement (the "Settlement Agreement") are posted at http://www.kccllc.net/calpine/canadasettlement. The Canadian Settlement Motion, the related proposed order and the Settlement Agreement are available at the web site of the Canadian Monitor, http://www.ey.com/global/content.nsf/Canada/Insolvencies_-_2005_-_Calpine_Canada. Bondholders may also obtain copies of the settlement documents and copies of information about procedures concerning the Settlement Motion and the hearing thereon at no charge by contacting Kirkland & Ellis LLP, Attention: Jeffrey W. Gettleman, 200 East Randolph Drive, Chicago, Illinois 60601, (312) 861-3289.

On or about July 9, 2007 Calpine served a copy of the Settlement Motion and related proposed order on the record holders of the Bonds. Calpine expects that, in accordance with industry practice and SEC rules, the record holders will cause these documents to be mailed to the respective beneficial holders of the Bonds on whose behalf such record holders are acting as custodians of the Bonds.

OBJECTION DEADLINE, HEARING

A hearing on the Settlement Motion has been scheduled for **July 24, 2007**. The hearing will take place at **2:00 p.m.** prevailing Eastern Time before the Honorable Burton R. Lifland in the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004-1408 (the "Bankruptcy Court"), and will be a joint hearing taking place at **Noon** prevailing Mountain Time before the Honourable Madam Justice B.E.C. Romaine, presiding in the Court of Queen's Bench, Court House, 611 - 4th St. S.W., Calgary, Alberta, Canada.

Objections, if any, to the Settlement Motion and the relief sought therein must be made in writing and filed and served so as to be actually received no later than **4:00 p.m. on July 16, 2007** prevailing Eastern Time. **Bondholders should refer to the Settlement Motions for specific requirements relating to the form, filing and service of such a response. UNLESS A TIMELY OBJECTION IS FILED WITH THE APPLICABLE COURT AND SERVED IN ACCORDANCE WITH THESE REQUIREMENTS, IT MAY NOT BE CONSIDERED BY THE APPLICABLE COURT.**

EXHIBIT 5

In re Calpine Corp., Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

ORDER PURSUANT TO 11 U.S.C. § 105(a)
APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the motion (the "Motion"), dated April 5, 2007, of the Canadian Debtors[1] for entry of an Order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq*. (the "Bankruptcy Code") approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"); and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and upon the record of a hearing held before this Court on April 12, 2007; and it appearing that the relief sought is in the best interests of the U.S. Debtors and the Canadian Debtors, their respective estates and creditors; and the Court-to-Court Protocol having been approved by the Canadian Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Court-to-Court Protocol is approved in all respects; and it is further

[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

ORDERED that the requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a separate memorandum of law is hereby waived.

Dated: New York, New York
April 12, 2007

/s/Burton R. Lifland
Burton R. Lifland
United States Bankruptcy Judge

EXHIBIT 6

In re Calpine Corp., Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

MOTION OF CANADIAN DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 105(a) APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

TO: THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

The Canadian Debtors (defined below), by and through their undersigned attorneys, hereby submit this motion (the "Motion") for entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"), which has been approved by the Canadian Court (defined below) subject in its entirety to this Court's further approval.[1] In support thereof, the Canadian Debtors state as follows:

PRELIMINARY STATEMENT

1. Both this Court and the Canadian Court (defined below) have recognized that these proceedings and the Canadian Proceedings (defined below) may benefit from a "protocol" that establishes procedures, and provides clarity and structure, for coordinating the administration of cross-border matters arising between the U.S. Debtors and the Canadian Debtors and their respective insolvency proceedings. The parties have taken those views to heart and have negotiated and developed a Court-to-Court Protocol. Upon the Canadian Debtors' motion, and with the support of the Monitor (as defined below), the Canadian Court has approved the Court-to-Court Protocol (subject to this Court's approval) and has ordered the Canadian Debtors to seek this Court's approval. The Canadian Debtors thus request that this Court join the Canadian Court in approving the Court-to-Court Protocol.

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[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Court-to-Court Protocol.

JURISDICTION

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core matter pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code.

BACKGROUND

3. On December 20, 2005, Calpine Corp. ("Calpine") and certain of its direct and indirect subsidiaries (collectively, the "U.S. Debtors") filed voluntary petitions for relief in this Court pursuant to chapter 11 of the Bankruptcy Code (the "Chapter 11 Proceedings"). The U.S. Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On the same date, twelve Canadian Calpine entities (collectively, the "Canadian Debtors") applied for and obtained protection from their creditors under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, pursuant to an order of the Honourable Madam Justice B.E.C. Romaine of the Alberta Court of Queen's Bench (the "Canadian Court") dated December 20, 2005 (the "Canadian Proceedings" and together with the Chapter 11 Proceedings, the "Proceedings"). Pursuant to that order, Ernst & Young Inc. was appointed as monitor of the Canadian Debtors during the Canadian Proceedings (the "Monitor").

5. The Chapter 11 Proceedings and the Canadian Proceedings function as separate and distinct proceedings. Neither the Canadian Debtors nor the U.S. Debtors have sought to have their proceedings recognized in the other's jurisdiction. Each, however, has appeared in court in the other's jurisdiction and each has filed claims in the other's proceedings.

THE NEED FOR CROSS-BORDER RELIEF

6. The Canadian Debtors, on the one hand, and the U.S. Debtors, on the other, have several significant, complex, and, in many instances, disputed matters between them that must be considered and adequately addressed before either group of debtors can successfully resolve its respective insolvency proceedings. In many instances, questions of jurisdiction, venue and choice of law suggest that both Courts may need to play a role in the adjudication and attendant resolution of the underlying issues.

7. Given the foregoing set of circumstances, at various times, both this Court and the Canadian Court have suggested that the collective Proceedings may benefit from the approval of and adherence to a "protocol" that establishes procedures for coordinating the administration of cross-border matters arising in the Proceedings. In light of the cross-border issues and claims that are coming to the forefront in the Proceedings, the Canadian Debtors (with the approval of the Monitor) submit that it is now appropriate for a protocol to be put in place. Thus, the Canadian Debtors, in consultation with the major stakeholders and the U.S. Debtors, have negotiated and developed the form of Court-to-Court Protocol attached hereto as Exhibit A.

8. The Court-to-Court Protocol seeks to (i) establish general administrative procedures and protocols to govern and facilitate the overall administration of cross-border matters between or among the Canadian Debtors and the U.S. Debtors and likewise between the Canadian Proceedings and the Chapter 11 Proceedings; (ii) ensure the maintenance of the two Courts' respective independent jurisdiction, where appropriate; and (iii) give due effect to any applicable principles, including without limitation, comity, where appropriate.

9. On March 29, 2007, the Canadian Debtors filed a motion with the Canadian Court seeking its approval of the Court-to-Court Protocol. A copy of the "Notice of Motion" filed by the Canadian Debtors with the Canadian Court is attached hereto as Exhibit B. On April 4, 2007,

the Canadian Court held a hearing on the Canadian Debtors' motion where it approved the Court-to-Court Protocol (without modification), finding that it was "fair" and "even handed." It also ordered the Canadian Debtors to seek the Court's approval of the Court-to-Court Protocol. (*See* Order of the Canadian Court, dated April 5, 2007, attached hereto as Exhibit C.)

10. The Court-to-Court Protocol contemplates the development and approval of a subsequent "Canada-U.S. Claims-Specific Protocol" intended to address timing, venue, and choice of law with respect to several significant and specific, disputed claims among the two groups of debtors and others. The Canadian Debtors and the U.S. Debtors continue to negotiate the specifics of that protocol. To date, the Canadian Debtors and the U.S. Debtors have not been able to reach agreement on the Canada-U.S. Claims-Specific Protocol and, indeed, significant disagreement exists. However, if and when those negotiations result in an agreed Canada-U.S. Claims-Specific Protocol, the Canadian Debtors contemplate that the Canada-U.S. Claims-Specific Protocol would be presented to this Court and the Canadian Court for simultaneous approval at a joint hearing to be scheduled and conducted pursuant to the provisions of the Court-to-Court Protocol establishing such hearings (once the Court-to-Court Protocol is approved). And if those ongoing negotiations do not bear fruit, the Court-to-Court Protocol can also provide the framework necessary for this Court and the Canadian Court to hold a joint hearing to resolve any open issues on the terms of a Canada-U.S. Claims-Specific Protocol, as necessary. The Canadian Court has suggested that it will contact this Court to schedule a joint hearing so that this matter does not languish.

THE COURT-TO-COURT PROTOCOL

11. The following is an overview of the provisions of the proposed Court-to-Court

Protocol:[2]

12. Purpose and Goals. The Court-to-Court Protocol seeks to promote the following mutually desirable goals and objectives in both Proceedings:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Proceedings before this Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Proceedings to, among other things, maximize the efficiency of the Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the U.S. Debtors, the Canadian Debtors, their creditors, the various committees, the U.S. Trustee, and the Monitor;

v. facilitate the fair, open and efficient administration of the Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Proceedings.

13. Comity and Independence of the Courts. This Court shall have sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Proceedings and the hearing and determination of matters arising therein. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising therein. By approving and implementing the Court-to-Court Protocol, neither this Court, the Canadian Court, the U.S. Debtors, the Canadian Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

[2] This overview is merely intended to provide a short summary of some of the provisions of the Court-to-Court Protocol. If any conflict arises between this overview and the Court-to-Court Protocol, the terms of the Court-to-Court Protocol shall control.

14. Cooperation. To harmonize and coordinate the administration of the Proceedings, this Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other court.

i. This Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Proceedings.

ii. Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party in interest in either of the Proceedings with respect to a motion or an application filed in either Court, the Court before which such motion or application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the U.S. Debtors, the Canadian Debtors, the U.S. Trustee, the Monitor, and any party in interest prior to any determination on the issue of jurisdiction being made by either Court.

iii. This Court and the Canadian Court may coordinate activities in the Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one tribunal.

iv. This Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of either of the Proceedings if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Proceedings or the resolution of any particular issue arising in the Proceedings.

15. Other Provisions. The Court-to-Court Protocol also contains other provisions that, among other things, concern (i) access to information, (ii) intercompany claims, (iii) recognition of claims protocol, and (iv) retention and compensation of estate representatives and professionals.

RELIEF REQUESTED

16. To facilitate the administration of these Chapter 11 Proceedings and the Canadian Proceedings, and as ordered by the Canadian Court, the Canadian Debtors request that the Court enter an order approving the Court-to-Court Protocol.

BASIS FOR RELIEF

17. Section 105(a) of the Bankruptcy Code provides in pertinent part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A number of courts, in this district and elsewhere, have authorized similar protocols for managing cross-border insolvency proceedings. *See In re Systech Retail Sys. (U.S.A.), Inc.*, Case No. 03-00142-5-ATS (Bankr. E.D.N.C. 2003); *In re Federal Mogul Global, Inc.*, Case No. 01-10578 (Bankr. D. Del. 2002); *In re Fin. Asset Mgmt. Found.*, Case No. 01-03640-304 (Bankr. S.D. Cal. 2001); *In re PSINet Inc.*, Case No. 01-13213 (Bankr. S.D.N.Y. 2001); *In re Laidlaw USA, Inc.*, Case No. 01-14099 (Bankr. W.D.N.Y. 2001); *In re Matlack Sys., Inc.*, Case No. 01-01114 (Bankr. D. Del. 2001); *In re Manhattan Inv. Fund Ltd.*, Case Nos. 00-10922 (BRL), 00-10921 (BRL) (Bankr. S.D.N.Y. 2000); *In re Inverworld, Inc.*, Case No. SA99-C0822FB (Bankr. W.D. Tex. 1999); *In re Loewen Group Int'l, Inc.*, Case No. 99-1244 (Bankr. D. Del. 1999); *In re Philip Servs. Corp.*, Case No. 99-B-02385 (Bankr. D. Del. 1999); *In re Livent (U.S.) Inc.*, Case No. 98 B 48312 (Bankr. S.D.N.Y. 1998); *In re Solvex Canada Ltd.*, 11-97-14362-MA (Bankr. N.M. 1997); *In re AIOC Corp.*, 96 B 41895 (Bankr. S.D.N.Y. 1996); *In re Everfresh Beverages, Inc.*, 95 B 45305 (Bankr. S.D.N.Y. 1995); *In re Nakash*, 94 B 44840 (Bankr. S.D.N.Y. 1994); *In re Olympia & York*, 92 B 42698 (Bankr. S.D.N.Y. 1992); *In re Maxwell Commc'n Corp.*, 91 B 15741 (Bankr. S.D.N.Y. 1991).

18. The Court-to-Court Protocol provides a necessary and appropriate means for communication between the two Courts. That communication will provide coordination of cross-border matters arising in the Proceedings. The Canadian Debtors thus submit that approval of the Court-to-Court Protocol by this Court will prove beneficial to the administration of both the Chapter 11 Proceedings and the Canadian Proceedings.

NOTICE

19. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to the administrative agents for the U.S. Debtors' prepetition secured lenders; (d) counsel to the *ad hoc* committees; (e) the indenture trustees pursuant to the U.S. Debtors' and Canadian Debtors' secured indentures; (f) counsel to the postpetition lenders: (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the United States Department of Justice; (j) counsel to the Official Committee of Equity Security Holders; (k) counsel to the U.S. Debtors; and (l) all parties that have requested special notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested herein, the Canadian Debtors submit that no other or further notice is required.

WAIVER OF MEMORANDUM OF LAW

20. Because this Motion presents no novel issues of law, the Canadian Debtors request that the Court waive the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith.

WHEREFORE, the Canadian Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, (a) approving the Court-to-Court Protocol and (b) granting to the Canadian Debtors such other and further relief that this Court deems just and proper.

Dated: April 5, 2007

Respectfully submitted,

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ATTORNEYS FOR
THE CANADIAN DEBTORS

EXHIBIT A

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule C hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 26 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 26 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 26 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

EXHIBIT B

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

NOTICE OF MOTION

(Approval of Court-to-Court Protocol returnable April 4, 2007)

TAKE NOTICE that an application will be made on behalf of the Applicants before the Honourable Madam Justice B.E.C. Romaine, at the Courthouse, 611 – 4th St. S.W., in the City of Calgary, in the Province of Alberta, on Wednesday, April 4, 2007, at 12:00 p.m. or as soon thereafter as counsel may be heard for the following relief:

1. An Order abridging the time for, and validating service of, this Notice of Motion and the materials filed in support of this application.

2. An Order approving a "Court-to-Court Protocol" substantially in the form attached at Schedule A.

3. Any other relief this Honourable Court may deem just.

AND TAKE NOTICE THAT the grounds of this application are that:

(a) On December 20, 2005, the Applicants and the CCAA Parties (as defined in the Initial CCAA Order and collectively, the "CCAA Debtors") applied for and were granted protection under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended (the "CCAA") pursuant to the Order of the Honourable Madam Justice B.E.C. Romaine dated December 20, 2005 (as thereafter amended and restated, the "Initial CCAA Order") (the "CCAA Proceedings");

(b) On December 20, 2005, Calpine Corporation and approximately 270 of its direct and indirect U.S. subsidiaries (collectively, and together with other subsidiaries that filed later, the "U.S. Debtors") filed petitions with the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") for relief under chapter 11 of Title 11 of the United States Code (the "U.S. Proceedings");

(c) The CCAA Proceedings and the U.S. Proceedings are separate and distinct proceedings and neither the Canadian Debtors nor the U.S. Debtors have sought to have their proceedings recognized in the other jurisdiction;

(d) Despite the separate and distinct nature of the Proceedings, Calpine's business operations in Canada and the United States were inter-related and as a result the CCAA Debtors and the U.S. Debtors have filed significant claims against each other and become interested parties in each other's Proceedings;

(e) Given the foregoing set of circumstances, it has been suggested at various times during the CCAA Proceedings and the U.S. Proceedings, including by the U.S. Bankruptcy Court and this Honourable Court at the last hearing, that it may be beneficial for the CCAA Debtors and the U.S. Debtors to, at the appropriate time, develop and seek Court approval of a "protocol" to establish procedures for coordinating the administration of cross-border matters arising in the Proceedings;

(f) In view of the cross-border issues and claims that have recently arisen in the Proceedings, the CCAA Debtors are of the view that it is now appropriate for such a protocol to be entered into and have, in consultation with the major

stakeholders, developed the form of "Court-to-Court Protocol" attached at Schedule A;

(g) The Court-to-Court Protocol is intended to: establish general administrative procedures and protocols to govern and facilitate the overall administration of cross-border matters between or among the CCAA Debtors and the U.S. Debtors and the CCAA Proceedings and the U.S. Proceedings; to ensure the maintenance of the Courts' independent jurisdiction, where appropriate; and to give due effect to any applicable principles, including without limitation, comity, where appropriate;

(h) If the Court-to-Court Protocol is approved by this Honourable Court, the CCAA Debtors intend to file a motion, either on their own or with the U.S. Debtors, with the U.S. Bankruptcy Court seeking approval of the Court-to-Court Protocol, in the form approved by this Honourable Court;

(i) The Court-to-Court Protocol shall only become effective upon approval by both this Honourable Court and the U.S. Bankruptcy Court, in form and substance acceptable to each Court; and

(j) such further and other grounds as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that in support of such application will be read (a) the Affidavit of Toby Austin sworn March 29, 2007, filed (b) a Report of the Monitor (to be filed separately), and (c) such further and other material as counsel may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 29th day of March, 2007, **AND DELIVERED** by **McCARTHY TÉTRAULT LLP**, Barristers and Solicitors, co-Counsel for the Applicants whose address for service is in care of the said Solicitors at 3300, 421-7th Ave. S.W., Calgary, Alberta, T2P 4K9.

McCARTHY TÉTRAULT LLP

Per: _____
Larry B. Robinson, Q.C.
Co-Counsel for the Applicants

GOODMANS LLP

Per: _____
Jay A. Carfagnini
Co-Counsel for the Applicants

TO: Clerk of the Court

AND TO: Service List

Schedule A

(Order approving Court-to-Court Protocol)

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF

CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

BEFORE THE HONOURABLE	)	AT THE COURTHOUSE, IN THE CITY
MADAM JUSTICE B.E.C. ROMAINE	)	OF CALGARY, IN THE PROVINCE OF
	)	ALBERTA, ON WEDNESDAY, THE 4TH
	)	DAY OF APRIL, 2007

ORDER
(Approval of Court-to-Court Protocol)

UPON THE APPLICATION of the Applicants; **AND UPON** having read (i) the Affidavit of Toby Austin sworn March 29, 2007 and (ii) the ● Report of the Monitor, Ernst & Young Inc., dated ●, 2007, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present; **AND UPON** being satisfied that circumstances exist that make this Order appropriate; **IT IS HEREBY ORDERED THAT**:

1. The time for service of the Notice of Motion is hereby abridged so that the application is properly returnable today, and, further, that any requirement for service of the Notice of Motion upon any party not served is hereby dispensed with.

2. The Court-to-Court Protocol attached as Schedule A is approved by this Court.

3. The Court-to-Court Protocol shall not become effective unless and until approved by the U.S. Bankruptcy Court, in form and substance acceptable to this Court.

_____

J.C.Q.B.A.

ENTERED this _____ day of April, 2007.

_____

Clerk of the Court

Schedule A

(Court-to-Court Protocol)

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule C hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 26 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 26 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 26 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

Schedule B

(Memorandum of Understanding)

Memorandum of Understanding re: Proofs of Claim

The purpose of this memorandum is to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States according to the following parameters:

1. It shall be sufficient if any Proof of Claim is signed by an authorized representative of the creditor and unless expressly prohibited by the claims procedure (bar) order or applicable bankruptcy or insolvency provisions in either jurisdiction, fax copies or photocopies shall be accepted if timing issues prevent delivery of originals by the bar date, with originals to be filed as soon as reasonably possible thereafter.

2. Intercompany creditors may file one or more placeholder claims against one or more entities in the other jurisdiction and such claims shall be marked as a "Master Proof of Claim" and be accepted as having been filed as against all debtors in the other jurisdiction.

3. Pending the parties' good faith efforts to negotiate a protocol referenced in paragraph 5 below and the completion of the procedures outlined therein and the completion of the procedures referenced in paragraphs 4 and 5 below, no claim shall be rejected or objected to on the basis:

A) that the claim ought to have been more appropriately asserted against another intercompany entity, and particulars may be provided subsequent to filing any claim as to which entity the claim properly lies against;

B) that the creditor is unable to express an exact dollar amount of its claim whether or not it is contingent or unliquidated;

C) that the amount claimed has been, on the books and records of either or both of the creditor or the debtor, mischaracterized or misclassified (including, for example related /non related party debt); or

D) of a lack of particularity,

4,. Intercompany creditors in both jurisdictions shall use best efforts to locate and file with their Proofs of Claim or thereafter further particulars and/or back up documentation to facilitate the fair and equitable evaluation ofthe claims.

5. Intercompany creditors shall continue their ongoing dialogue and cooperation in an effort to resolve discrepancies and issues relating to their claims, and following the claims bar date and the filing of claims, the intercompany creditors and their representatives shall meet in an effort to agree upon a protocol for the resolution/adjudication of all intercompany claims where possible.

6. The Monitor in the Canadian proceedings consents to this MOD.

Schedule C

(Cross-Border Service List)

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No. 0501-17864 A.D. 2005

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

Applicants

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NOTICE OF MOTION

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EXHIBIT C

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF

CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

BEFORE THE HONOURABLE	)	AT THE COURTHOUSE, IN THE CITY
MADAM JUSTICE B.E.C. ROMAINE	)	OF CALGARY, IN THE PROVINCE OF
	)	ALBERTA, ON WEDNESDAY, THE 4TH
	)	DAY OF APRIL, 2007

I hereby certify this to be a true copy of
the original Order
Dated this 5 day of April, 2007
Dueland
for Clerk of the Court

ORDER
(Approval of Court-to-Court Protocol)

UPON THE APPLICATION of the Applicants; **AND UPON** having read (i) the Affidavit of Toby Austin sworn March 29, 2007 and (ii) the Twenty-Second Report of the Monitor, Ernst & Young Inc., dated April 3, 2007, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present; **AND UPON** being satisfied that circumstances exist that make this Order appropriate; **IT IS HEREBY ORDERED THAT**:

1. The time for service of the Notice of Motion is hereby abridged so that the application is properly returnable today, and, further, that any requirement for service of the Notice of Motion upon any party not served is hereby dispensed with.

2. The Court-to-Court Protocol attached as Schedule A is approved by this Court.

3. The Court-to-Court Protocol shall not become effective unless and until approved by the U.S. Bankruptcy Court, in form and substance acceptable to this Court.

J.C.Q.B.A.

ENTERED this 5 day of April, 2007.

COURT SEAL

Clerk of the Court

Schedule A

(Court-to-Court Protocol)

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

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[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule "C" hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 25 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 25 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 25 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines,* however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines.*

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

Schedule B

(Memorandum of Understanding)

Memorandum of Understanding re: Proofs of Claim

The purpose of this memorandum is to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States according to the following parameters:

1. It shall be sufficient if any Proof of Claim is signed by an authorized representative of the creditor and unless expressly prohibited by the claims procedure (bar) order or applicable bankruptcy or insolvency provisions in either jurisdiction, fax copies or photocopies shall be accepted if timing issues prevent delivery of originals by the bar date, with originals to be filed as soon as reasonably possible thereafter.

2. Intercompany creditors may file one or more placeholder claims against one or more entities in the other jurisdiction and such claims shall be marked as a "Master Proof of Claim" and be accepted as having been filed as against all debtors in the other jurisdiction.

3. Pending the parties' good faith efforts to negotiate a protocol referenced in paragraph 5 below and the completion of the procedures outlined therein and the completion of the procedures referenced in paragraphs 4 and 5 below, no claim shall be rejected or objected to on the basis:

A) that the claim ought to have been more appropriately asserted against another intercompany entity, and particulars may be provided subsequent to filing any claim as to which entity the claim properly lies against;

B) that the creditor is unable to express an exact dollar amount of its claim whether or not it is contingent or unliquidated;

C) that the amount claimed has been, on the books and records of either or both of the creditor or the debtor, mischaracterized or misclassified (including, for example related /non related party debt); or

D) of a lack of particularity,

4,. Intercompany creditors in both jurisdictions shall use best efforts to locate and file with their Proofs of Claim or thereafter further particulars and/or back up documentation to facilitate the fair and equitable evaluation ofthe claims.

5. Intercompany creditors shall continue their ongoing dialogue and cooperation in an effort to resolve discrepancies and issues relating to their claims, and following the claims bar date and the filing of claims, the intercompany creditors and their representatives shall meet in an effort to agree upon a protocol for the resolution/adjudication of all intercompany claims where possible.

6. The Monitor in the Canadian proceedings consents to this MOD.

Schedule C

(Cross-Border Service List)

[*intentionally blank*]

No. 0501-17864 A.D. 2005

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

Applicants

ORDER

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199472-371537
CAL_DOCS #1572857 v. 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

ORDER PURSUANT TO 11 U.S.C. § 105(a)
APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the motion (the "Motion"), dated April 5, 2007, of the Canadian Debtors[1] for entry of an Order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"); and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and upon the record of a hearing held before this Court on April 12, 2007; and it appearing that the relief sought is in the best interests of the U.S. Debtors and the Canadian Debtors, their respective estates and creditors; and the Court-to-Court Protocol having been approved by the Canadian Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Court-to-Court Protocol is approved in all respects; and it is further

[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

ORDERED that the requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a separate memorandum of law is hereby waived.

Dated: New York, New York
April ___, 2007

Burton R. Lifland
United States Bankruptcy Judge

EXHIBIT 7

In re Calpine Corp., Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In the Matter of

Case No.
CALPINE CORPORATION, et al., 05-60200
Debtors.
----------x

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY
----------x
In the Matter of
THE COMPANIES' CREDITORS ARRANGEMENT ACT, Action No.
R.S.C. 1985, c. C-36, AS AMENDED 0501-17864
AND IN THE MATTER OF
CALPINE CANADA ENERGY LIMITED, et al.,

Applicants.
----------x
July 24, 2007
United States Custom House
One Bowling Green
New York, New York 10004

Joint Hearing with Canadian Judge in re: Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and Other Relief; Approval of Bond Sale; Debtors' Emergency Motion with Respect to CCAA Proceedings; Debtors' Partial Objection to Proof of Claim.

B E F O R E:
HON. BURTON R. LIFLAND,
U.S. Bankruptcy Judge
- and -
HON. B.E.C. ROMAINE,
Queen's Bench Justice

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A L S O P R E S E N T:

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NATHAN LANCE - for the ULC1 indentured trustee

DAVID JOHNSTON - Alix Partners

P R O C E E D I N G S:

JUDGE LIFLAND: Please be seated.

THE CLERK: It's the clerk from Calgary we are ready to commence.

JUDGE LIFLAND: Good afternoon.

MR. SELIGMAN: Good afternoon, your Honor.

JUDGE LIFLAND: This is the joint hearing before The Court of Queen's Bench of Alberta and the U.S. Bankruptcy Court for the Southern District of New York.

While not the first of such joint hearings, it is the latest to recognize that debtors with assets and creditors and insolvency proceedings in more than one state have an urgent need for cross-border cooperation and coordination, and the supervision and administration of their assets and affairs.

At the very least, these joint proceedings contemplated by court approved protocols, provide the forum for cross-border access and recognition for the stake holders on both sides of the border. And I, for the New York court, welcome all the stakeholders in Canada as well as recognizing those here in the US.

It's my understanding that the parties have agreed on a scheduling of the presentation; is that correct?

MR. SELIGMAN: David Seligman for the US

debtors, your Honor, that is correct.

JUDGE LIFLAND: Do you want to be heard on that, Mr. Seligman?

MR. SELIGMAN: Yes, your Honor.

Your Honor, Seligman on behalf of the United States debtors in the Chapter 11 cases of Calpine Corporation, case number 05-60200 --

JUDGE LIFLAND: Can Mr. Seligman be heard?

JUSTICE ROMAINE: Yes, we can hear Mr. Seligman. Thank you.

MR. SELIGMAN: Thank you, your Honor.

We are here this afternoon on a motion for a global settlement between the United States and Canadian debtors and certain other parties. We are also here pursuant to that cross-border insolvency protocol for Calpine Corporation and its affiliates approved by the United States court an April 12, 2007, and by the Canadian court on April 4, 2007.

Your Honor, I was going to turn to some of the logistical matters, including the order that the parties have agreed to, if I can proceed?

JUDGE LIFLAND: Certainly.

MR. SELIGMAN: Your Honor, just as a logistical matter for the people in the courtroom, the clerk admonished us previously, just to make sure that

there is --

JUDGE LIFLAND: May I just interrupt a moment?

MR. SELIGMAN: Sure.

JUDGE LIFLAND: There seems to be some background speaking that's coming across the loudspeakers.

JUSTICE ROMAINE: Okay. Judge Lifland, I don't think there's any noise from this court that I can detect. I do want to tell you, though, that your voice is not coming across as clearly, perhaps, as we would like it. We can hear Mr. Seligman clearly, but not you.

JUDGE LIFLAND: Well, I'll try to swallow the microphone.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: Your Honor, just for everyone here in the courtroom, the check admonish to admonished the people here to please keep background noise to a minimum because the microphones are very sensitive. I will do my best, and I would everyone else who is speaking here today to make sure that they are speaking slowly and clearly, and also being cognizant of the proceedings in the Canadian court, to the extent that there needs to be an interruption or a pause in the proceedings.

I would also ask that people make sure to state their names clearly every time they speak for the

benefit of the court reporters.

Your Honor, in the spirit of comedy and cooperation, the US debtors and the Canadian debtors had met with each other and discussed the orders of proceedings for this morning, particularly in light of the objections that had come in. And we had prepared a suggested schedule that had been previously provided to both the US court as well as the Canadian court, and I would like to outline that process for this morning.

JUDGE LIFLAND: I'm going to interrupt for a moment. There may be no conversation in each of the courtrooms, but if there are open telephone lines, that may be the source of the conversations.

JUSTICE ROMAINE: Okay. Mr. Robinson?

MR. ROBINSON: My Lady, I don't have any technical knowledge at all, but perhaps I could suggest, with the indulgence of the folks on our line, that we put this telephone on mute.

JUSTICE ROMAINE: Let's do that.

MR. ROBINSON: Let's see if that solves the problem.

JUSTICE ROMAINE: Okay, we'll try that, Judge Lifland, and hopefully that will help.

JUDGE LIFLAND: Thank you.

JUSTICE ROMAINE: It is muted already.

MR. ROBINSON: Mr. Seligman, does that make a difference in your courtroom?

MR. SELIGMAN: Well, I guess we'll see. Is that better, Judge Lifland?

A VOICE: The fact that no one on the line will be able to hear this proceeding --

MR. ROBINSON: We went the wrong way. I guess we could ask the folks --

JUSTICE ROMAINE: But they won't hear you, Mr. Robinson.

MR. ROBINSON: I'm sorry, I've demonstrated my ignorance already. But perhaps we could ask the people that are listening in to our proceedings by telephone to mute their lines, unless they need to speak, and see if that solves the problem of interference in Judge Lifland's courtroom.

JUSTICE ROMAINE: Thank you. And unfortunately none of these people are able to respond to that request because of the way we've set it up, but, Judge Lifland, if you can see if that will make a difference.

JUDGE LIFLAND: It sounds already as if they've got the message.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: Your Honor, the way that we had suggested to proceed this morning was for the US

debtors to make some introductory remarks followed by the Canadian debtors making similar introductory remarks with respect to the motion. We will then come back to the US court for the US debtors to make their presentations, submissions and evidence, if necessary, with respect to the motion. And then refer it to the Canadian court to have the Canadian debtors make their submissions.

With each pair of submissions, we would also include statements in support or statements of non opposition to the settlement agreement before the courts this morning. We would then come back to the US court to consider objections to the settlement agreement there.

And just to pause on that for a moment, your Honor, there are basically four objections filed to the settlement. One filed by the ULC1 trustee, one filed by the ULC2 trustee, one filed by the Canadian income fund, and one filed by what we will refer to ass the CCRC committee.

The objection of the ULC21 indentured trustee is really the only substantive objection to the settlement on the US side, i.e. that there is perhaps a violation of US law. The other three objections really go to the aspect of the settlement that may be allegedly violative of Canadian law, and is really more appropriately directly, in our opinion, to the Canadian court. So we

envision that there will be argument with respect to the ULC1 indentured trustee followed by perhaps free statements by the other objectors, to the extent they want to make a statement here in this court understanding that perhaps the balance or the majority of their presentations will be made in the Canadian court.

Once we have done that, your Honor, then I think we will have then completed our submissions and the responses and the replies in both courts, and it will be up to the courts to entertain any questions or comments, and then we can proceed from there.

The one other point I did want to make was with respect to the ULC1 indentured trustee's objection. There has been some continuing dialogue right before the hearing and is going on right now. I think that, depending on where we are at that particular moment, we may ask that you put that objection off until after the Canadian objectors make their submissions to the Canadian court to give more opportunity to perhaps reach a resolution and to consider their objection, to the extent it still remains, at the end of the process.

If that's acceptable to your Honor and My Lady, that's how we would like to proceed this morning.

JUDGE LIFLAND: That's acceptable to this court.

Madam Justice.

JUSTICE ROMAINE: Thank you, Judge Lifland. And I want to say first thank you for your words of welcome and your words with respect to the importance of this cross-border proceeding, words that I certainly agree with. I would like to welcome you, the US debtors, and the US stake holders to these proceedings in the Court of Queen's Bench of Alberta.

Having said that, I will turn to Mr. Robinson and Mr. Meyers to respond to what Mr. Seligman has said with respect to the procedure before us this afternoon.

Mr. Robinson?

MR. ROBINSON: For the record, Larry Robinson of McCarthy Tetrault for the Canadian debtors.

My Lady, your Honor, we have received from Mr. Seligman the proposed outline of schedule of submissions on behalf of the Canadian applicants. That schedule, we think, is a logical approach and we are in agreement with that schedule and in fact have indicated to your Ladyship in the past of this hearing that that is the order that we would be recommending to this court as well.

The only addition I would make is that, as is customary in Canadian proceedings, given the existence of our monitor, at the conclusions of the applications by

the Canadian debtors and statement of support for the Canadian debtors, we would propose that the monitor make any submissions it wishes to make with respect to the applications before objections are commenced by folks.

JUSTICE ROMAINE: Thank you. Does anybody else wish to address procedure?

Thank you. Judge Lifland, we are back to you.

JUDGE LIFLAND: Thank you, Madame Justice.

Mr. Seligman, you may start your presentation.

MR. SELIGMAN: Thank you, your Honor.

Your Honor, just before I proceed this morning, if it's acceptable with your Honor, I would like to introduce just a couple of people in the courtroom before we proceeded, just for the benefit of the Canadian court.

JUDGE LIFLAND: Certainly.

MR. SELIGMAN: Your Honor, with me this afternoon from Kirkland and Ellis is Thomas Clare and Todd Maynes who are here. They may be speaking to your Honor this morning, hopefully not, if we can resolve everything, but we'll see where we go on that front. I also did want to introduce Monique Jilesen of the law firm of Lenczner Slaght. She is Canadian counsel to the US debtors, and I'm

sure is familiar to the Canadian court already.

I also would like to introduce David Johnston, managing debtor at Alix Partners. Mr. Johnson has been instrumental throughout this process of trying to reach a resolution with the Canadian debtors and had personally daily involvement from the business and from the financial side to try to bring this settlement to where it is today.

I would also like to just introduce Melissa Brown and Jim Mine from Calpine Corporation. Melissa Brown is treasurer and senior vice president of strategy and financial analyses, as well as Jim Mine, who is vice president of structuring, who have both been very involved and instrumental in the efforts to bring this settlement agreement to fruition.

I would also like just to mention, your Honor, that there is some other business pertaining to Calpine. There may be some people in the courtroom who may have to leave in a couple of hours, I just want to apologize in advance and ask for the court's indulgence in the event that people may have to leave the courtroom for other matters.

Let me step back and just ask that if there are other people in the courtroom sitting at counsel's table who will perhaps be presenting something to the court

this morning to make their appearances on the record.

MR. STABER: Your Honor, My Lady, David Staber of Akin Gump Straus Hauer and Feld, counsel to the unsecured creditors' committee.

MR. KAPLAN: Gary Kaplan from Fried, Frank, Harris, Shriver and Jacobson here on behalf of the official equity committee.

MS. McCOLM: Good afternoon, Elizabeth McColm from Paul, Weiss, Rifkind, Wharton and Garrison on behalf of the second lien committee.

MR. ECKSTEIN: Good afternoon, your Honor, My Lady, Kenneth Eckstein of Kramer Levin representing the ad hoc committee of CCRC creditors.

MR. ANKER: Good afternoon, Judge Lifland and My Lady. Philip Anker and James Millar of WilmerHale, and Brendan O'Neill of Goodmans, counsel appearing today in New York on behalf of the Canadian debtors.

MR. CASHER: Good afternoon, your Honor and My Lady. Richard Casher of Kasowitz, Benson, Torres and Friedman on behalf of the ad hoc committee of ULC1 note holders.

MR. CASTELLO: Good afternoon your Honor and My Lady, Geoffrey Castello of Kelley Drye and Warren for the ULC1 indentured trustee, HSBC.

MR. FREDERICKS: Good afternoon, your

Honor, My Lady. Ian Fredericks of Young Conaway Stargatt and Taylor, US counsel to Manufacturers and Traders Trust Company in its role as indentured trustee.

JUDGE LIFLAND: Hopefully you people will keep all your interventions as briefly as that.

MR. SELIGMAN: Your Honor, moving to the substance of the presentations this morning, your Honor a lot of the detailed background has been laid out in a variety of paper before your Honor and before My Lady. So I will briefly summarize the settlement motion and a little bit of background for the benefit of the court and the various people in the courtroom this morning.

I think what I want to talk about today, your Honor, are some of the key issues that the US debtors and the Canadian debtors, at least from our perspective, are struggling with since the conception of these insolvency cases, how they attempted to reconcile or address those issues, how they ultimately resolved those issues, and how, from at least the US debtors' perspective, and I'm sure the Canadian debtors would agree, how the ultimate resolution is in the best interest of the estates, their creditors, and the variety of stakeholders who have played significant roles in these proceedings.

This case truly has some unique and interesting aspects to them. If we go back to December

20th, 2005 the date that the US debtors filed their Chapter 11 petitions and the date that the CCAA applicants and CCAA parties commenced the proceedings in Calgary, you have a recently unique situation where you have, on the one side of the border, the US debtors which are in the process of reorganizing with significant assets. At the same time you have a number of Canadian subsidiaries that were in some senses operating but in some senses already not operating, but they also had, relative to their size, significant assets, mostly in the form of intangibles.

Stepping back even further, prior to toe time of filing Calpine Corporation viewed itself as a whole. So a lot of times there were joint bank accounts, there were employees, professionals, et cetera, who viewed the company as a whole and conducted a lot of business from the perspective of the company as a whole. And this is important, your Honor, because a lot of the work that has been done since the petition date has been to try to understand a lot of the intercompany accounting and intercompany reconciliations that were ultimately resolved and set forth in the settlement agreement. You also have a unique situation where you have most, not necessarily all, but most of the creditors of the Canadian debtors also having guarantees from Calpine Corporation.

So after the initial filing on December

20th, 2005, there was a period of stabilization of operations provided -- that were improved upon by the automatic stay here in the US proceeding and by the stay in the initial order in the Canadian proceedings, but soon thereafter the companies -- both sets of debtors began struggling with a variety of issues. We lay them out in the papers. I just wanted to highlight five issues, a very big issues for your Honor, because those are the critical big points that we see from our perspective.

Number one, ULC hybrid note structure. This was approximately 2 billion dollars of debt financing raised through the Canadian debtors, we've called the ULC1 bond debt, where there were approximately 12 billion dollars or more of claims filed against the US debtors by their bond holders, the trustee, the indentured trustee for the Canadian debtors. There was a significant issue about how the US debtors were going to obtain clarity so that they could move forward with their plan of reorganization. How were they going to address all of the variety of issues that came to light as a result of this complex, hybrid financing. How would the claims objection be handed? Would they be handled in this or the court, or how would the claims that were alleged against the Canadian debtors be handled, and what kind of joint proceeding, if any, could there be. That you issue number one.

Issue number two were the 360 million dollars approximately of ULC bonds that have been repurchased by the US debtors, and in a variety of transactions ended up in the name of the Canadian debtors prepetition. The Canadian debtors wanted to sell those bonds, and it's been the subject of a number of proceedings and motion practice before the Canadian court, to maximize value to their estate.

The US debtors had a number of issues with respect to the bond sale, principally they had concerns that that bond sale may be avoidable and subject to a 502(d) defense or another avoidance action under 550. That presented a variety of issues, not only on the substance but also an on procedure. How would those claims be handled? Would they be viewed as assets to be in handled in front of the Canadian court, or would they be viewed as claims objections to be handled in the US court? That was an issue that was very important to be reconciled, and the parties tried to work in a way to maximize value to both.

The third issue is the Greenfield project facility, which this court I'm sure is familiar with having approved a variety of motions with respect to the Greenfield facility. That is a very significant project for the US debtors. It's over a thousand megawatts, one of the biggest megawatt power facilities that the US debtors

have.

There were a number of issues associated with Greenfield. Number one, there was a small piece of the ownership interest held by the Canadian debtors.

Number two, there was an avoidance action commenced by the Canadian debtors against some non debtor subsidiaries of the US debtors alleging that a transfer of a portion of that interest prepetition was also an avoidable action in the Canadian court.

Third, this wasn't simply an action that could languish for a period of time because the project was in the process of every couple of months needing equity contributions both from the US debtors and their joint venturer, Mitsui.

Every time that an equity contribution was due, there was the issue of could Mitsui exercise certain of its buyout rights to buy out the United States debtors' interest at a discount. So that was an extra issue that we were facing that took a great issue of timing.

And finally, your Honor, there was the issue of at some point the project could not survive an equity contributions alone but needed third party financing, and who could we get as a lender to come in and loan money to this facility with all the cloud of the litigation, the partial interest held by the Canadian

debtors, and how could we resolve that in a way to maximize value, unlock the project, and let it be financed.

Next, your Honor, was the issue of literally hundreds of millions, if not billions of intercompany claims between the two estates. As I mentioned earlier, prior to the petition date Calpine was viewed as a whole and the accounting record were not necessarily the best. There needed to be a lot of work done to reconcile down to the penny a lot of these intercompany claims. People had to look back to original wire transfers and other documentation to recreate the books and to establish who made transfers to whom.

And as a result of that there was over a billion dollars of claims asserted by the Canadian debtors against the US debtors, and I believe over 200 million dollars of claims asserted by the US debtors against the Canadian debtors, and they couldn't be offset, because it was against a different debtor correspondingly. So that was another issue that had to be resolve.

And finally, your Honor, there was the issue of what I will refer to as the guaranteed claims, which are the claims asserted against the Canadian debtors, they are also guaranteed by the US debtors. Principally amongst these I put in this category; the ULC2 bonds, which was originally about a 550 million dollars or so issuance

of bonds. The third party bonds are now at about 350 million. That was a claim asserted against the Canadian debtors but also guaranteed by the US debtors, as well as there were also a number of trade claims, a number of contracted pipeline rejection claims asserted against the Canadian debtors that were also guaranteed by the US debtors.

The parties faced a difficult dilemma of how do we resolve those claims. There could be the Canadian court that would adjudicate the primary claims, but then how we would deal with the guaranteed claim that would be asserted against the US debtors? There is different rules in each jurisdiction about who has rights and standing to participate in claims objections.

So faced with these five primary issues, as well as a variety of other issues set forth and resolved in the settlement agreement, the parties started working very diligently as far back as around Thanksgiving of last year to try and see if we could move the process forward, resolve these issues, and, as we sometimes refer, unlock the estates and let them go on their merry way.

And the statement today is a product of approximately seven months of intense, hard work to unlock the estates. And it was simultaneously conducted with negotiations between the US debtors and the ULC1 ad hoc

committee of bond holders to try and resolve their issues about the ULC1 hybrid note. And it wasn't just the debtors talking, both sets of debtors talked to their various stake holders to try to get input from their various stake holders.

I had a lot of meetings with them and their creditors over the course of time. I can certainly speak from the US debtors' perspective, we had our official committees and our unofficial committee in the loop constantly as we were going through the process. And in addition there was the role of the court appointed monitor, Ernst and Young, who participated in a variety of these meetings to get something done.

So, your Honor, eventually we reached settlement on the global resolution that we were presenting to your Honor today. And it resolves virtually all issue between the two estates. And to the extent it doesn't resolve an issue, it creates a process for resolution of an issues. So we really do believe that it provides maximum value both substantively and from a process perspective for both the estates.

And I was going to highlight, your Honor, just for a moment, a couple of the benefits of the settlement agreement. But I did just want to mention to your Honor that this settlement agreement was the result of

months of back and forth, if you will, horse trading. There were a lot of different pieces. There was some give and take on one issue and give and take on another issue.

It should be viewed as a collective whole. We refer to in our motion that this is somewhat akin to a jigsaw puzzle, and if you take out one piece it's not a compete picture anymore. And that's very important, because some of the people here today may suggest that one issue should be tweaked or a that issue should be tweaked, when in reality it was a comprehensive whole, and if you change one piece you've to got to change the whole settlement agreement.

So what were the primary benefits for those five major issues that we were talking about? Well, as to the ULC hybrid note issues, we resolved the issue by basically allowing a claim by the ULC1 bond holders in the amount of nominally of 3 and a half billion dollars, with the understanding that they could never collect more than principal, pre and post petition accrued interest, plus some fees and expenses. This reduced the claims register from 12 billion down to three and a half, but in our modeling purposes we could use, as we set forth in the settlement agreement, approximately 2.3; so approximately a 10 billion dollar reduction in the claims register, and absolute clarity on this issue from our perspective of

allowing us, among other things, to move forward with the plan of reorganization process. And we filed a plan that may not have been able to be filed with this issue if we didn't have some clarity on this issue.

Secondly, we have issue of the repurchase bonds. There's been an agreement to let the Canadian debtors sell those bonds in the open market and fund distributions on account of claim in the Canadian proceedings.

As part of that, and this is number 3, the US debtors are resolving all of their various objections and avoidance action claims that they would have against the Canadian debtors in return for a 75 million dollar cash payment from the bond sale proceeds. And, your Honor, this is important, because from our perspective we don't just view this as a claim like every other Canadian creditor may have. There are rights as to these bonds, in our opinion we felt were as to a race, as to an escrow, so we had really superior structural priority rights that are being settled by the 75 million dollars.

We also, as we originally set forth in our 502(d) claim objection, we had rights as to the Salten proceeds, which were about 230 million dollars of money repatriated up through the Canadian process sitting at CCRC, which is one of the Canadian debtors.

The US debtors and the Canadian debtors had agreed a long time ago that to the extent the US debtors had any claims with respect to any of the proceeds of those claims, and we believe that our avoidance action was against one of those claims, that we would have structural priority that would be senior to any of the creditors of CCRC so that in a sense we would get paid first.

Number 4, as to Greenfield. The Greenfield issue is resolved. There is going to be a withdrawal of the avoidance action against the US debtors and their subsidiaries with respect to that; that will allow us to fully move forward with the facility unencumbered by any of the clouds that were existing before.

Number 5, all of the intercompany claims have been fixed and resolved. There is a schedule attached to the motion and the settlement agreement which lays out in detail all the various claims back and forth that are going to be allowed and how they are going to be allowed, so that issue is resolved.

And finally there is a process in place to resolve the so called guaranteed claims. We have agreed with respect to those guarantee claims that are going to be adjudicate, that they will be adjudicated in front of the Canadian courts, and that the US debtors and their official committees will have the opportunity to have standing and

to participate in that litigation. That gave us and our committees comfort that we could litigate that issue in Canada and not revisit the issue in this court.

In addition, with respect to the ULC2 bonds, as laid out in the pleadings, we have agreed that there's enough money and that they should be paid in full. There is some disagreement as to the exact amounts that are owed, but we've agreed to reserve some money set aside, to the extent that we can't pay what they say they are owed, and we will litigate those issues letter.

One issue that may come up, perhaps, are the ULC2's argument for make whole, and we have both agreed that that would be an issued to be dealt with by this court, given that it's an indenture governed by New York law, and given the state of the law in the US as far as make wholes and given your Honor's recent experience in this case regarding make wholes.

So we think that from the US debtors' perspective, it solves all of the major issues that we were grappling with, from our perspective it brings a significant amount of cash into the estate, assuming that all the Canadian creditors get paid in full, there will also be, perhaps, a significant return on equity to the US estate, which is additional funding money, there is the Greenfield issue resolved, there is the claims pool being

reduced by billions of dollars, and there is the unlocking of the estates and allowing the process to move forward.

Your Honor, let me pause here for a second, and I was going to move to just process for a second in terms of how we talk to our stakeholders about the settlement, but I wanted to pause here and just ask your Honor, we do have Mr. Johnston here who would be prepared to testify as to the benefits of the settlement and a little bit of the background of the settlement.

We have a proffer that we would be willing to put on for your Honor that would take 15 minutes to read. If your Honor would like, we are happy to go forward and introduce that proffer. If your Honor feels that based upon the record before you that that would be duplicative of the presentation this morning, we can move on.

JUDGE LIFLAND: Frankly I think it would be duplicative. I've got about two feet of papers in front of me, and I've had about 48 or more hours to plow through them. It might be redundant, unless somebody wants to have the proffer and go through that exercise. I do not find it necessary.

MR. SELIGMAN: Thank you, your Honor. We just wanted to give your Honor the opportunity.

With that, let me just briefly mention that as far as dialogue with our committees, and I think that

you'll hear the same thing from the Canadian debtors, there was a process in place to keep our committees at least updated on this process as it was developing and as we were having negotiations with the Canadian debtors. And even before, well in advance of filing of motion, we spoke to our various stakeholders to have them comfortable with what was going on.

One of the things between Alix Partners and the monitor was what we called a distribution model, which kind of laid out how we thought the funds would ultimately flow, and that was one of the things we used to talk to our creditors and stakeholders about the process.

Just to remind your Honor of some of the dates here. The term sheet between the US debtors and Canadian debtors was signed May 13, and May 17 a press release.

MR. ANKER: AK was filed with respect to the term sheet, so that was the first opportunity that people were on notice publically about this settlement. It wasn't until over a month later that the motion was filed, during which time we were talking to all of our various stakeholders; with the motion we attached a draft form of the settlement agreement.

As set forth in the motion, we would file and did file by July 9th, a final version of that global

settlement agreement. That was not only published in various newspapers across North America, it was also served on all of the bond holders for the ULC1 holders, it was also put on the depository trust lens system, and it was also put on the Calpine Corporation Chapter 11 website. And again, during this entire process there were continuing discussions going on.

Over the past several weeks there has been continuing dialogue, and there has been some minor modifications agreed to between the debtors and their US constituents with respect to the implementation of the settlement agreement. And just as housekeeping matter I just want to identify those briefly for your Honor, and this is reflected in a black line and settlement agreement and proposed order that was signed on Friday to put everyone on notice as to what those changes are.

These changes were, just the big picture, were essentially to ensure that as the US debtors were implementing a settlement agreement on their side of the border, that they were going to be constantly keeping their committees and the official and unofficial committees in the loop as to the process. And to the extent that they were going to be needing to give consent on various issues or sign-off on various issues, that they could talk with the committee's before doing so.

And so essentially we've agreed in general to consult with the committees, and when I say committees, I'm talking about the equity committee, the creditors' committee, and the ad hoc committee of second lien holders. The debtors have agreed to generally consult with the committees on matters related to the implementation of the settlement agreement, whenever the US debtors have to consent or give approval on any issues, the US debtors have agreed to give notice to the committees and to provide relevant documentation to the committees.

With respect to any settlement of the guaranteed claims that we spoke about before, the US debtors have agreed to gave reasonable notice to the committees and an opportunity to comment on any such settlement. And to the extent that the committees believe that it's inappropriate they can object, and then we can come before your Honor to determine whether that particular settlement, from only in the US debtors' perspective, would be in or not in the debtors' reasonable business judgment.

We have also agreed with the ad hoc committee that certain transfers of property under the settlement agreement would not be made unless there was a context of a confirmed plan of reorganization. We have also confirmed with the ad hoc committee that this transaction will not effect whatever lien rights they have

against the US debtors. And finally, because the ad hoc committee is not a participant in the guaranteed claims litigation, that we would basically continue to talk to them and provide them with relevant documentation as we are going through that process.

As a housekeeping matter, we just also recently agreement with the committees on an additional point about implementation of the settlement, and I just want to read this into the record for your Honor. If you'll bear with me, it will take about a minute.

The debtors would like to make a clarifying statement for the record with respect to the proposed settlement that reflects an understanding between the US debtors, the creditors' committee the equity committee, and the ad hoc committee of second lien holders. As your Honor may recall, last year the Canadian debtors decided to repatriate the proceeds from the sale of the Salten Energy Center in the UK which resided in a bank account of a UK subsidiary of CCRC, one of the Canadian debtors.

The repatriation required the proceeds to flow through entities in Luxembourg, the Channel Islands and the UK to ensure that intercompany obligations were paid off along the way. At the time the Canadian and US debtors cooperated in establishing a plan to structure the repatriation of the fund in such a way to honor the

original transaction thereby avoiding the incurrence of additional taxes not originally contemplated. This repatriation plan was successfully executed and the Salten proceeds now reside at CCRC and will be able to be used to fund distribution to the Canadian debtors' creditors to creditors as contemplated in the settlement before the court this afternoon.

The Canadian global settlement presents similar issues. The flow of funds in the global settlement will travel through several entities paying off intercompany obligations along the way. The most significant among these is Calpine Corporations' satisfaction of the claims of the bond holders through the ULC1 hybrid note structure described in the motion.

This fund should flow well, among other things, be structured to minimize any negative tax consequences to the CCAA and US estates and to assure compliance with US and Canadian tax laws. Your Honor, as you will note in section 2.6 of the settlement agreement obligates the parties to use commercially reasonable efforts to cooperatively implement, perform, and execute the terms of the agreement in a manner that is mutually beneficial for both the US debtors and Canadian debtors, while retaining the same economic benefits of the agreement.

Your Honor, the US debtors have been working with their tax advisors to develop a structuring plan for implementing a settlement agreement, particularly the satisfaction of the ULC1 obligations throughout the hybrid note structure that will honor Section 2.6 of the settlement agreement; and the final version of that structure was shared with the official committees and the ad hoc committees on July 23rd. The US debtors intend to implement that settlement agreement substantially in accordance with the structuring plan; however, any implementation actions are proposed to be taken under this agreement by any party that deviates materially from this July 23rd structuring plan.

The US debtors have agreed to provide ten business days prior written notice of any such proposed action to the official committees and the ad hoc committee of second lien holders, and shall consult with those three committees regarding such actions. If any of those three committees object to such proposed actions by the US debtors by providing written notification of such objection within ten business days from the date of the US debtors' providing written notice of such actions, then the US debtors have agreed to seek a determination from this court, that is the US court, on an expedited basis that such proposed actions by the US debtors are the product of

reasonable exercise of the US debtors business judgment, provided, however, that this expedited process will provide all parties in interest, including each of the three committees, with an opportunity to object to the proposed modifications to the structuring plan.

Your Honor, I apologize to the length of that, but that was agreed upon language with respect to the three committees.

Your Honor, in conclusion, for all the reasons that we've set forth in the motion, and based on the presentation this morning, we believe that at least from the US debtors' perspective, the settlement is in the best interest of the creditors, a sound exercise of the debtors' business judgment, clearly confers a substantial benefit on all concerned and should be approved.

With that, your Honor, unless your Honor has any questions, I would propose to turn it over to those individuals who wish to makes a statement or in support or a statement of non opposition to the motion, at which time we would turn it over to the Canadian court.

JUDGE LIFLAND: We'll turn it over to the Canadian court.

MR. SELIGMAN: Should we hear statements in support, or do you want us to --

JUDGE LIFLAND: Well, that's in violation

of your proposed order of presentation, but on an ad hoc basis it does make a lot of sense to hear your supporters at the same time.

MR. SELIGMAN: Thank you, your Honor.

JUDGE LIFLAND: Go ahead.

MR. STABER: Your Honor and My Lady, David Staber on behalf of the official committee of unsecured creditors of Calpine Corp. and its jointly administered US debtors.

Your Honor, recognizing the number of parties appearing here and your admonition, I have deleted by a third my comments, as brief as they were.

Early in this case the creditors' committee was very concerned that the cross-border issues between the US and Canada, particularly the hybrid note structure impediment to confirmation, we became involved early in the process, hiring Canadian counsel, studying the underlying documents, and working with the US debtors on these issues. Based on that background and our conversations with the debtor, we believe that the settlement is reasonable and appropriate and will help the parties move forward to completion for reorganization in these cases.

And with that, your Honor, and my promise to be brief, I'll be seated.

JUDGE LIFLAND: Thank you.

MR. KAPLAN: Your Honor and My Lady, Gary Kaplan from Fried Frank.

Your Honor, the equity it committee filed a brief statement in support of the debtors' motion. I too will be extraordinarily brief. For all the reasons that the debtors laid out in their motion papers and for the reasons that Mr. Seligman discussed on the record today, the equity committee is supportive of the settlement.

One other thing I would be remiss if I didn't say, I've often been very critical, your Honor, of the debtors. On this issue I do have to give credit to the debtors that they have been very good at keeping their constituents in the loop throughout, and we are very happy. Obviously we are supportive of the settlement, and we also appreciate the process that was run to get to this settlement.

MS. McCOLM: Your Honor and My Lady, Elizabeth McColm from Paul, Weiss, Rifkind, Wharton and Garrison on behalf of the second lien committee to Calpine Corporation.

Your Honor, similar to the official committee of unsecured creditors and the equity committee, the debtors have kept the second lien committee in the loop over the past few months throughout the negotiation process, and we are grateful to the debtors for that.

Your Honor, it's suffice to say that the second lien committee believes that the settlement presented here today is in the best interest the US debtors' estates and should be approved.

JUDGE LIFLAND: Does anyone else want to be heard in support of?

MR. ANKER: Your Honor and My Lady, Philip Anker, US counsel for the Canadian debtors. Your will obviously hear and My Lady will hear much more from the counsel for the Canadian debtors in Canada. But I did want to give one minute of a US perspective.

As I heard Mr. Seligman, I agreed with so much of what he said, and I yet I disagreed with a little, and what I disagreed about I think is significant. As he was describing if there had been litigation what the US's position would have been, I kept saying to myself, no, we would have argued this, no, we would have argued that.

It would have been an extraordinarily complicated and involved process. There would have been, as Mr. Seligman noted, major issues of jurisdiction, which court should decide what. There would have been, had the avoidance claims been brought, all sorts of issues about were the transfers, by way of example, made from one US debtor to another? Does an action have to be brought by one US debtor against another as a predicate? Would

separate counsel be needed? Can you avoid that through substantive consolidation? What issues would have that raised about whether substantive consolidation would or would not have been appropriate?

I think, one thing that everyone in this courtroom can agree upon is that that litigation would have taken enormous time. I would have been hopefully that I could have persuaded your Honor, if your Honor were to decide the issues as a matter of law that we would have been right on some issues, but I'm smart enough and I've been around the block long enough to know that there would have been issues that would have required discovery and a long complicated process. And at the end, while that might have personally benefited me and my law firm and benefited other professionals, who would it would not have benefited are the creditors of these two estates.

This process in the US, and from what I'm the told about the process in Canada, is, at its core, designed to maximize recoveries and lead to a fair and equitable distribution to creditors, and that is what this will do. Your Honor is well aware of what the US debtors' projections are and their plans for the recoveries. The Canadian debtors believe that this will lead to payment in full to the vast majority of their creditors.

This is, certainly from a US perspective, I

think a remarkable accomplishment, and I certainly can second and verify Mr. Seligman's comments that this required extraordinary numbers of meetings and hard work of a lot of professionals, and he's absolutely right when he says it's a jigsaw us puzzle. There was give and take an every element here.

So from a US perspective, the Canadian debtors support the motion of the US debtors here.

JUDGE LIFLAND: Thank you for those very brief remarks, counselor. But you also remind me that you've appeared before me, and some of the same colloquy took place and it became the bully pulpit for me to admonish everybody about the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a different perspective, with coordination and cooperation being the watch word which turned out to be -- well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit.

MR. CASHER: Your Honor and My Lady Richard Casher of Kasowitz Benson for the ad hoc committee of ULC1 note holders.

Just by way of a quick status report, we obviously filed very lengthy papers in support of the

motion today, your Honor. Our group, which had directed -- issued a written direction to the ULC1 indentured trustee, consists of 12 note holders. We've been negotiating with HSBC over their objection. We believe we've reached agreement with HSBC concerning their objection, which essentially has resulted in a revised form of a direction and indemnity letter having been agreed upon.

We are waiting for final sign-off by one of the 12 note holders, and we expect hopefully to receive that shortly. And when we do so, we will report that to both courts.

JUDGE LIFLAND: Thank you, sir.

MR. SELIGMAN: Your Honor, I just wanted to note on that. Obviously the US of debtors need to see the language, but hopefully we can resolve that issue.

And with that, your Honor, the US debtors have completed their submissions. And unless your Honor has questions, we would request that you turn it over to the Canadian court.

JUDGE LIFLAND: I'm sure My Lady is anxiously awaiting to hear from our constituency.

JUSTICE ROMAINE: Anxious but patiently, Judge Lifland. So we will now turn things over to you, Mr. Robinson, to make the opening statement and presentation on behalf of the Canadian debtors.

MR. ROBINSON: Thank you, My Lady and your Honor. For the record, Larry B. Robinson of McCarthy Tetrault co-counsel for the Canadian debtors.

Following Mr. Seligman's lead, given the significance of this application from Canadian debtors' review, I would like to take a moment to make some introductions with respect to the Canadian team that are in court today, starting with Mr. Tobey Austin.

Mr. Austin is the director of the Canadian debtors who has met the charge. He is the client that we often forget about that we have reported to and has been instrumental in the structure of this transaction for us. With me from McCarthy Tetrault, my partner, Sean Collins.

The settlement agreement was put together between Mr. Austin and the Goodman team, our co-counsel lead by Mr. Carfagnini, who is at the table with me, and Mr. Meyers, Fred Meyers of Goodman's, who will be making the application on behalf of the Canadian applicants, Mr. Brian Empey is in the courtroom, Mr. Joseph Pasquariello is in the courtroom, Brendan O'Neil, another member of that team of Goodmans is in the New York courtroom already.

This deal could not have come together without the assistance of the monitor's staff, Mr. Narfason and Mr. Fun, who are in the courtroom. They, working with Alix Partners, who I know were of great assistance to the

US debtors, were very instrumental in bringing us to today hopefully through today. Their counsel, Pat McCarthy and Josef Kruger are in the courtroom as well. In addition, and not the least is Mr. Jay Swartz from Davies Ward Phillips and Vineberg who represents Lehman Brothers, who had a key role to play in the bond sale, presumably debt, to that point.

We concur with the order of proceedings as set up earlier with the introductions. And the with these additions on our side, I will turn over to other parties in courtroom to introduce themselves. I don't know if they wish to mention numbers of their teams, but there are a number of parties here speaking for and against.

And following those introductions, Mr. Meyers will make the application on behalf of the Canadian debtors.

JUSTICE ROMAINE: Thank you.

Mr. Thornton, do you wish to lead the charge on the opposition introductions?

MR. THORNTON: Thornton, initial R, counsel for the informal CCRC committee, and assisted here today by Mr. Finnigan and Ms. Moncur.

JUSTICE ROMAINE: Mr. Dunphy?

MR. DUNPHY: Thank you, My Lady. Sean Dunphy here for the ULC trustee. Ms. Pillon is with us as

well, and I guess we'll save our comments for when it's time.

JUSTICE ROMAINE: Thank you. Mr. Linder?

MR. LINDER: My Lady, Peter Linder on behalf of Calpine Power Limited Partnership, along with my colleague, Emi Bossio, and we will have some comments in response.

JUSTICE ROMAINE: Yes, thank you. Mr. Gorman and Mr. Smith?

MR. GORMAN: My Lady and your Honor, Howard Gorman on behalf of the ULC ad hoc committee, and we will be speaking in support of the application in due course.

JUSTICE ROMAINE: Thank you.

MR. SMITH: My Lady and your Honor, Quincy Smith on behalf of Alliance Pipeline.

JUSTICE ROMAINE: Thank you.

MR. McCLAIN: My Lady, Douglas McClain for the TransCanada Pipeline. Also with me is David Elrod from the Elrod Trial Attorney firm in Dallas.

JUSTICE ROMAINE: Thank you.

MR. GRIFFIN: My Lady, your Honor, Peter Griffin for the US debtors.

JUSTICE ROMAINE: Thank you, Mr. Griffin.

MR. LANCE: Nathan Lance Canadian counsel for the ULC1 indentured trustee.

JUSTICE ROMAINE: Okay. Thank you.

Do we have everyone introduced?

Thank you then. Mr. Meyers?

MR. MEYERS: Thank you, My Lady. Good afternoon your Honor. My name is Fred Meyers, counsel for the Canadian Calpine debtors, and I rise today on behalf of the Canadian debtors seeking orders of this court approving and authorizing the Canadian debtors to enter into the global settlement agreement approving the sale by CCRC of its ULC1 notes, and also not to be forgotten, seeking extension of these proceeding.

I want to start off very briefly dealing with the sale of the ULC1 notes. That motion is an integral component of the global settlement agreement and is part of the value maximizing process that has been created to fit the nature of the market for those particular assets.

JUSTICE ROMAINE: Mr. Meyers, can I stop you just for a moment?

We have the sound turned very loudly in order to hear the US side. Could I just ask, Madam Clerk, that we turn it down just a little bit, and when we need to we'll turn it back up, that might make it a little better here.

Go ahead, Mr. Meyers.

MR. MEYERS: The process that we have proposed for the sale of the ULC1 notes is actually quite complex and it occupies a fair amount of material, including seeking a sealing order for the supplemental affidavit of Mr. Sholvat from Lehman Brothers. That affidavit discloses pricing issues that need to be sealed in order to protect the integrity of the value maximizing process.

Out of all the briefs that we have received, there has not been any opposition, that we've seen, with respect to the bond sale aspect of the motion. So I don't propose to spend any time on it, My Lady, except to note that it's a key element to the global settlement, designed to bring in sufficient funds to see to the payment of all of the Canadian creditors as best as possible.

In our bench brief, that is perhaps too long to be called a brief, we've summarized the benefits of the global settlement agreement, and I'm going to try to follow that section roughly. The bench brief is in the first volume of the binders behind Tab 3 -- Tab 2, excuse me, and I'm going to start at paragraph 20.

The first benefit that has been identified by the Canadian debtors from the global settlement agreement is the reduction in claims against the Canadian estates, something in the order of 7.4 billion dollars in

claims against the Canadian debtors are gone, because other claims from those same creditors are going to be paid in full. ULC1 note claims, for example, are simply moved out of the estate into the United States. Of the 21.7 billion dollars of claims identified by the monitor in its 23rd report, it look like all are going to be paid in full, with a possible exception of 25 thousand dollars at CCEL, and that's a matter that we are working on as part of the future structuring. And it's really an incredible outcome. It's certainly a long way from where this case began.

The monitor has identified the possibility of another 25 million dollars of potential creditor shortfall at the CESCA subsidiary, and those are claims that are not guaranteed by the US debtors, that are held principal by the pipe lines, TransCanada Pipeline, Limited, CCEL, and Alliance. Those are the creditors who are most on the bubble or on the cusp of the recovery, and who compared the result of the finance anticipated end result. Their counsel is here today to support the deal, or at least not to oppose the global settlement agreement.

So even though you hear from others, particularly the fund, who seek to raise the risk of non payment, as is identified in their materials, My Lady should be clear that they are not speaking on behalf of themselves but purporting to speak on behalf of others who

do not oppose, and in some cases actively support the settlement. CCEL and Alliance themselves together make up between 23 and 24 million of the 25 million potential shortfall.

There are other creditors as well. At CCRC, we tend to only talk about the ULC2 note holders or CESCA. There are direct creditors. West Coast is here with a 66 million dollar claim under CCRC. I understand that they are going to support the deal because they would like to get paid in full under the ULC2 note holders.

Equally important, since I don't mean to minimize anyone's role, but there is another party who is integral and whose recommendation will play a heavy weight on or have any weight on My Lady, not a question of the monitor, who is, of course, an independent officer. They have been highly involved, as My Lady has heard and seen in the materials. They worked on the models, the distribution analysis that's so carefully and fully outlined in the 23rd report. The monitor has given a clear and powerful support for the global settlement agreement. Paragraph 3 of its 23rd report says, "in fact, these global settlement agreement provides the maximum recovery available to the debtors." Those are strong words from the court monitor and the monitor's recommend is an important element in our request today for approval.

By decreasing the claims, we, of course, wanted to maximize realization. Part of the production of claims is a 2 billion dollar claim of CCEL against CCRC that is going to be subordinated by the US debtors. And you'll hear much reference, I suspect, to the US debtors as equity holders, but in fact they have creditor interest as well of their own and subrogated claims. And here we understand that as part of the global settlement agreement, they are going to subordinate those claims. And as the monitor can confirm, no money will go to CCEL by equity holders until all the Canadian creditors and CCRC are paid in full, either in Canada or through their guarantees. And that's confirmed in paragraph 7 of the draft order.

The monitor predicts that the US debtors stand to receive between 176 and 369 million dollars on distributions above the 75 million dollar settlement benefit. That's a substantial flow of money to the equity holders due to this transaction, but it means first that the Canadian creditors of CCRC are paid, because that's the provision of the order and of the global settlement agreement, either paid from the claims or paid through the guarantees of the US.

The second benefit that we've identified, starting at paragraph 22 of our bench brief, is the maximization of realization. And that's principally, but

not completely deals with the sale of CCRC's ULC1 notes. In order to get to the position to sell those notes, we've had to resolve the bond differentiation claims advanced in this court by the US debtors. The US debtors had to remove their objections to the ULC claims under the guarantees. We've been trying, as My Lady knows, for almost a year to get to this point. The CCRC committee says in their brief, they should have been cooperating throughout, but that's what makes lawsuits, parties disagree. And I've heard Mr. Anker and Mr. Seligman talk about potential litigation in the United States; I thought I understood that there were real objections filed and real deposition notices with respect to those objections.

At paragraph 26 of our brief, we note that in the March 5th application before this court brought by the CCRC committee, the committee complained that six months had passed since the August 31, 2006 order authorizing and directing the sale of the CCRC ULC1 notes at issue, and yet the notes remained unsold and pointed out that they could not be sold until the US debtors' market claims were adjudicated. And its bench brief for the April 4th, 2007 application, the CCRC committee said, it is inerrantly that the CCAA proceedings can proceed to conclusion without the bond differentiation claims, among others, being resolved, unless the bond differentiation

claims are resolved, the CCRC ULC1 bonds can not be realized and distributed. The global settlement agreement resolves those claims.

The fund then objects while a part of that is releasing a 575 million dollar claims of CCEL up into PCH, an American debtor. But again, in picking one piece "to look at," they ignore the other pieces that the US agreement to subordinate the 2 billion dollar claim back into CCRC. The 180 million dollars of cash that's going to come down in intercompany claims into Canada, the US debtors' agreement to remove their preference claims against the Salten proceeds, removal of the BEC's and US objections to the notes, subrogation of 50 million dollars to CESCA, all aimed at designed to ensure that the Canadian debtors are paid here or in the Unites States.

The third principle I want to spend a moment on is the elimination of litigation, which is dealt with in paragraph 37 -- 27 of our brief. Not just the BEC's, the bond differentiation trend litigation, but also it's the Salten proceeds, there were claims being made, those were preferential potentially in the United States, that's over 250 million dollars in cash at CCRC. The hybrid note structure that we heard about, the litigation and the complexity that would have been involved in that claim. The Greenfield litigation. And with respect to the

Quintana 575 million dollar claim that's been released, the CCRC committee says why don't you just make them pay it, because you owe 2 billion back, and under the rule ensuring liability, before somebody can get money, they have to pay the money. Well, it doesn't apply to a Nova Scotia limited liability company. And how does Cherry and Bolty apply the partnership claims in the subsidiary, to raise one issue, rises a whole host of litigation issues that have all been resolved.

The global settlement agreement is first and foremost a settlement of claims between the US and Canadian estates. And in our submission you can't simply isolate one issues, and even to make another an example to make the facts, is the 75 million dollar settlement that we are the US -- excuse me, 75 million dollar payment that we are making to the US, of course that's a payment that's not priority distribution but rather we understand that in selling the CCRC ULC1 notes free of bond differentiation claims and US objections, there will be an increased recovery through decreased market discounts.

In addition, we are settling at least five significant pieces of litigation with the US, and in return we are giving a 75 million dollar charge which will be a charge on the proceeds of the note sale, so it's only going to be paid ones we have a successful note sale, and it will

be paid at the same time as the ULC2 notes are paid after the bond sale -- the note sale.

The 75 million is, in essence, a net share of the benefit of certainty in all of these matters. You may recall in February when HCP bought the income fund, HCP being the current fund, some creditors complained, at the time, that HCP's offer had effectively declined by the 25 million dollars distributed during the bid process, and you were told by the funds counsel that was the price of certainty, because the fund wanted to litigate with us over whether our management agreements could be terminated. And My Lady accepted in your decision that it was reasonable for a debtor to share value to setoff claims to obtain certainty; whether we call the 75 million dollar payment a piece of sharing of the upside of having a clean bond sale, or we call it a net payment of 90 million to the US, offsetting against the 15 million dollar payment on Greenfield, which is in the monitor's finding report, we could call it a 200 million dollar payment to the US and 125 million dollar sale of the savings on Greenfield, or offset on Greenfield, it doesn't matters. It's a net 75 million dollar payment which is part of a bigger plan that sees money go to the US through equity on the basis that Canadian creditors are paid. And the monitor says that maximizes realization, and we submit its completely

correct.

Turning then to the last benefit that I'll spend time on, although there are others, is treatment of guaranteed claims, which is dealt with starting at paragraph 34 of our packet. We understand in common law that a guarantor has a right of standing in a claim between a debtor and a creditor. It's clear in the textbooks the creditor sues the debtor, it can sue the guarantor in the same claim, the proper parties. The guarantor has the right to be there and to raise defenses. But the problem in our case is the US debtor has a stake, so our creditors can't come and sue the debtor and the guarantor in the same claim. And under the texts it's equally clear, if you sue the debtor, the debtor sues a creditor and not the guarantor, the guarantor is not bound by the outcome; it prevents collusion between the debtor and the creditor.

So we have two claims with the guarantor not being bound by the outcome in the most inefficient and expensive process. And so our creditors face the prospect of having to deal with a trial here, and then a trial in the US. And under the global settlement agreement, the US debtors will acknowledge their guarantees unconditionally, they will admit to the claims, so that all that will be needed is an evaluation hearing.

The US debtors also agree that guaranteed

claims that could be claims in the US cases against US debtors, will be heard in a unified, single proceeding before this honourable court. We have to give credit where credit is due; after a tussle last April, the US debtors have certainly stepped up with to the mark, with the assistance and perhaps gentle nudges of the courts, which have not been lost on the parties, but as part of the global settlement agreement, we are all recognizing the efficiency of having a single court hearing on the issue of quantum; we don't even need to worry about liability.

Now, you may have read in some of the briefs that -- the CCRC committee's briefs, the complaint that they weren't at the table with the US actually drafting the document, and it's true. Mr. Austin, in his cross examination, when the trust was filed?

JUSTICE ROMAINE: Yes, it was. Thank you.

MR. MEYERS: Mr. Strausser said the settlement was estate to estate, the CCRC and the United States wasn't at the table either, each estate was acting for its stakeholders. How many people can one have at the actual bargaining table before it becomes impractical and nothing gets done. But they weren't fully involved, the ULC1s put in a term sheet that resulted in a deal. Mr. Austin said the ULC2s put in a term sheet for the fund. That didn't resolve the deal, but at the end of the day we

ended up getting a the deal that incorporated many of the terms of their term sheet and they are all listed in paragraph -- that's sort of the last paragraph of our reply brief, including among the terms sought by these baggaged funds and the ULC2 creditors was in fact the very terms that I'm rely relying on now, the single guarantee in Canada -- hearing in Canada.

I was going to turn, My Lady, to a brief which is a submission on the law, I don't know if My Lady feels the need to hear it at this point or it's better saved.

JUSTICE ROMAINE: Let's save it and see where we get. Okay.

MR. MEYERS: In summary, My Lady, this is an estate to estate settlement, no one is being crammed unilaterally, we are in a joint hearing to bring to fruition months of efforts spurned with the assistance of both courts last April. The ULC1 is going to be paid in full, the ULC2 is going to be paid in full, the fund is going to be paid in full, assets are maximized, enough so -- enough assets are going to be realized so as to allow payments into the US once the Canadian creditors are paid. The creditors at risk support it on their votes. Perfection, of course, is never the test, nor is formal equality. The test is fairness and reasonableness.

All of these matters are linked in our submission, but the settlement agreement provides all of the benefits that I've enumerated, unlocks the estates, allows us to move forward. And on that basis we seek approval of the global settlement and bond sale, the threshold amount referred to in the -- by a confidential affidavit which has to be sealed, and of course I'll speak to you later perhaps about an extension.

JUSTICE ROMAINE: Thank you, Mr. Meyers. And I should, as a housekeeping matter, tell you that I have not received a copy of the confidential Lehman affidavit as of yet. At an appropriate time --

MR. MEYERS: Very shortly.

JUSTICE ROMAINE: Okay.

Mr. Carfagnini, did you wish to speak? No?

Does anyone else in wish to speak in favor of the settlement agreement?

MR. GORMAN: Yes, My Lady and your Honor. Howard Gorman again on behalf of the ULC1 ad hoc creditor committee.

I think it's significant to recall the overwhelming size of the ULC1 claim in Canada. It's in excess of 2.5 billion dollars flowing through the various companies, which, without the guarantee or intercompany claims from the United States, overwhelms the remaining

Canadian assets.

My Lady, in your, and, your Honor, in your three or four binders or two feet of materials, there is a three page entry of the ULC1 note holders with respect to the approval of the plan, and it's a scant three pages. I've been on holiday, and it seemed to me that one needn't swing hard with the driver when faced with the beginning cut, and that is --

JUSTICE ROMAINE: I don't understand that, Mr. Gorman, I think you'll have to explain that.

MR. GORMAN: I think we need Justice Delvecchio to explain that analogy, My Lady.

My Lady, the absence of applications throughout this process have been to maximize recovery of assets, and we've heard from the commercial trust, we've heard from the ULC2 before their convergence under the CCRC and since, that the ULC1 people should be forced with a choice. You want this plead in the Canadian assets, which would be the notes, the Salten proceeds, and the money in the accounts, or do you want to pursue the guaranteed claims, both the initial guarantee and the guarantees under the hybrid note structure. And in the spring of this year, after significant negotiations, we gave the CCRC creditors what they asked for, which was we moved from looking at the Canadian assets, other than intercompany accounts, to a

resolution where we would focus our attention on recoveries from CORPX and the US debtors under the guaranteed plan. And this became sort of the lynchpin for the unlocking that has occurred. There is a significant benefit for other Canadian creditors in that Salten proceeds, the CCRC note proceeds, our part of the settlement, and that's what's occurred.

With respect to the timing, and should things be delayed in the implementation of the settlement, I remind My Lady that we started fighting with the CCRC notes last summer when they were trading at about half of what the current potential marketing plan is, and at that time the trust and ULC2s were adamant, don't wait, let's get the sale process going. It now can proceed in a timely manner to maximize the recoveries, otherwise with respect to the Calpine estate so as to satisfy the settlement, our client now, they didn't want to be at risk last year, I don't think anyone also wanted to be at risk this year, and don't let a creditor who still has some contingent claims get too much leverage in the process by derailing this significant settlement achievement.

With respect to the ULC1 holders, I think it's significant to note, and the numbers are in paragraph 8 of the brief, that over 55 percent of one series and 59 percent of the other series of bonds have negotiated with

its ULC1 trustee to provide the letters of direction and the required indemnity, and significantly no ULC1 note holder has filed any opposition to this plan. You have a predominant creditor supporting the settlement agreement, and that's the stage we are at because we've got the settlement agreement that is supported. Let's move it forward, and let's move these estates forward by implementing a settlement, getting the extension, and getting the notes sold at the appropriate time at the appropriate price. Thank you.

JUSTICE ROMAINE: Thank you, Mr. Gorman.

Mr. Smith?

MR. SMITH: My Lady and your Honor, Quincy Smith of Fraser Milner Casgrain. I speak for Alliance Pipeline who are a 30 million dollar creditor of CESCA. They have reviewed the material and are happy to support Mr. Meyers' application for approval of the global settlement.

I also speak as agent for Mr. Salard as solicitor for Westpoint Energy, who are a 67 million dollar creditor, he said 66 of CCRC. They also have reviewed the material and support Mr. Meyers application for approval.

Thank you.

JUSTICE ROMAINE: Thank you, Mr. Smith.

MR. McCLAIN: My Lady, Douglas McClain for

TransCanada Pipeline and Nova Gas Transmission.

As we have not appeared in that in these proceedings before, it may be of some benefit to give you some sense of TransCanada's position in both the CCAA Canadian proceedings, and also in the US Chapter 11 proceedings. In the Canadian proceedings between TransCanada and Nova they have collectively undiscounted claim exceeding one hundred million dollars. These claims arise out of transportation agreements which have been rejected by the debtor.

In the US Chapter 11 proceedings, TransCanada and Nova have guaranteed claims against the US debtor arising out of these same contracts which were at issue in the Canadian proceedings.

Additionally, TransCanada has subsidiaries, Portland Natural Gas Transmission, and GTN or Gas Transmission North, which between them have undiscounted claims in excess of 725 million dollars US.

So collectively in both proceedings TransCanada is a significant creditor. With the exception of small guarantee amounts and amounts which were small amounts which were secured by letters of credit, TransCanada's claims are substantially unsecured, and its position in both proceedings is basically as an unsecured creditor.

Having regard to the application before the court, it clearly resolves a host of issues and provides a basis for resolving others. With respect to TransCanada's position as a substantial unsecured creditor, both TransCanada and Nova have properly considered the motion and have no objection to the relief there is being sought on this motion by the Canadian Calpine debtors.

Thank you.

JUSTICE ROMAINE: Thank you, Mr. McClain.

Does anyone else wish to speak in favor of approval of the settlement agreement before the monitor speaks? Perhaps Mr. McCarthy; Mr. Griffith? Thank you.

MR. GRIFFIN: Thank you, My Lady. Peter Griffin for the US debtors, your Honor.

The US debtors are obviously pleased to be both in the US court and Canadian court in support of this global settlement agreement. I can see that the US debtors were uniquely positioned to participate in and deliver this result in conjunction with the Canadian debtors as, obviously, not only equity holder, but subordinating creditor and creditor of the Canadian estate.

It goes without saying, and we've heard much about it and you see it in the material of the benefits. My respectful submission of this settlement agreement are obvious. It is an agreement which resolves

much, delivers solutions or the method to arrive at a solution on an expedited basis, unlocks value and facilitates moving forward with respect to these estates. And there are time, My Lady, in any estate or series of estates, when there is the potential for a great step forward, and this is indeed one of those, which has been reached by virtue of this agreement. And it is for that reason that you can see it so exhaustively, and properly reviewed by the monitor in the 23rd report to give you the type of analysis of all of the stakeholders expect and deserve and are pleased to receive from the monitor as to the obvious benefits of the settlement.

At the end of the day, in my respectful submission, this is the very sort of facilitated forward looking result which the jurisdiction of this court exists to support and endorse approval.

JUSTICE ROMAINE: Thank you Mr. Griffin.

MR. GRIFFIN: My Lady, can I deal with one other point. I was a bit dismayed to see this afternoon that we were sitting with a jury. I would caution you to relieve no issue in this application.

JUSTICE ROMAINE: Two facts to be founded.

MR. DeWAAL: My Lady, your Honor, Rinus deWaal of the committee of unsecured creditors in the US proceedings.

As you've heard from Mr. Staber in the US courtroom, we support the application. For the reasons that have been stated with we think that's the way that it should go, and we, for that reason, support this.

JUSTICE ROMAINE: Thank you, Mr. DeWaal.

MR. RABINOVITCH. Good afternoon, your Honor. Neil Rabinovitch for the second lien committee. Just to echo what my colleague Ms. McColm said in the US court, we are delighted that some very very complicated issues have been resolved between the two estates, and we are very pleased and hopeful the settlement will proceed, and that both estates can move expeditiously to distributing funds to their creditors. Thank you.

JUSTICE ROMAINE: Thank you, Mr. Rabinovitch.

Does anyone else before I call upon counsel for the monitor?

Thank you. Mr. McCarthy?

MR. McCARTHY: My Lady and your Honor, we have all of the submissions from the monitor are contained in the many pages of the report, the 23rd report that you have before you. Having experience with Judge Lifland and you, My Lady, I am confident that both of you have read every word of all of that.

On that assumption, I don't intend to say

any more than obviously that the monitor does recommend this arrangement. And, secondly, that it is, as has previously been said in my submission, a credit to the debtors in the US and Canada, and if I may is so on behalf of my client, a credit to the work done by Neil Narfason and Mary McDonald and their staff in interfacing, and in some case mediating the many issues that you see in the complex agreement before you.

And, your Honor, if you have any questions on the monitor's report, I'd be happy to answer them. And again, My Lady, if you have any, I would be happy to answer them as well.

JUSTICE ROMAINE: I have none. Judge Lifland?

JUDGE LIFLAND: I have none except to observe the monitor's report was the most quoted in all the submissions that I've received.

JUSTICE ROMAINE: I guess that's a complement.

MR. McCARTHY: Thank you, your Honor, My Lady.

JUSTICE ROMAINE: Mr. Meyers?

MR. MEYERS: My Lady, I wonder if I can just hand up the register the confidential supplemental affidavit.

JUSTICE ROMAINE: Thank you.

I guess, Judge Lifland, we will go back to you for the next step.

JUDGE LIFLAND: Certainly.

JUSTICE ROMAINE: Thank you.

MR. SELIGMAN: Your Honor, we would next like to turn to any objections to the settlement lodged in the US proceedings.

With respect to the ULC1 indentured trustee, we've been making continued progress there, and to allow that process to continue without necessarily having arguments made on that aspect, I would ask that if we can reserve on that issue until after the Canadian objections are heard, I think hopefully that will facilitate that process and focus on resolution rather than in this area of the argument.

JUDGE LIFLAND: Well, it's my understanding that the ULC1 trustee's objection are the only objection that's really going to the merits of the settlement. And if that's in the process of possibly being resolved, we can defer that argument and pass it back to the Canadian court.

MR. SELIGMAN: Your Honor, I just didn't know if any of the other objectors wanted to make a statement here. On behalf of the equity, I notice Mr. Eckstein rising.

MR. ECKSTEIN: Good afternoon, your Honor.

JUDGE LIFLAND: Retrieving the gavel.

MR. ECKSTEIN: Good afternoon, your Honor. Kenneth Eckstein of Kramer Levin, counsel for the ad hoc committee of CCRC creditors which consists of both of the ULC2 bond holders and the CLP income fund.

Your Honor, I would certainly find it much easier to join the chorus of parties who are complementing the court, complementing the company, and complementing each other for achieving such an outstanding outcome. Regrettably --

JUDGE LIFLAND: I knew there was a but.

MR. ECKSTEIN: Regrettably, we are not in the same position, although I do think it's important to share the perspective that there is an additional hero, I think, in the case, in addition to, I believe, the efforts that the court did bring to ensure that there was a protocol and a process, and that is the market. The fact of the matter is, as some of the parties have indicated, a year ago we had all of these issues pending in this case and there was no ability to reach resolution. As your Honor recalls, there was a strong desire to have the bonds sold, and for some reason that was not accomplishable.

Today, with the power markets where they are, with the Calpine debt at a level where I believe the

parties are expecting to only be disputing the computations of postpetition interest and make wholes, there is an ability to somehow smooth over a multitude of problems. And there's no question that the proposed settlement today takes advantage of the market, and certainly does so effectively by suggesting that everybody has figured out a way to get paid in full. And if in fact that were true for my constituency, I probably would also be standing here and join the chorus of support.

The fact of the matter is, your Honor, unfortunately while the parties suggest that we will be paid in full, I did hear Mr. Seligman acknowledge that in fact with respect to the ULC2 bonds and CLP income fund, our claims have not yet been resolved. There are financial disputes that remain open, for some reason the parties did not see fit to try to bring those to foreclosure before today. And unfortunately we stand here today being told that we shouldn't worry that at some time in the future they will get to our claims and resolve those.

The income fund claim is called a disputed claim. It's a 500 million dollar contract claim that we are told may get resolved at some point in time. It's not great comfort to us, your Honor, to simply be told that we can possibly look to a guarantee if there are no funds in Canada to resolve those claims. We don't know what that

guarantee will be worth, maybe it will be worth what it's worth today, maybe it will be would this less.

Your Honor will note that with respect to ULC1, they were willing to live only with their guarantee because they reached an agreement to backstop that guarantee with two-thirds of an additional claim in the US. We don't have the benefit of that arrangement, your Honor, so therefore we have to rely solely upon our rights.

Your Honor, we are not suggesting that a global resolution is not in order, we are not suggesting that the sale of the ULC1 bonds are not in order. What we are concerned about, and I will defer to Mr. Thornton in Canada who is going to make the substantive arguments, we believe that where there has not a full consensus in a proceeding, whether it's in the US or in Canada, the right way to proceed is to submit a resolution to the creditors for a vote and let the creditors speak through a plan of reorganization as to whether or not they do or do not want to support this resolution.

In the absence of a complete consensus, we believe that there is a responsibility on the part of the debtors and an obligation imposed upon the proceeding to rely upon the process that we have both in the US and in Canada, which is creditor vote. Let the creditors determine whether in fact they do want to support this.

And in the process of the vote, and in the process of a confirmation proceeding, you would, I would expect, be able to work through the claims and we would have the opportunity over the next several weeks and months, which I think is what the debtors suggest, to both resolve the ULC2 claims and resolve the income fund claim so that we can determine whether in fact we will be paid in full, or whether or not in fact it's appropriate to allow monies to leave Canada into the United States prematurely. Because right now the suggestion is that before the ULC2 claims are paid, before the income funds claim has even be adjudicated, 75 million dollars of funds will move from Canada to the US, and whether that's in respect of a debt or in respect of equity, we would submit that that is not permitted or authorized under the bankruptcy process.

So, your Honor, that is the perspective of my constituency, since we are standing really from the perspective of the guaranteed claims, I think it's appropriate to let Mr. Thornton articulate the Canadian issue, which I believe governs both the ULC2 rights and the income fund rights. Thank you, your Honor.

JUDGE LIFLAND: Thank you, Mr. Eckstein.

MR. FREDERICKS: Your Honor, Ian Fredericks on behalf of the ULC2 indentured trustee.

I would also like to allow my Canadian

counsel, Mr. Dunphy, to speak first to the issues, because I believe they involve primarily Canadian issues, and then, to the extent anything else is necessary, I request that the court allow me to speak in after Mr. Dunphy has concluded.

JUDGE LIFLAND: We'll play it out, Counselor.

MR. SELIGMAN: Your Honor, if I could just respond briefly pursuant to schedule, and I'm going to defer to Canadian counsel for the Canadian debtors to speak to the issues of Canadian Bankruptcy Law, I'm not proposing to be an expert in that area.

Just one or two clarifying notes. Mr. Eckstein spoke about the lack of clarity or timing of payment of the ULC2 bonds. I think that what's been set forth and what the documents contemplate, that as soon as there is distribution to anybody, it's going to include distributions to the ULC2 bondholders, and Canadian counsel for the Canadian debtors can confirm that.

There hasn't been agreement on the exact amounts of the interest because it's very clear that you have an issue of currencies in pounds and currencies in Euros, and there's different conventions about how you calculate interest, but it's literally a couple million dollars difference on a 350 million dollar issuance.

There is an issue of a make whole of perhaps almost 50 million dollars alleged. I think everyone has agreed it's going to be paid out -- what's agreed to is going to be paid out; what's not agreed to, that 50 million dollars in the make whole, the couple million dollars in interest, that's going to be reserved, so there shouldn't be any issue as to the ULC2 note holders getting paid in full whatever their claims are ultimately determined to be. It's not going to be an issue. They continue raise that issue, but I just want to make it clear for your Honor.

As to the issue of the CLP claims, when it's going to be decided and the lack of clarity on that point, just to remind your Honor that in the Canadian debtors' replied bench brief they did lay out a proposed schedule for resolving that claim. I won't go through the schedule, but do note that they contemplate a hearing in the last week of October or the first week of November with respect to that hearing. I think all parties have an interest in getting the claim adjudicated quickly and promptly, and the fact that the parties have worked together on the issues between the Canadian debtors and US debtors to agree upon a schedule to resolve that claim as soon as possible as indicated before, speaks volumes to the process.

As to the third point raised by Mr. Eckstein, again, as to whether this should be put to a vote or not under Canadian law, I'll defer to my colleague in the Canadian proceedings to address that.

JUDGE LIFLAND: Do I understand, then, what's contemplated, at least the principal amount of 350 million dollars will be paid?

MR. SELIGMAN: That's my understanding that that will be paid upon the bond sale, that there will presumably be an application --

JUDGE LIFLAND: Leaving only the issue of make whole and interest differentials.

MR. SELIGMAN: That's correct, your Honor.

MR. FREDERICKS: Respectfully, your Honor, Ian Fredericks again in response to Mr. Seligman's comments that involve the 350 million dollars, I believe that he's speaking of only speaks to the ULC2 bonds that are held by third parties. There is the issue, as indentured trustee, that certain of these bonds are held by Canadian affiliates, and the indentured trustee's position is that we have not been provided proof that these bonds have been canceled or otherwise satisfied. And before our claim can be compromised, one of the issues -- we don't believe our issuance can be compromised. Before the settlement can be approved, either the US debtors, Canadian debtors, or

someone else needs to provide us with proof that these bonds have been canceled, or they also need to pay us on account of those bonds as well. So with we don't believe that the 350 million, or payment of the 350 million dollars resolves our claims, or comes close to paying it in full.

JUDGE LIFLAND: Thank you, Counselor.

MR. SELIGMAN: Your Honor, just with respect to that, and I'll defer to the Canadian counsel to address the issue. But, yes, there are bonds held by the Canadian debtors, whether they are treated cancelled or there's a round trip of funds, economically it's not going to make a difference, and I will leave it to the monitor and to counsel for the Canadian debtors to speak to the issue, but I don't think there's an issue of dispute of making sure that the third party bond holds will be paid.

JUDGE LIFLAND: Very well.

MR. ECKSTEIN: Your Honor, at the risk of leaving the record open, there are a number of other categories and claims that will need to be resolved that are not yet resolved, and I didn't want to omit those from at least being mentioned on the record.

JUDGE LIFLAND: My only inquiry was, in concept, of the principle amount of the bonds is a bond payment.

MR. ECKSTEIN: I understand fully what it

says --

JUDGE LIFLAND: We'll pass over to the Canadian court at this point.

MR. SELIGMAN: Thank you, your Honor.

JUDGE LIFLAND: My Lady?

JUSTICE ROMAINE: Thank you, Judge Lifland.

Mr. Meyers, Mr. Robinson, before I call on Mr. Thornton, does anybody wish to address the question has just been raised in the United States proceedings about what happens to the ULC2 bonds held by the Canadian debtors.

MR. MEYERS: Yes, thank you, My Lady. It's good of the trustee to be concerned about our bonds, we are, too. And there's an obligation that My Lady heard about earlier to deal with the structure and a tax efficient way of those issues are being considered, whether the bond should merely be cancelled or whether the bonds should flow through.

In the proposed order there are two provisions of relevance. Paragraph 34 makes it clear that the 75 million that goes to the United States is at the same time as a payment of CCRC direct creditors, which include the ULC2 bonds.

Secondly, in paragraph 21 we'll be handing up a black line of the order, and one of the black lines it

has already been added, it's been matriculated to the list, is a -- you saw in schedule B to our reply bench brief, there is actually agreements; the ULC2 note holder's trustee, and our financial advisors and theirs agreed on what the amounts in issues are. And they are set out in Schedule B.

Those amounts are now contained in the order and will be held, as well as an additional amount to be calculated out in respect of the Canadian debtors' bonds in the event that the bonds are not cancelled. And we understand that is a straight proportionality. We know the amount of their bonds, the amount for our bonds is just a percentage increase depending on the bonds.

So the matter is covered; all monies in dispute will be held in escrow for the ULC2 bonds. They will be paid.

JUSTICE ROMAINE: Okay, thank you, Mr. Meyers.

Mr. Dunphy, are you starting?

MR. DUNPHY: Well, just on that point.

JUSTICE ROMAINE: Okay.

MR. DUNPHY: Since you asked about it. And just to be very clear about it, I have other issues of other aspects. But as trustee, the only thing we know are the bonds that are issued.

We are told from reading onerous reports that a certain number are held in Salten LP. I have taken a number of things on faith in life; I suppose that can be one of them. And without being a doubting Thomas about it, I just don't know. And under our trust indenture, when I get a dollar, it tells me exactly how to distribute it. Who gets the first portion; I get the first dollar, but after a few more of those come in, then we start to pass it to the bond holders, and I have to pay all the bondholders pro rata in relation to the bonds the I hold. And I don't know Salten LP, I don't know how many they own, and if they show up and say cancel these bonds, then they all live happily ever after.

I will agree with Mr. Meyers on the make hole; our financial advisors have had a dialogue. I don't think the order is spot on in terms of catching the issue, but I think we are mostly there, in that if necessary, even in subsequent attendance that issue should be able to be resolved quantum of the make whole amounts, as long as the principal, whatever it is, gets tallied up and socked away, we can deal with that. And I have something to say about where it gets socked away, but I'll wait to get to that.

JUSTICE ROMAINE: Exactly. Okay, I'll leave that issue and then turn to Mr. Thornton. Are you going to be the first speaker?

MR. THORNTON: Yes, I am. Thank you, My Lady. Good afternoon, your Honor.

I'm wondering if we could prevail upon the US court to focus on your Honor rather than the very talented group of gentleman we have in the front row?

JUSTICE ROMAINE: Judge Lifland, do you mind?

MR. THORNTON: Because otherwise I'll be making submissions to Mr. Seligman's empty chair. And even when he is there to hear them, he hasn't been too receptive of my submissions. I'm hoping to do better with Judge Lifland.

JUSTICE ROMAINE: Okay.

JUDGE LIFLAND: That's not a problem.

JUSTICE ROMAINE: I'm not sure, Judge Lifland, whether you heard that request.

Oh, there you are, okay. Thank you.

MR. THORNTON: Thank you, your Honor. Thornton, initial R., and we represent the CCRC committee, which is the committee composed of the majority of the third party ULC2 bonds and CLP as since the purchase of that entity earlier this month, and earlier this year in this proceeding. And because of the breath and diversity of our representation, for your Honor's benefit, we are probably most analogous to what you would refer to as the

UCC.

In order to facilitate these submissions, I would ask both courts if you would have and handy our bench brief, our book of authorities, the revised settlement agreement which I received Monday, but which I think perhaps the courts received either Friday or over the weekend, and the revised orders which I think are being proposed in Canada and the US which we received in the last day or two. In addition I will be making reference to the monitor's report.

JUSTICE ROMAINE: I think that takes care of 2 of the 3 volumes, Judge Lifland?

JUDGE LIFLAND: I think it spans across three of mine.

JUSTICE ROMAINE: Mr. Meyers, if you have an extra copy that would be useful.

(handing)

JUSTICE ROMAINE: Thank you.

MR. THORNTON: The references for both My Lady and your Honor's benefit will not be extensive for this material, but if we have difficulty locating it, I will try to be mindful of that and help.

Now, a lot of work has gone into this settlement. And there is a lot of benefits for both

estates in the settlement. And we are not suggesting that this settlement should simply be thrown out, what we are suggesting is that Canadian law must be complied with before it can be implemented; and that is a key part of our submission.

This settlement does not just effect the parties to the settlement, it effects all of the Canadian debtors and every creditor in the Canadian estate. And that is why the monitor has examined the effects of this settlement upon every Canadian debtor estate and the recoveries of every Canadian debtor.

As it happens, there are some estates that get paid in full and some estates that do not, or may not, and that may is very important. Everyone is optimistic that they will, but what the settlement actual contemplates is they may get paid in full.

And what the settlement, in essence, as it happens I should add, I suppose, as a matter of coincidence I'm sure, the creditors we represent, who are at the CESCA level, at the CCEL level, are the estates that are most likely to be subject to a potential compromise, and there are other non economic compromises that are being proposed for the ULC2s, and we will go into those in some detail.

But the settlement agreement in its essence represents a balance of risks, of tradeoffs, of negotiated

settlement and proposed compromises. In short, this settlement is replete with business judgments. And as such, under Canadian law, the affected creditors are the ones who are required to decide whether the compromises, viewed as a package, are acceptable.

The mechanism required under Canadian law and the CCAA to discover the answer to that is through a vote. And this is not a question of whether or not this is a good deal, a fair deal, an equitable deal, or, in fact, as I assume for the purposes of argument is, it's very best deal that the Canadian debtors and the monitor could negotiate under the circumstances. And I can understand the desire of all of the parties who have spoken here today and the courts to want to implement it.

But the issue is a question of who decides. Can the court, this court, decide on its own, and thereby force this package of compromises upon the creditors, or must the creditors decide in the usual and recognized way in Canada? And I emphasize here that the debtors seek not just the approval of this settlement to go forward to a vote of creditors, but an actual implementation of it.

The settlement agreement is a comprehensive rearrangement of priorities and compromise of claims of the Canadian creditors. Can the court impose it, or must it be put to the creditors? That is the issue for this court

today.

My Lady, your Honor, I propose to examine four areas of fact and law. Firstly, we will examine the nature and extent of the compromises being proposed upon three creditor groups, being the ULC2 creditors, the CESCA creditors, and the CCEL creditors.

Secondly, we will examine the effect of the approval and implementation now, as asked, what that would have on the creditors and on the vote, and, in our submissions, a subsequent vote to the implementation would, in fact, be rendered meaningless. I will then examine the jurisdiction of this court, and I will distinguish the jurisdiction under Section 4 where a compromise is proposed to a class of creditors or creditors generally from the supervisory jurisdiction under Section 11.

We will also look at the jurisdiction under Section 18.6 to coordinate foreign proceedings, and to inherent jurisdiction to fill in the gaps when the statute is silent. In so doing, I will then address the cases in all of the bench briefs that have been filed with a view to reconciling them along the bright line that says where compromises are proposed upon a class or classes of creditors, a vote and the protection of that fundamental right must be protected by the CCA Supervisory Court, and distinguished that from cases where there is no such

compromise being proposed.

And lastly, within the statutory jurisdiction, I will propose a way that the court may exercise its discretion within the statutory jurisdiction that is available to this court in a way that promotes the efficient finalization of the administration of the Canadian estates, brings them to an expeditious resolution, and more importantly, maximizes the possibility of salvaging the benefits and all the good work and efforts that have gone into the settlement agreement.

First, to the nature of the compromises, and starting with the ULC2 trustee and its beneficiaries the bond holders. My friend, Mr. Dunphy, will have more submissions on this point, but I note three.

Firstly, the amounts were in dispute. And in the first draft of the settlement agreement that accompanied the motion materials, there were specific amounts in there, and the amounts were in error. The numbers were changed in the revised agreement, we don't need to go to them actually, but let's just say that there was a significant variance from our point of view. The ULC2s believe that there is no reason to compromise anything in this estate given their structural priority.

And so, when the numbers that were too low and wrong in our opinion first showed up, we were most

disturbed about that. And we were told as well in the bench briefs that every section of the settlement agreement was precious and could not be changed without threatening the picture as a whole. Well, they changed the numbers; which I raise that only to point out that the settlement agreement is not quite as immutable as the bench briefs would have us believe, and it does show that what can happen when you actually engage with the creditors who are effected to try to clarify things, as should happen in this case and as would happen if there was an establishment of a voting mechanism, that those negotiations could occur.

So those amounts have been changed, and there is a hope that there will be funds sufficient to put aside to pay all of the ULC2s in full, to which we say that is a good step in the right direction. But there are other compromises that are inherent in this settlement agreement as written, and I emphasize the following two.

Firstly, there is a release of claims immediately, even though payment is deferred and contingent. Contingent against at least upon the bond sale and then contingent upon a subsequent court order. Now the claims specifically that are released are oppression claims, and they are not marker claims. And for the benefit of Judge Lifland's who may not have this background, prior to Calpine filing for protection in

Canada, Harbor, which is a bondholder, brought an oppression action in Nova Scotia, which was the jurisdiction of ULC2, to say that certain parties in the Calpine empire were guilt of conduct that was asset stripping, that materially and prejudicially and with oppressive effect, disregarded the interests of the bond holders. In fact, cash was being stripped out of Canada to feed US needs.

Now, there is a judgment that was rendered in the summer before the filing, and that judgment found that CCRC and CORPX were guilty of oppressive conduct. The claims that have been filed are against CCRC in Canada and against QCH and CORPX in the United States. QCH was added once we learned through the monitor's reports in this proceedings, that it was intimately involved in the transactions that were oppressive and that stripped the assets out of Canada.

Now those claims were filed in accordance with this court's claims procedure order on a timely basis, they were based on an existing judgment and a finding of oppression. There has been no dispute of those claims, and there has been no judicial determination under the claims process about those claims. But under the settlement agreement those claims simply vanish, and they vanish before payment. And here there's an interesting

distinction in the timing of what happens in the US and in Canada, and this may be inadvertent, but in either way it's prejudicial, and I just want to bring that to your attention.

So let us look at the revised order submitted to in the US proceeding.

JUSTICE ROMAINE: I don't have that order in the US proceeding. I have the Canadian form of order, but go ahead.

MR. THORNTON: Well, it's quite possible to follow along without having the order in front of you.

JUSTICE ROMAINE: Okay.

MR. THORNTON: Paragraph 16 of that order says that, "The claims included in Exhibit G to the settlement agreement are hereby dismissed with prejudice or deemed to be withdrawn with prejudice." That is, I think, the exact same paragraph as is in the Canadian order in paragraph 9.

JUSTICE ROMAINE: Thank you.

MR. THORNTON: Yes. In the Canadian order, paragraph 9.

Now in the US order where it was paragraph 16, if we look at the tiny paragraph, while this is effective in the US order, paragraph 5 says that paragraph 16 is effective upon entry of this order. So that means

that if this order is given today, our claims are gone today before the bond sale may ever happen, and certainly before any payment.

Now with respect to the Canadian order they have, and may I emphasize, that would get rid of the oppression claims against both CORPX and Quintana, QCH, gone. Now the Canadian side of that equation is the oppression claim against CCRC, and it is actually delayed, under paragraph of the 5 of the Canadian order, to be effective only when the bond sale us occurs, which is little better, but in any event, what it is is a compromise. It is an extinguishment of rights now before payment, and I ask why? Why was that so important that that had to be embodied into this settlement agreement? Why couldn't the claims stay upstanding and be dismissed or extinguished upon payment?

If they are going to be paid, they should be paid. But the payment is contingent, and therefore there is some risk. It may be small, but it is the creditor's risk to choose to accept it or not. It is their choice, in my submission, My Lady, not the courts.

And thirdly, there is a transfer of jurisdiction inherent in the -- embodied in the settlement agreement. The legal entitlement of the ULC1 trustee and its note holders for their claims, as it stands today, is

established by the claims order in this proceeding with respect to claims it has made in this proceeding pursuant to those orders. And that includes an ability on your part, My Lady, to call Judge Lifland and get advice about US law, to the extent you feel you need to, under the protocols that we have put in place.

But three things under the settlement agreement are transferred to the U.S. Bankruptcy Court. The ULC2's right to make whole payment, to the interest that is in dispute and continues to be in dispute, and certain fees of Harbinger -- of Harbor, pardon me, which I will get to in a minute.

Now this is not a question of which is the better court or the best court, this is a question of is this a compromise of an existing right to people who are non parties to the settlement, and it is. And let's look it at it from Harbor's points of view. What is the jurisdiction of the U.S. Bankruptcy Court to its claim which has no connection to the US in any way? It is a claim for recovery of fees in a Nova Scotia action against Canadian entities, primarily, and that claim is not made against CORPX, not made against any US debtor, and there is no element of a guarantee involved in it.

JUSTICE ROMAINE: This is the Harbor fees issue.

MR. THORNTON: This is the Harbor fees issues. And furthermore, there is different treatment under the US law of a litigant's fees than there are is Canada. In Canada, a successful litigant has a reasonable expectation of recovering at least some of their costs against an unsuccessful defendant. And whether you -- pardon me. And in the US, a party litigant bears their own costs except under extremely unusual circumstances, as I understand it.

Now we say that the transfer of this jurisdiction is possibly done with a view to seek different treatment imposed, or we have to prove the entire Canadian law of cost before the US Bankruptcy Court, which does not seem to be a valuable use of anybody's time, and we are not sure why this issue has to be determined there when it's already a claim in this proceeding. And as you know, in addition to the issue of success, we will be claiming recovery on a quantum meruit basis, since it was that litigation which stoppered up 280 million dollars of Canadian -- of the Salten proceeds so that that asset did not get stripped as a result of the oppressive conduct.

So, with the dispute about the amounts, the release of the claims prior to payment, and the transfer of jurisdiction from the rights as they now stand, there are a number of compromises and arrangements that affects ULC2,

which would be an identifiable class or group of creditors as we would ordinarily classify them in a Canadian proceeding, and that is enough to bring this case, in our submission, within the jurisdiction of Section 4 of the CCAA.

But the settlement agreement goes much further, and I do not have to rely on the compromise that's proposed on ULC2, because there are also compromises on the CESCA creditors. These are of economic significance, it dwarfs the issues relating to ULC2.

And I turn now to the monitor's report, in particular to the very important chart on page 15 of the monitor's report. That chart shows the claims against CESCA. And it shows, on the right hand side, that's on page 15 at the top, the monitor's 23rd report. All right.

Your Honor and My Lady, you'll note in the column on the extreme right hand side under recovery that there were a range of recoveries specified for intercompany trade creditors, CRA being the Canada Revenue Agency; the CLP tool claims and gas transportation claims that range between 64.7 percent and one hundred percent. You will also note that the gross claim numbers in the first column shows 500 million dollars of claims, approximately, and recovery in the next column from the CCAA proceeding, that is the proceeding that this court is dealing with, of only

324 million dollars. There is a shortfall of 177 million dollars. And the monitor notes that it expects 151 or 2 of those millions to be satisfied out of Chapter 11 proceeding, but still leaving a shortfall of some 25 million dollars at the end of the day.

Now, being forced to rely upon a guarantee, when there is demonstrably sufficient value in Canada to be paid in full, is of itself, in our view, a compromise. And I pause here to note that the monitor has assumed one hundred percent recovery under the guarantees in the US preceding for the purposes of its analysis. And the monitor is quite capable of making its own assessments, but that also is a risk analysis and decision for the creditors who are affected there and forced to rely on those guarantees to make.

The fact of the matter is that the recoveries from the US estate, and I emphasize this, particularly with respect to undetermined claims, unliquidated claims, are uncertain. They are uncertain as to timing, they are uncertain as to amount, and they are uncertain as to the form and value of consideration. There is much work yet to be done before a plan is confirmed in Chapter 11 and before these claims will see payment from Chapter 11.

But in addition to that compromise, there

are four others that I would like to bring to the court's attention. Firstly, there is the US 75 million dollar priority payment of the CCRC. Secondly, there is the cutoff of CCRC from making claims up into CCEL. Thirdly, there's the settlement of the Greenfield litigation for 15 million that's as a net credit to CCRC as opposed to CESCA. And lastly there's another collateral attacked on your claims process, My Lady.

Now starting first with the US 75 million dollar first charge cash payment, as Mr. Seligman calls it, out of the CCRC estate. Is that a good deal or not? Well, it resolves a lot of things, but the US has, as a matter of fact, untested claims in Canada, and we say, after extensive examination, those claims are unmeritorious. Now, is 75 million dollars the right number? Is it coming from the right place? We say that is part of the creditors' judgment to accept this compromise as a passenger or not.

Let's look then at the cutoff of CCRC. And for this we need a bit of explanation. CESCA is a partnership. Under Canadian law, the partner is liable for the claims of the partnership. One of the partners here is CCRC where a lot of the value in the Canadian estate resides. CCRC, in turn, is wholly owned by CCEL, and CCRC is an unlimited liability corporation. The key distinction

between an unlimited liability corporation and other corporations is that the owners, called members, can be forced to contribute to the assets of the unlimited liability corporate estate until all of the ULC's creditors are paid in full.

Now in this case, one of the creditors of CCRC is CCEL, its parent. So under the corporate law that establishes the liability of the member, CCEL is required to contribute enough to CCRC so that CCRC will be able to pay off its own member. That sets up a perfect setup. And my friends say what a great deal it is that that claim has been subordinated. We say that claim doesn't exist because it would be set off in any event.

And furthermore, under the general rules as uncharitable as it may be, wherever you have any fund that a person who claims from that fund is owed money by the fund, they have to make good on the claim before they get anything out of it. That is in fact the situation we have here. So whether it's setoff or subordination, the fact of the matter is the creditors of CCRC are the claim up into CCEL, and CCEL has a 575 million dollar intercompany claim owing to it by QCH; we've known that since the monitor's 5th report, in appendix B, which is annexed to our bench brief. That at today's values, and now that much QCH is consolidated into the general US estate, is the single

biggest assets of the Canadian estate.

That asset, under the settlement agreement, is being cut off from being available to the Canadian creditors, because the settlement agreement purports to terminate the member liability of CCEL, which owns that receivable, which otherwise it would be liable to contribute to the estate of CCRC.

So let's stop there. The CESCA creditors, according to the monitor's report, could suffer a shortfall as much in the Canadian estate of 176 million. Under the settlement agreement, 75 million in cash, 575 million of an intercompany receivable are being taken off the table for the creditors of CESCA. We say there should be no need for any creditor to be exposed even to the risk of a shortfall when there is something in the neighborhood of 650 million of value going to the US equity holder.

Now, these payments are really going on account of the untested and we say unmeritorious claims of the US creditors which should give rise to mere hold up value. 650 million dollars; some hold up, some value.

JUSTICE ROMAINE: So, Mr. Thornton, you are discounting the 7.4 billion dollars of claims that are no longer being made against the Canadian estate as a result of this settlement agreement.

MR. THORNTON: I am not balancing at all

the benefits and the burdens in the agreement, because that is an inquiry as to whether this is a good deal or not.

What I am pointing out is that to the extent legal rights are compromised upon a class of creditors, that that class must have a vote, and that is a fundamental right under Canadian restructuring law. And in this case that right can be respected, and we still do not have to throw out this settlement agreement. And I will get exactly as to how we get there later in my submissions.

Now Greenfield. There is an a trend that that was an inter-billed project, complete with a 20 year power purchase agreement with a promise of material and all municipal regulatory environmental approvals in place. It was sold six weeks before filing to a non filed US affiliate. It was transferred from CESCA for a hundred dollars. It was one of the largest and most obvious fraudulent conveyances I've seen in my 23 years of practice, as I've said in this court previously, and it is a claim for the benefit of the CESCA creditors. It was CESCA's assets and transfer.

Now that claim is to be dismissed. And under this settlement, there is a release by all Canadian debtors and any creditors who claim through them. So that action would be dead as a result of this settlement agreement. And CESCA itself gets nothing on account of it.

It is settled by the reduction of a payment that CCRC would otherwise have to make, but more importantly it settled for 15 million dollars.

Now, who came up with that number? The parties that implemented that transaction in the first place came up with that number. And do you have evidence before you to vet that number on its own? I submit that you do not. That is an element of the kind of decision a creditor is entitled to make. In fact there's no whole package worth that, and that is what the creditors should be asked here by way of a vote.

And lastly, in terms of particular effect upon Canadian creditors, we look at the adjudication of disputed claims. The US debtors seeks to do, through the settlement agreement, what you directly denied them on their motion on April 4. They sought then a change to your claims process order to be allowed to insert themselves into that order, and in effect revoke or rework a notice of dispute or disallowance that the monitor and the company had put forward.

You will recall this was in relation to CLP's repudiation claim with respect to the Calgary Energy Center, the monitor and the company allowed that claim in the amount of 142 million. CLP thinks the claim is much higher, but the US debtors have a theory. They have a

theory that even though the new toll is lower than the old toll, that the net damages claim is actually less than zero. And I don't think they go so far as to say as the CLP owes CESCA any money, but they do want an opportunity to go at that again, even though they were unsuccessful in asking you to do that directly, and they do that through the provision of Section 2.8A sub 4 on page 22 of the revised settlement agreement.

JUSTICE ROMAINE: I'm sorry, what page?

MR. THORNTON: Page 22.

JUSTICE ROMAINE: Thank you. Okay.

MR. THORNTON: If you look at sub 4 at the top of that page, and about halfway down, the Canadian guaranteed claims determination order will also provide for the manner of participation in the judicial claims determinations of the guaranteed claims by guarantors who have submitted their guarantee obligations, so it's a long way of saying that includes the US debtor with respect to the CLP claim, to ensure, and this is the meat of it, that such guarantors have all of their rights of participation preserved, including the right to raise and have fully determine any defenses or objections that the Canadian debtor or monitor could have raised to the creditors' claims, notwithstanding any statements of the Canadian debtors position in any notices of revision they have

issued to date. Clearly trying to do indirectly what they do could not do directly as determined by this court.

So not only does that represent a compromise of the rights to CLP as they now stand, but is also a collateral attack on both your claims process orders and your order of April 4.

Now the monitor, in page 15 and 16 of its report, also notes that that CLP claim is very important to the CESCA creditor group as a whole. It is the swing claim. Depending on how much it is determined that, and I can say that at this point I believe all the parties are agreed that needs to be determined, because I don't believe it will be settled, that that claim is a swing vote, a swing claim which determines whether or not the CESCA creditors get paid in full under this settlement agreement.

Well that's a critical fact among all the CESCA creditors, and having that determined would be of great assistance in determining whether or not there is a compromise being imposed on the CESCA creditors whether they like it or not. It's a question of whether it needs to go to a vote. So the determination of that issue, which we are all in agreement should be done as expeditiously as possible, we say should occur under that schedule and be so ordered by you.

So, in summary, the CESCA creditors are

exposed to recovery as low as 64 percent. The size of the CLP claim is a key driver of how much that compromise will be. In addition, the rights of the CESCA creditors are being compromised in a number of ways, recognizing that there are benefits, recognizing also that we have always maintained that the ULC1 claims, by virtue of the nonrecourse nature of the notes, were not, in fact, through claims as if this chain of assets in Canada, but there are a complete -- the settlement agreement is a complete plan of priorities it sets out who gets what and how from all of the Canadian. Estates, and that in that regard it is more like a plan outline and does propose compromises to classes of creditors, and therefore must be put to a vote, which we say should happen expeditiously so as to coordinate with the US proceeding and be then in tandem with the resolution of the CESCA claims so it can be determine whether or not there are, in fact, economic compromises to be suffered by the CESCA creditors.

JUSTICE ROMAINE: Mr. Thornton, I just seek to take you up on the table on page 15, of course. The table shows that the creditors of CESCA who are possibly at risk are the trade creditors in the amount of 1.9 million dollars, and the gas transportation claims creditors in the amount of 23 million dollars. I don't hear the trade creditors objecting to this approval of the settlement

agreement today, and I have heard from the gas transportation claimants that they in fact support the settlement.

Where is the risk to your clients?

MR. THORNTON: You have bought into the argument that there will be recoveries --

JUSTICE ROMAINE: Perhaps I have.

MR. THORNTON: -- of one hundred percent from the -- because you've identified the 25 million dollar shortfall.

JUSTICE ROMAINE: I'm not talking about the guarantees, I'm talking about the shortfall after taking into account the guarantees.

MR. THORNTON: After taking in the guarantees. Yes, I'm suggesting that from the point of view of this court and whether or not there are compromises, the mere fact that they are forced to look to guarantees is in itself a compromise.

JUSTICE ROMAINE: Yes, I understand your point.

MR. THORNTON: Now jurisdiction comes from two places. A compromise can be consented to, and if it's consented to, is binding upon that creditors. But it is not within the jurisdiction of this court to impose a compromise on a class of creditors without a vote of that

class, a two-thirds majority of vote in value and a majority in number and a sanction order that says it's a fair and reasonable compromise.

What we are doing here is skipping that nasty step of the proposed compromised based on the fact that some people haven't showed up or that some have and they like it. That's good that they like it, that means that there's a chance that this would actually be voted on and approved, that this is not doomed to fail, but we should go forward to a vote. But what you cannot say today, My Lady, is that every creditor who is affected by this compromise has signed off on this saying that they accept it. And without that you must go through the mechanism of having a vote.

We wish that they had. We don't see any reason why they can't. The vote can happen here within the timelines of what is the economic, legal and practical necessities of this case.

The US debtor is not about to emerge from Chapter 11. I don't believe it's scheduled before the end of December. We are now at the end of July. We can have a vote in a couple of months. We can have a determination of these outstanding claims within that same time period. We can be done. We don't need to skip over the fundamentally important Canadian aspect of this restructuring, which is a

creditor vote of a proposed compromise. There is no need to try to skip that bit. If this is such a good deal and they have such creditor support, why are they not putting it to a vote? Why are they asking this court to side step and turn on its head the Canadian restructuring law, and that is in essence our submission.

Now, if they say don't worry there's a vote coming later, I say the train will have left the station. This settlement agreement is, conveniently perhaps, but as point of fact, wrapped together as one big ball. You don't get the benefit of a clean bond sale unless you buy into the structure of settlements and priorities established through CCRC and CCEL, you don't get one without the other.

So, is that compromise worth it? Are those benefits worth the burden? In my submission that is exactly the question that our regime suggests must be put to the creditors, and that's what we should do. And we should be quick about it.

A vote after the settlement agreement is implemented, a vote after this settlement is implemented would mean nothing. You couldn't unscramble the egg at that point. There is nothing from a military point of view, after the settlement goes through, there is nothing left to be done but bayonet the wounded. And we will see then whether or not these creditors have a shortfall or

not. They should not be asked to take that risk, we don't need to be asked to take the risk, we can determine that beforehand, and we should do so before it's implemented.

Which brings me now to the issue of jurisdiction. There are four relevant sources of jurisdiction under Canadian restructuring law that possibly come to bear here. Under Section 11 of the CCAA, you are given jurisdiction to make such order as you consider appropriate on an initial order or any other application. That allows you to impose a broad stay to stabilize the business of companies and do all manner of things that have filled the case books with the appropriate extent of that jurisdiction, and after the initial order, it is the section that gives the jurisdiction to shepherd the process along.

Now where that shepherding process jurisdiction under Section 11 stops, and the jurisdiction under Section 4 begins, is where there is a permanent compromise or arrangement of rights being proposed by the debtor upon the creditors generally or a class of creditors. There is exactly what Section 4 says.

Section 4 then prescribes what your jurisdiction is. It says you may, and implicitly may not, choose to put it to a vote of the creditors duly called. What it does not say is that you may decide to implement

the transaction and forego the vote. There is no such authority within the CCAA.

Furthermore, where the statute is specific as to what your discretion is, inherent jurisdiction cannot pour in to fill the gap because there is no functional gap. The statute says what must be done, and that is what we must do in a way that helps the case move forward to a resolution.

Now, there is also jurisdiction under Section 18.6. 18.6 is meant to coordinate foreign proceedings. And under that section, it is specifically -- that section is not so vigorous as to override a fundamental right nor to override the statutory discretion inherent in Section 4. I will deal with that in length during the course of the cases, as I would like to address the cases. I would like to address Red Cross, Palladium, Air Canadian Stelco and Phelps, and I will do so in the context of the distinction between of the sale function and the shepherding function under Section 11 with the requirement under Section 4.

Now, in both Red Cross and Palladium there was a sale of substantially all of the assets. And now I am mindful here that they are both Ontario cases. And I am mindful of the fragmaster decision from the Alberta Court of Appeals that suggests that perhaps liquidating all the

assets is not a jurisdiction that -- that should not be done under the CCAA. So I will leave my Alberta co-counsel from Peacock Linder to address the fragmaster decision specifically. But because my friends would submit to you, which submission I submit that they are wrong, that Red Cross and Palladium stand against, me I'll address them anyway, even though they might have been differently decided had they been decided by this case.

So in Red Cross there was a sale of substantially all of the assets. In essence, My Lady, the case stands for the proposition that a debtor may propose to convert its existing assets into cash, and that that exchange does not affect a compromise on anybody, that's a conversion of one asset for another. So that alone does not amount to a compromise.

Now in the Red Cross case one creditor said, don't do that, I want the debtor to consider going concern restructuring. But Mr. Justice Blair, when he was still at the trial level, held that there was, as a matter of practicality and legality, there was no way the Red Cross could stay in business, that the governments had made the decision that the Red Cross was no longer going to be responsible for the blood supply business in Canada because of the social and political repercussions flowing from the tainted blood scandal which this country so unfortunately

faced. So we found that there was no possibility of that being a realistic possibility, and therefore the fact that that was not being put forward or followed by them could not be viewed as a compromise.

So Red Cross and Palladium, sale of all the assets, exchanged the assets for cash, and provided you do so in the right way, as we've learned here already in the agreement sale, that you go through a process, that you are content that there is no unfairness in the process, and that the price is good, all of the sound air principals that we've already debated at length in this part, that court may, under its supervisory jurisdiction down under Section 11, approve theit's conversion of assets.

Now in Air Canada, quite a different thing, in Air Canada it negotiated -- Air Canada and its affiliates negotiated a significant agreement with a major constituent, GE. I had some familiarity with that having been on the team that did that. It provided a significant amount of exit financing, of new regional jet financing, which was key to Air Canada's business plan, and most importantly it offered a number of compromises on various aircraft as the leading lessor in Air Canada's fleet, approximately 25 percent of the fleet was leased with a GE affiliate.

And that GE deal formed a building block to

what eventually became Air Canada's plan of arrangement. But, and this is an important distinction, there were no compromises of any other creditors' rights proposed or inherent in the settlement agreement other than those that directly affected GE, the party to the settlement. It did not purport to compromise the rights of creditors generally, nor any particular class of unsecured creditors, only GE's rights were compromised.

And so I would submit to you that in that case Section 4 never entered in. The parties accepted the compromise, they asked the court to bless the transaction as the building block under the supervisory, shepherding jurisdiction in Section 11, and most importantly, My Lady, they then put it to a vote. When they actually got enough building blocks together to have a plan, that plan was put to the vote and the deals inherent in the GE agreement became effective upon exit. As opposed to here, where a comprehensive plan of priorities and compromises are to be effected immediately, without ever having a vote.

So then we turn to the similar kind of deal approvals in Stelco. And again this is a case of interim supervision under Section 11, as both the trial judge and the Ontario Court of Appeals being clear. There were no compromises or arrangements proposed on any creditors other than those who are parties to the deal. There were three

of them, as I recall. The first was a collective agreement there had been outstanding which the united steel workers used to great advantage. It settled deals as between the steel workers and Stelco but didn't effect anybody else. Next, and I can assure you that there were no compromises in there.

Secondly, it established how the pensions were to be funded by the government, and the government was a party to that deal, and that did not effect creditors generally, it effected the funding of the pension plan. And lastly they made a deal with Tricap, and Tricap offered exit financing and that was approached. The only thing that could be worried into a compromise of creditors generally was that the Tricap financing had a break fee, and the court, both at trial and in the Court of Appeals, recognized that the break fee in and of itself was held to be a reasonable one.

And I would submit, My Lady, that it is now recognize that it is a cost of doing business of getting in a value enhancing financing transaction that there needs to be a break fee component when you are dealing with an insolvent company. And the cost that of that value enhancement cannot be viewed responsibly or practically as coming within the meaning of compromise or arrangement of creditors generally within the meaning of Section 4.

Now I would like to take you to some of the things that the Ontario Court of Appeals said in Stelco.

JUSTICE ROMAINE: Mr. Thornton, I have copies of these cases in several places; can you perhaps tell me where I can find Stelco?

MR. THORNTON: Yes. If you look at the ad hoc committee of creditors of Calpine Canada Resources Company, that is at tab 5, My Lady.

JUSTICE ROMAINE: Okay.

MR. THORNTON: No, I am in error.

JUSTICE ROMAINE: Okay.

I've got it, found it. Thank you. Judge Lifland, are you okay?

JUDGE LIFLAND: Yes, I'm fine.

JUSTICE ROMAINE: Okay. Thank you.

JUDGE LIFLAND: Does Mr. Thornton have an estimate of how much more time he's reserving?

JUSTICE ROMAINE: I'm sorry, Judge Lifland, I couldn't hear that.

JUDGE LIFLAND: Does the speaker have an estimate of how much more time he's going to spend?

JUSTICE ROMAINE: Mr. Thornton?

MR. THORNTON: Yes, I suspect I would be approximately another 15 to 20 minutes.

JUSTICE ROMAINE: Do you wish to call an

adjournments, Judge Lifland?

JUDGE LIFLAND: Why don't we wait until he's finished.

MR. THORNTON: I'm actually having trouble finding my copy of the case.

JUSTICE ROMAINE: It appears that it might be a good time here to call an adjournment. Would you like to do so?

JUDGE LIFLAND: Sure.

JUSTICE ROMAINE: Okay. How long do you usually call.

JUDGE LIFLAND: I usually take five minutes.

(Laughter)

JUSTICE ROMAINE: 20 minutes; is 20 minutes all right?

JUDGE LIFLAND: Sure, 20 minutes.

(Whereupon a recess taken)

JUSTICE ROMAINE: Thank you. Please be seated.

JUDGE LIFLAND: Is everyone refreshed? Please be seated.

JUSTICE ROMAINE: Judge Lifland, we are ready to continue? Are you ready?

JUDGE LIFLAND: We're ready.

JUSTICE ROMAINE: Mr. Thornton?

MR. THORNTON: Thank you, your Honor. Thank you, My Lady.

In fact there are two different Stelco cases in two briefs, which was the cause of my confusion.

I point you to the reply brief of the US debtors at Tab C.

JUSTICE ROMAINE: Okay, thank you.

MR. THORNTON: So this is the Court of Appeals decision after Justice Farley had approved the interim deals to go forward with a plan and the bondholders objected and said that any such plan was doomed to fail. The Court of Appeals says, at paragraph 18, and I'm quoting paragraph 18 and 19, "In my view the motion's judge have the jurisdiction to make the orders he did authorizing Stelco to enter into the agreements. Section 11 of the CCAA provides a broad jurisdiction to impose terms and conditions on the granting of the stay. In my view Section 11.4 includes the power to vary the stay and allow the company to enter into agreements to facilitate the restructuring, and I emphasize these following words, provided that the creditors have the final decision under Section 6 whether or not to approve a plan."

And then again at paragraph 19, they say, "In my view, provided the other" -- pardon me "provided the

orders to do not usurp the rights of the creditors to decide whether to approve the plan, the motion's judge has the necessary jurisdiction to make them. The orders made in this case do not usurp the Section 6 rights," and for your Honor, that's the right to vote and Section 4 is the right to call a meeting to hold the vote, "of the creditors and do not unduly interfere with the business judgment of the creditors. The orders move the process along to the point to where the creditors are free to exercise their rights at the creditors' meetings."

Now I would submit that what the court is doing in that case is recognizing that the supervisory shepherding jurisdiction under Section 11 runs up against a wall when faced with a compromise proposed to the creditors as we have in this case.

In this case, usurping the creditors' rights is exactly what is being proposed as the debtors here are not speaking mere approval of this deal, but actual approval and approval of implementation of it now, and without a creditors vote. It is the implementation that compromises the rights of the creditors groups here, and that rendered any subsequent vote meaningless for the reasons I have previously described.

In both Stelco and Air Canada, the affect upon other creditors of the largest complicated deals put

before the courts for interim approval there were delayed in their implementation until after the creditors had their say by way of a vote. It's ironic that in Stelco the bond holders said, this is doomed to fail so don't you dare send it to a vote. We are standing here today and saying the debtors are trying to forego that vote please send it to them.

Which brings us to the Phillips services case. Now that case is to be found in our book of authorities, the book of authorities of the ad hoc committee creditors of CCRC, at Tab 3. Now in that case, a cross-border case where both Canadian debtors and US debtors, as here, and a compromise of rights of Canadian creditors was proposed. In particular, under a joint plan, some Canadian creditors who had claims against the parent were to be dealt with in the US and not the Canadian plan, and as such, they had no right to vote in the Canadian meeting.

And the heart of the decision is in paragraph 38 on page 11. And I quote it in its entirety. "In my opinion, it is the loss of the right to vote in the Canadian plan which lies at the heart of the present dilemma. The mere fact that a Canadian creditor's rights are to be dealt with and affected by a single or parallel insolvency in the U.S. Bankruptcy Court, or that the

reverse may be the case, a US creditor in a Canadian court, is not necessarily sufficient in itself to undermine the fairness and reasonableness of a proposed plan." He cites two cases there.

"In Canadian insolvency proceedings under the CCAA, however, it is the right to vote on the compromise or arrangement which the debtor company proposes to make with them, which is the central counter part on the part of the creditors to the debtor's right to attempt to make that compromise or arrangement.

"In my view, having chosen to initiate and take advantage of the CCAA proceedings, Phillips cannot now evade the implications and statutory requirements of those proceedings by seeking to carve out certain pesky and potentially large contingent claims," and may I stop there to say that if there ever was a perfectly pesky precedent that is, for this case, "as a requirement to be dealt with under a foreign regime where you will be treated less fairly, while at the same time purporting to bind them to the provisions of the Canadian plan, all of this without the right to vote on the proposals."

JUSTICE ROMAINE: In Philips there was a settlement and there was a plan, the two were distinct. And these comments of Justice Blair referred to the plan, did they not?

MR. THORNTON: Correct.

JUSTICE ROMAINE: Not the settlement agreement. And the plan purported to cram down certain creditors.

Mr. Dunphy, do you want to address that?

MR. DUNPHY: The plan certainly outlined on what it would say, but it wasn't, I guess, proceeding to votes, and so on and so on.

JUSTICE ROMAINE: Right. But they wanted something identified clearly as a plan.

MR. DUNPHY: Yes, there was.

JUSTICE ROMAINE: And something identified clearly as a settlement.

MR. DUNPHY: That's correct.

JUSTICE ROMAINE: Okay.

MR. THORNTON: As far as the United States, there was a proposed settlement which was put forward to the court, and various motions as to what should go forward and how.

And in my submission it does not what you call it, whether it's got the name plan in the title or not, the word plan does not appear in Section 4. What Section 4 addresses is whether there are proposed compromises or arrangements.

So the fact that we have something called a

global settlement here, it doesn't call itself a plan, it is certainly not the determination if there are not proposed settlements and compromises. There are, in fact, many settlements and compromises, as I have suggested in my submissions, and it is up to the creditors to decide that based on this court's jurisdiction to decide whether to put it to a meeting and a vote or not.

MR. DUNPHY: In paragraph 17 of the decision, Justice Blair says in Philip's perspective the plan filed in both the US and Canada, according to the debtor, so that we are clear to on that.

JUSTICE ROMAINE: Thank you.

MR. THORNTON: In my submission it doesn't matter, because in this case what we have is a plan, not so named.

Later at paragraph 42 we have the statement of the law in Canada as I submit it now stands in terms of when and how this court can compromise creditors' rights. And that is to say that the rights of creditors under the CCAA cannot be compromised unless, one, the creditor has been given a right to vote in the appropriate class on the proposed compromise, two, no mention of a plan there, B, that the creditor's vote is in accordance with value ascribed to the claim by a court approved procedure, we have a claims procedure here, C, the class in which the

creditor has been appropriately placed as voted by a majority in number and two-thirds in value in favor of the compromise, and, D, the court has sanctioned the compromise on the basis that is fair and reasonable with a considerable deference being given by the court in this regard with respect to the votes of the creditors.

Now that is not what is proposed here. What is proposed here is an implementation of a proposed compromise and arrangement which is a comprehensive plan, and it may be a wonderful settlement, but it has not gone through the steps required under Canadian law to effect a compromise, and cannot be simply approved directly by this court.

Now, we then turn to issues that are also germane to this case regarding comedy and the jurisdiction under Section 18.6. And Justice Blair says that the jurisdiction you under 18.6 cannot override the statutory requirement of the vote.

And I turn to paragraph 48 of the Philips decision, starting in the middle of the paragraph at the word however, "However, comedy and international cooperation do not mean that one court must cede its authority in jurisdiction over its own process or over the application of the substantive laws of its own jurisdiction whenever any kind of differences between the two

jurisdictions may arise. Both the protocol and the provisions of subsection 18.6 sub 2 of the CCAA which gives this court authority, 'to make such orders and grant such relief as it considers appropriate to facilitate, improve or implement arrangements that will result in the coordination of proceedings under the CCAA, any foreign proceeding, confirm this.'

"Sub Section 18.6 5 of the CCAA provides that nothing in this section requires the court to make any order." And he emphasizes that he is not in compliance with the laws of Canada or in the force and the order made by a foreign court.

So My Lady, I remember respectfully submit that the Philips case has settled the issue of whether Section 18.6 can be used as a back door through which the jurisdiction clearly demanded in Section 4 where compromises are proposed to be applied, and it can not.

In summary, courts' jurisdiction is found and prescribed in Section 4 when a compromise arrangement is proposed. The discretion provided within that jurisdiction the is to determine whether or not to put the matter to a vote, not to simply implement the compromise directly.

No matter how appealing such a compromise might be to this court and the creditors, it is not within

the jurisdiction of this court to do so. Such a cramdown cannot be done in Canadian insolvency restructuring.

JUSTICE ROMAINE: Where do you say the cramdown occurs here with respect to your clients?

MR. THORNTON: Correct.

JUSTICE ROMAINE: Where do you say it is occurs here with respect to your clients.

MR. THORNTON: It occurs with respect to all of the compromises that I have identified which we may accept. They are 75 million out to the US debtor. It's cutting off the claims in the CCEL. It is establishing the foreign court as a jurisdiction to determine rights and entitlements that are now before this court. They are all of those things, which might be ironed out by the time we actually have a vote, or it may be determined that the size of the CLP claim is such that the CESCA creditors are in fact are not compromised. But right now there is a settlement being imposed that is at best a maybe in terms of being paid in full from Canada, and that is the cramdown. That is the matter that must, as a matter of Canadian law, be put to the creditors.

And it can be done, I hasten to add, in a time line that does no violence to the cases that are before this court and the US court. We can still go forward and do everything that we wish to do. There is no

screaming urgency here that requires us to travel upon the Canadian insolvency regime to that requires a vote of potential compromises.

JUSTICE ROMAINE: So you don't accept the urgency argument with respect to the volatile of the market being the necessity to sell the bonds as quickly as possible.

MR. THORNTON: Well, as you know, My Lady, we have on our record saying that bonds should have been sold many, many months ago. Now in a perfect world we would be done now, but the bond market has not been proved as so volatile that we can't wait the extra 60 days that it would take to get this thing to a vote, perhaps 90.

After a year and a half in this proceeding, to suddenly now have everyone jump on the urgency band wagon because they think that's the way to trample over certain pesky creditors that might be standing in their ways demanding a fundamental right like their right to vote, there is no reason to suggest that now, of all times, is this critical 90 day period.

So, My Lady and your Honor, I would submit that the broad compromises that are contained within the settlement agreement is, as hard bargained as they all were and as wonderful a deal as they all might be, still represent particular, potential, or and actual compromises

classes of the creditors in Canada which requires this court to exercise jurisdiction under Section 4, and not simply implement it under any other jurisdiction, because a vote after the battle is over, the creditors --

JUSTICE ROMAINE: I think somebody walked over the video camera.

JUDGE LIFLAND: Somebody is exercising editorial prerogative.

(Laughter)

MR. THORNTON: I knew you were with me, your Honor.

JUSTICE ROMAINE: Okay.

MR. THORNTON: The proposed compromises here would be effective immediately, or forthwith. There would be no vote. The battle would be over and the creditors get what's left. And that's not the kind of creditor protection that is required under the CCAA. It is required under our regime. And it is spoken out by Justice Blair in the Philips case, and in the Ontario Court of Appeals in Stelco, and by the Alberta Court of Appeals in fragmaster.

I pause here to mention that the ramification of any decision to the contrary will be important for future Canadian restructures. This is an important case and an important issue. Increasingly,

Canadian restructurings have cross-border implication. And there are those who believe that many elements of the restructuring statutes of other jurisdictions, particularly of our neighbors to the south, should be incorporated into our CCAA. And, in fact, some of them are in the legislation which has been passed but not yet proclaimed enforced; however, even those provisions do not include a cramdown provision such as being contemplated here today, nor can they purport to give the court the jurisdiction to forego a creditor vote of an effective class of creditors.

The decision in this case that would allow the debtors and the court to implement a compromise or arrangement without a vote over the objection of creditors would have far reaching effects indeed. In our submission such a change must come from Parliament and not from the court.

I turned to turn to the last leg of my submissions, mercifully for some I'm sure, and that has to do with the discretion that this court has under Section 4 about how, and how we should go about putting this matter to a vote. As I have is said, the two large creditor groups which stand opposed today are the ULC2 bondholders and the CESCA creditors, particularly CLP. The CLP has two large undetermined claims, and those claims can be determined on an expedited base.

A significant amount of work has already gone into agreeing on a common model to calculate the amount of the claim depending on various legal theories and inputs, and a litigation timetable has been worked out between the US and Canadian debtors and CLP. And we would suggest that it would greatly assist the creditors, when coming to a vote, to know what that CESCA claim is, and whether, in fact, they are even being offered a compromise by this settlement.

As it now stands it's somewhere between 65 and one hundred percent; and that's a range, and that's a potential compromise. If we determine the claim, we will know with certainty what the compromise is, if any. It is our submission that it would be towards the lower end of that scale, but that is a matter to be determined in this process fairly and expeditiously, and that will inform the decision. Likewise, the issues that separate us on the ULC2 trustee's part can also be determined expeditiously and within the time frame that a vote would be allowed.

So we say that this is not a case where your discretion should be exercised not to put this to a vote at all. We do not suggest we throw this agreement out the window, because it is not doomed to fail. What we suggest that practicality dictates and justice demands is to put the handful of largest claims that are outstanding

into an expedited process in parallel with the vote that's required and bring this entire proceeding to its practical conclusion.

Lastly, I reemphasize, My Lady, where is the urgency? We have, in fact, been at this, which is not a restructuring but from the Canadian perspective a liquidation, for a year and a half.

JUSTICE ROMAINE: Is that all?

MR. THORNTON: It just seems like three. The US debtor does not need this cash. They are not despite for this last 75 million dollars to stay in business. They will do quite well. And they would be very happy to receive this before or upon their exit from their proceed I am sure. Time has been generous to this proceeding in that the values have risen. And there is no evidence before you that the bond market is such that it is about to crater such that huge value is going to be lost. So there is no urgency disclosed that would require you to consider for a moment that there is some crisis that should tempt you to eliminate a fundamental right of the Canadian creditors to vote on this proposed compromise inherent in the settlement agreement.

In fact, My Lady, it is our submission that the debtors are trying to do this not because they have to, but because of the weight and momentum they think they can.

And we say there is no jurisdiction in Canada to do that.

So in the end, My Lady, we are asking for a brief delay in the implementation of this agreement and a vote. And while that vote is being put in place, we should do three things -- pardon me, one is the vote itself; two other things. One is to direct the ULC creditor entitlements to be determined as expeditiously as possible. And thirdly, that the CLP claims be determined in accordance with the schedule contained in the reply briefs.

In all cases that can be by the end of October or the first week of November, creditors will have clarity to know what they are getting, and more importantly what they are not getting and what they are giving up in the settlement agreement, and will be able to make an informed decision, and most importantly, Canadian restructuring law will be respected.

Those are our submissions.

JUSTICE ROMAINE: Thank you, Mr. Thornton.

Mr. Dunphy?

MR. DUNPHY: My Lady and your Honor, I will be referring to exactly two volumes of things. To make life a little simple, have I the affidavit of Sean Collins from the 20th of July. I'm only using that because it has the settlement agreement black lined in it as Exhibit E, and at the tail end it's got the revised draft of the US

order that I had a few comments on. So I'll be turning to that from time to time.

I have the affidavit of Jacob Smith, which is the one that we filed on behalf of the ULC2 trustee. And the only thing I'm going to be referring to in that is Article 7 of the trust indenture, the ULC trust indenture in a moment, and then finally our bench brief, but you can get it elsewhere, it's the famous Philips case. I'm proud to say it's the only case I've ever lost. But I can show you something were where I've gotten from that.

Now I would very much like to join the parade of counsel that is congratulating everyone on the wonderful settlement that they had done. I'm sure that there was a lot of hard work all around. My only complaint was that in their excess of enthusiasm they decided to settle my claims too. And I would very much of appreciated a phone call or two just so we might compare notes. And I note the contracts between what happened here and what happened in my friend's court. Mr. Seligman stood up and said he had all these committee and that he was keeping them all up to date, maybe erroneously thought I read into that, but they had probably seen drafts of the settlement agreement once or twice, and maybe put into the order, because I see the revised order has about six paragraphs on the end stipulating that not a single change to the

settlement agreement is going to be made without those committees having their say so. I have nothing like that here reflecting the fact that this material was drafted with a long session in front of a mirror. It was not drafted by getting dialog with us, and that's where I would submit using my analogy to the Philip case.

We need a level the playing field here. They are close. They are very close. This is not, in the abstract, a bad deal. There are a lot of good things done here, there's been a lot of hard work done. We are very close, but what we have is, in effect, unilateral deal, and as my friend said a moment ago, relying in part upon the momentum of a deal, let's see what else we can put on the back of the train and get it down the tracks. And, My Lady, I am saying there are some things you can't do that way. We can fix them if we had a proper level playing field and a single opportunity for dialogue. And at the end of my submissions, I will give you a suggested fix, at least for us, which is very simple and they are already all in the documents. We don't have to do things in a complicated way when it's fairly simple. I'll leave you in suspense on that for a moment.

Now our main points are that the ULC2 trustee, standing as it does in the shoes for all the bondholders, has compromises imposed upon it. You will see

in the settlement agreement and two draft orders that our claim is determined at a number which is less than the face amount of the bonds and which we say is inadequate interest.

I'm going to take you to one that's completely unnecessary for that one, but there's more; not only is that claim determined with a without a hearing on the merits, with a subsequent right which, in effect, to revised claim, but it doesn't say that. It says we have an allowed claim in one paragraph. Two paragraphs later it says if it's a different number we can fix it. I guess I read into that that I have some kind of right of appeal, but I'm not sure what it means.

But, be that as it may, I have a bunch of other claims. We have oppression claims filed against CCRC backed by nothing less than a judgment by the Nova Scotia court, and we have claims filed against the US debtor backed by that same judgment. We have a number of claims filed in the US and Canada, all of which are being dismissed through and thoroughly without a hearing on the merits. Now is if not though that is not a compromise on my claim without a vote, I don't know what is.

JUSTICE ROMAINE: Well, Mr. Dunphy, it may be that your claims have been recharacterized, but the financial impact is the same, is it not?

MR. DUNPHY: No, it's absolutely not, it's all a question of timing. And this all gets to the nub of the matter. And I'll take you to it. Article 7 says, My Lady, how you pay my off. Because what's really happened -- let's take two steps back and look at this from on high. What the US debtor and Canadian debtor are relying telling you, break out the ticker tape parade, the market has been good to us, and I congratulate them.

And as a result, the Canadian estate is totally, if not certainly, probably not asset insolvent any more. It may have appeared to be asset insolvent when they filed, but what they are telling you is the claims sitting on the books, who owes what to them, there is enough there to pay everyone; they haven't done it yet, but they are saying there is enough.

It may be liquidity insolvent, meaning that absent of the sale of the ULC1 bonds they haven't got enough money to pay their creditors right away, and many of them have accelerated claims, but they are telling you they are asset insolvent.

And what follows from that, of course, is that now the US debtor says, well, I have the equity left here and all the residual things are mine. And I have no dispute with that; it is. I have only dispute with putting the cart before the horse or after the horse; the equity

cart belongs behind the creditor horse, not in front of it.

So what we are seeing here is, in a dialog between the US debtor and the Canadian debtor, I need not point out wholly owned subsidiaries, in a case where equity has restorative value, we have all of the equity, in effect, being safe.

Well, I'll get the 75 million now, I'll get a bunch of your claims against me canceled, and while we're at it, I'm going to cancel, and, My Lady, I will not say recharacterize, they are canceled. My claims are simply gone. And in fact they are gone whether or not the settlement agreement ever closes. They are gone whether or not I'm ever paid out. They are gone whether or not we have a 1929 again that crashes everything.

I'm not standing here telling you that I want to take market risk and volatility risk. I'm still saying sell the bonds yesterday and pay me thereafter. My job as trustee is simply to recognize when the obligations on the trust indenture have been satisfied, and they haven't. There's a road map to do it right in the trust indenture and you don't need my permission to do it. You just flood me with money; it's easy and it's right in there. And if there's too much it tells me what to do with it; I give I it back to the company.

I'm a trustee; that's what I do. I hold

the money, I find it tells me who is entitled to it and I give it out. It's right there. You don't need my permission. You don't need a court order that says anything. You don't need to dismiss my claim; you just need to do it. So rather than say trust us you will be paid, what I say is I'll trust you when I have been paid. And until I have been paid axiomatically, I haven't. And at the point in time where I haven't and all my claims are flying out a window, that is a compromise. It is nothing more or less than a compromise.

And, My Lady, there are a lot of things we can do under the CCAA, it affords us a lot of latitude, but not unlimited latitude. And as I heartedly concur with what my friend said about Section 4 of CCAA. Look at the definition of court in the CCAA. My claim can't just be tossed over to another court to be determined, not in the CCAA. If I'm being paid under the trust indenture, different matter maybe. If you are looking for advice and direction as a trustee, I might go to the superior court of any province or in the State of New York possibly, but there's a if I needed advice and directions; there's a provision dealing with that.

If I'm being paid under the CCAA, then either give me a vote or pay me out. And you can't just invent a mechanism to do that. What they are trying to do

is come up with what is, in effect, an insolvency discount, and they are not entitled to that. It's not like equity is getting paid here. What they are entitled to do is give me everything I'm owed, and when I'm not owed any more, surprisingly enough I will have no more claims. So my claim will die a natural death, not a premature one. They will die a natural death when the trust indenture is discharged. And there's a specific road map for how you do it in Article 7, and I'll take you to it.

JUSTICE ROMAINE: Mr. Dunphy, and perhaps this is a question that Mr. Meyers can help me with.

Do I understand today that I'm being told in the Canadian order that the claims are not released until the CLR2 notes have been paid. Mr Meyers?

MR. MEYERS: In the Canadian order, the claims are released when the bonds are sold. And we will have a commitment, an order of the court, requiring us to come back here as soon as practicable to distribute the money. And that's, of course, when the US will get their 75 million as well.

JUSTICE ROMAINE: Okay.

MR. MEYERS: The same fund; the same distribution order. You will order us to come back and bring that motion right on.

JUSTICE ROMAINE: Okay, thank you.

MR. DUNPHY: And I'm going to get to that since I'm hopscotching all over my submission.

JUSTICE ROMAINE: Go ahead.

MR. DUNPHY: But the US order is patently clear, in paragraph 16 and paragraph 5 of the draft US order said, if memory serves me, those two paragraphs make it of immediate effect so that my claims in the US are evaporated on contact of your pen with that piece of paper, your Honor's pen. So that's when my claims evaporate in the United States. My claims in Canada apparently evaporate on the completion of a bond sale, according to the settlement agreement, after which I'm still not paid, nor have I even got a certainty of being paid. I don't have any money being held in trust for me anywhere that's only for me and not for anyone else.

I then have the liberty of sitting back and waiting for the subsequent application, which may or may not be granted, and which may or may not involve different circumstances arising between now and then, which may or may not see me paid. In other words, while I'll probably be paid, I don't know that I'll be paid. And it is entirely unnecessary to compromise all of my rights if it is assured that I will be paid. It is so simple to say to the US debtor and the Canadian debtor both, if you are both telling the court that the reason why you need pay no heed

to ULC2 is because they are going to be paid in full, then stop wasting the court's time and mine with a bunch of compromises that you don't need, because, as a matter of law, when I am paid in full, all of those claims fall away. And if it's eminent, if it's going to happen by September 30th, from their lips to God's ears, it should happen.

But it hasn't happened. And until it does happen, I would submit Section 4 of the CCAA. This is not an issue, it cannot pass. It cannot pass. When I am paid, then I'm not compromised. When payment is in futuro and my present, existing claim is evaporated on that hour, minute and day, I have been compromised. And you need look no farther than Section 4 to say there is no vote that preceded that. It was not done by my voluntary concession, and therefore my claim, having died an ignoble death on that day, was compromised and it cannot pass under Section 4. There are many things they wish they could do, but that's just not one of them.

But as I said, there is an easy way out here because Article 7 tells you how to pay me off. And I'm a trustee, and I'm used to holding money for other people. And if it turns out you end up giving me a little bit too much and I have to give a bit back, we can handle that. And it if it turns out that we have to come back to the court for direction because my financial adviser and

the monitor can't agree on the right number or interest, how long can that take? And will we have an issue on the make whole? Well, we don't have an issue on the calculation of it, but we do have an issue on the merits of it, and that's what I'm owed by ULC2, a Canadian company.

And so, can we come back between now and September 30th to have a hearing on that? I think we can. Can we get a ruling before then? I should think so. Do you need to have all this in the settlement agreement that is jamming me in advance when your whole premises don't listen to him because he's paid? Absolutely not. If you are going to pay him anyway, then why insert provisions in there dealing with the ULC2 trustee? You don't need it. You've got Article 7. You don't need my consent to discharge the obligations on the trust indenture.

I'm a passive preacher. I just follow orders. Pay me money, I'm out of here. It's no discretion on my part, just follow the map that's in Article 7. And what follows from that follows from it. What my legal entitlements are more, and unfortunately for them not less; just what it is.

And that's the beginning of my end of submissions, quite frankly, it's a little bit in the middle which I'll get to now.

The first ask is what do we want? We want

to be paid in full before our claims fall away. We want not the probability of settlement, but the certainty. We want to know we have been paid. I don't want to have a subsequent application to the court to say can I be paid now and find out that revenue in Canada is reassessed. I don't want to have a subsequent application and find out that some other thing has happened and that values the have plummeted to the floor and who knows what; not my cup of tea. If that happens I'll live with it, if values do fall, but then I keep all my claims. If I have three pockets to pick to get paid then so be it. But until I'm paid, I'm not.

So we want to have, as I said, nothing prior to being paid, we want to have any dispute on quantum settled by this court. Am I telling you that you cannot have a joint hearing as we're having today? Absolutely not. If you think it's warranted, it's merited, we can do that.

The only justification for having my claims determined in a different court is that the make whole provision is set to be governed my New York law. Well, guess what? This settlement agreement is governed by New York law. Are we to understand by that, that by virtue of having the settlement agreement that any subsequent applications, including, while I'm at it, my getting paid

have to go now before the U.S. Bankruptcy Court because it's governed by US law? Not at all. We have contracts governed by foreign law every day of the week.

And the rules of conflicts of law are the law of the forum is presumed to be the same unless there's evidence lead to the contrary. There's no evidence to suggest that New York law is the issue on the make whole, it's the interplay between the trust indenture and the CCAA where we are in kind of uncharted territory here. And that is your domain. It's not what the words mean, it's how you apply those words in the context of the CCAA. And with all due respect to his Honor, that's not determined under the US Bankruptcy Code, that's determined here.

And it's the obligation of a Canadian company, ULC2, under the trust indenture that I'm saying you can't just turn that away. And under the CCAA, which is the only jurisdiction being invoked here to do all these things, you must determine my claim. The court is not a different court, it's you. It's the Alberta court.

So I would submit, and my second ask was I'm in this court and I stay in this court. You can ask for directions. We can do have joint hearings; I'm all over all of that, but I can't be thrown out. I'm staying here until you are done with me is my submission.

The third ask we have is that any disputed

sums, and if there appear to be some I won't bore you with the details of that dispute because I'm sure we'll have a chance to do that before you later, but there are some legitimate disputes that add up to a relatively small sum of money compared to the total amounts at issues but there's some real numbers. There's about 30 odd million on the make whole, and there's three quarters of a million to a million in interest.

We were a couple million apart. We are now about three quarters of a million apart. We may settle those numbers out with further discussion, or we may need your help. But our submission is if we are going to have some escrow numbers, I don't want to have anything preparatory in there, anything that may apply for an escrow or anything something.

The only condition of my being paid should be my legal entitlement on the resolution of that issue, not whether some subsequent issues occurs and they become asset insolvent again. If the premise is that we are all asset insolvent, then pay me out and be done with me. But I'm not losing my claims, and I'm taking the risk that escrow is going to have somebody else putting their nose into it and saying that's my money, too.

Article 7 says you pay the trustee, and it's held in trust for the bond holders, and anything left

over goes back to the company. There I have absolute certainty that the only thing left to be determined is your ascertainment order, with the assistance of his Honor, if necessary, of how much we are owed. So I could submit, my third ask is the trustee is should get the money what it's to be paid.

But, My Lady and your Honor, we've been told that every term is sacred and nothing can be changed. Much has been changed, including coming most of the way to our interest number. We are about three quarters of a million apart; we were a couple of a million apart before. So they managed to change those, but they didn't get all the way there.

So until the FMB told us an all or nothing deal, I have no option but to say what is a pretty good deal, what an is almost all the way there, I have no objection but to say I'm asking you not to approve it.

I'm not a party to the settlement agreement, I have no rights to it under it. And as I'll take you to in a moment, the settlement agreement is preparatory, which means it's a statement of intent, not a legal obligation. Because the two parties, and I again remind you, a wholly own subsidiary and parent, are they in a situation where we are now talking about the equity of the parent, can move assets around within those schedules.

I'll take you to some of those provisions on their own. They don't need your consent. They sure don't need mine. In fact there's an explicit provision in there that says no one else has any rights under this agreement. So that's why I'm asking you to say great agreement, just don't make me bear the burden of it if I'm not paid. If the whole premise of this is on being paid, then just do so. But if there's a burden to be borne, it's not mine.

So let's look at a couple of things where I'll show you there is a lot of discretion built into this agreement, which is worrisome, Section 2.2 sub 1 and 2 of the settlement agreement. This is basically our get, one of the big gets, which is all the claims the US and Canadian claims. And you will see when you look at that Section 2.2 sub 1 and 2, that they can.

JUSTICE ROMAINE: I'm sorry, I just got to --

MR. DUNPHY: I just have to get my notes.

JUSTICE ROMAINE: Go ahead.

MR. DUNPHY: Section 2.2 sub 1 and sub 2, says they can move these claims around in those schedules and remove them. So although I'm being told that these claims are subordinated, so a major benefit is, for example, the US debtors subordinating a bunch of claims in

CESCA, but if they decide not to subordinate it tomorrow, then they just remove it from the schedule and put it somewhere else, and they can give the Canadian debtors' consent. Will they consent? Probably not. But can they consent? Yes. And is anyone else's consent required to validate their consent? No. In fact, the thing says at Section 5.3, "no other party has any rights under this agreement but them."

So without your supervision, that could happen. I am suggesting that shouldn't be the case.

The other thing we get from this agreement is things we already have. Mr. Thornton referred you to the rule on Cherry and Bolty, but we are being told the major benefit of CCEL, a Canadian creditor, or I should say a Canadian debtor, is going to agree to subordinate its claims in CCRC. Well, that's a purely domestic internal matter. I don't need the consent of the US debtor for that, so I don't consider that to be a major concession that we got from them in our own estate, and I don't consider it to be anything of great merit, given the fact that Canadian Bankruptcy Law, contributories are obliged to contribute before they can share in the bankrupt estate in the BIA, and we have the rule on Cherry and Bolty as well.

Now, the sale of the bonds, I agree. Sell the bonds. But if the price is 90 million, I'm no not

going to make that decision as to whether that's a good price or not, or 75 million, or whatever they are at. I am in agreement with my friend that if that's to be done, that that can go elsewhere. Don't ask me to make that business call.

Then I want to refer to the compromises. I took you to the biggest one, which is Exhibit G. And Exhibit G says prior to payment in full of my claims, all of my claims in the US and Canadian estates are evaporated. And I submit, I can't be more candid, it simply can't be done. There is no constitutional jurisdiction do that. You can't dismiss a claim without hearing on the merits. I filed a claim. I'm entitled to procedural due process. And two parties sitting in a room somewhere else can't decide for me to settle my claim, and they sure can't do it based on a promise that I have no way of -- that is unsecured, that I will be paid in the future. It's an unsecured promise. We've got plenty of those already. Thank you, very much. Payment I understand. Promises, I've got a few.

Now Mr. Thornton took you through some of the other ones, but I will just point out -- Greenfield we've been through, the limitation on CCRC claims. Again that's, you know, one of the reasons in which CCRC finds the money to pay us is by paying its intercompany claims.

They are being capped. But the biggest one is our claim.

Our claim is being fixed at a number which does not reflect our actual claim amount. It is less than what you are owed. And if you look at the paragraph, paragraph 21 fixes my number, and that's res judicata on the day you sign it. It says what my claim is, yet somehow in paragraph 25 there's a backhanded way that recognizes that it might be readjusted later. Then don't fix my claim.

Why don't you just say nothing on it? You don't need to fix my claim. How about we just pay it, and if we need some direction from the court, we'll get it? We don't need to fix my claim. Am I appealing it? Have I got an onus now to say it's not what they say; it's some other number? What does that mean? So, it's not their business to sit around a table and fix my claim for me. That's a compromise. You can't do that.

And as I've said, there is simply no basis in law to send a determination of my claim, under my trust indenture, against my Canadian debtor to the US to be resolved. It can't be done, because the resolution of the claim in the CCAA, Section 12, and the definition of court is court. It's you.

JUSTICE ROMAINE: It's not that that aspect is not compromised you are suggesting.

MR. DUNPHY: I'm saying it's over the top. I mean it's -- I've got a claim against a Canadian debtor. And let's take a step back. Remember what the whole premises here, don't listen to him he's going to be paid by anyway. Well, who is he going to be paid by? He's going to be paid by the Canadian debtor, of course. So if I'm going to be paid by the Canadian debtor, and what I'm supposed to take is that I'll probably, for present purposes, as I will certainly be paid. I'm going to be paid by the Canadian debtor so my guarantees in the US don't matter, so don't worry if you're cancelling all those other superfluous claims in the US.

Okay. Let's follow that reasoning. That tells me that I have no claim in the US that is ever going to be adjudicated on and result in a payment. So why again would I be walking down there to get my claim against the Canadian debtor on the premise of the claim resolved in the court of the guarantor, when the whole premise of this exercise is the guarantor is never going to pay me a red cent.

Since the premise of your doing all this is the guarantor not going to pay, then why am I in front of the guarantor's court? In fact, why am I in the U.S. Bankruptcy Court at all? Because it's not a bankruptcy matter, it's a matter of New York law which is supposed to

be the superior court or whatever is down there. That doesn't make any sense.

But under the CCAA you just can't do it. There's no basis in law to do it. The only basis offered up is that it's governed my New York law. And as I just mentioned to you, lots of things are, including the settlement agreement. And the logic of that proposition would be that as long as you sign this order you're pointless, because the settlement agreement is governed by New York law, so you better sit down to and let everything else happen somewhere else.

That's not the case. That's not right. And, again, this is one of those things grafted onto the back of a locomotive that they sent off down the hill saying there's so many wheels in this thing that nobody can possibly stop it. I'm standing up and saying you can't do that. And if the price is I'm going to have to make you do it again, we'll pay that price. We're saying, as drafted, we can't stand for the settlement agreement. It's really close. It's really close, but whether you negotiate in front of a mirror and not by talking to the effective parties these things happen. And I submit, with regret, that the only thing for you to do here is to recognize the fact that we are very close, but to tell them to go and take it over the line.

There's a couple, just while I'm on the subject of the order I want to point out what I think are two Trojan horses in there. Paragraph 32 of the US order, and 23 of the Canadian order. Paragraph 32 of the US order says, "all relief contemplated by the settlement agreement is hereby granted." Well what does that mean? Because I have the settlement agreement. I have a very lengthy order that's implementing various bits and pieces of it, but then I have this one paragraph that says in case we forgot something this implements it anyway.

JUSTICE ROMAINE: I'm sorry, I'm having trouble getting my hands on the Canadian order, Mr. Dunphy.

MR. DUNPHY: Well, the Canadian order I only have one copy of it.

JUSTICE ROMAINE: No, I have a copy of it right here. What paragraph is it?

MR. DUNPHY: In the US order, it's in the column dated July 20. It's right at the very back. Unfortunately I have no tabs in mine; it's the very last pages.

JUSTICE ROMAINE: Okay. And you are looking at what paragraph?

MR. DUNPHY: I'm looking at paragraph 32 which is on page 14 of mine at the back.

JUSTICE ROMAINE: Okay, thank you.

MR. DUNPHY: And paragraph 32 says, the failure to mention any provision of the settlement in the settlement agreement are accrued in all the steps -- in all that is contemplated by the settlement, the ULC1 settlement, the settlement agreement is hereby granted. So in case we forgot something, everything else is swept in here. That's just a Trojan horse. If it means nothing then I would submit it goes. If it means something I would very much like someone to tell me exactly what it means.

And to the same effect, slightly different, is an arguably bigger Trojan horse, which is the paragraph -- the paragraph over here. I don't have the tab. In the Canadian order we have a paragraph that approves the monitor's report that admits. I don't mind approving the activities of the monitor, we haven't done it in prior attendances, but I'll do it every day if that makes people happy.

I don't take issue with the activities of the monitor, but the monitor's report is a breathtaking rendition of a lot of things that have happened. And I don't want to be arguing at some future court at some future day as to what is implicitly meant by a blanket approval of the monitor's approval report. His activities, I don't have a problem with, but I'm not in favor of a Trojan horse that I don't understand.

I've dealt with the subject of an escrow; as I said, an escrow is not the same as being paid. I don't know that I'm the only one entitled to the funds that's in there. I do know when it's paid to me, pursuant to Article 7 of the trust indenture, which I'll take to you in a moment, so I don't want to go there. So let me take you to Article 7 and my suggested resolution, and I'll finish with this, because we are done here.

Page 32 of the trust indenture, Article 7, and you'll see that under 7.1, for example, if all outstanding securities of a series become due and payable, you can deposit the money with the trustee. If you want to prepay there's provisions to do that too. I say that because I'm told that the holders of my bonds may be in the process of withdrawing the automatic acceleration of their series. It doesn't matter. Even if they do, you've got another provision where you can repay it.

So they have provisions where you can repay it. And under this provision, anything leftover goes to the company, and ti says it in a couple of places. And let me find you one; 7.6, for example. They can ask for any excess that we are holding and the return of it. So I'm a trustee. You get the simplest way to do it, and I'll read you my language at the end, because I am finished, is instead of having my claims being compromised, instead of

having provisions that say my claim is fixed at dollars bullet when I don't agree with the number, none of that is necessary. All they needed to do, and all they still need to two do is exactly two paragraphs.

Number one, upon payment in full of all amounts owing to the US -- under the ULC2 trust indenture pursuant to Article 7 thereof, all claims filed by the ULC2 trustee in the US proceedings or Canadian proceedings shall be withdrawn or satisfied. Common sense. I submit it follows law anyway, but if someone needs the comfort of knowing it's in an order, I'm happy to have that in the order.

Paragraph 2, the court shall stand seized to provide ULC2 and its trustee with advise and directions regarding the amounts to be paid pursuant to Article 7, proving that this court may, in its discretion, hold a joint hearing. We're done. That takes care of all my issues; all of them not, just some, all of them.

And with that hopefully simple submission, I will thank you for your time, and your Honor as well, thank you.

JUSTICE ROMAINE: Thank you, Mr. Dunphy.

Mr. Linder?

A VOICE: Mr. Linder is not here. Ms. Bossio will be presenting the matter.

JUSTICE ROMAINE: Okay, Ms. Bossio, go ahead.

MS. BOSSIO: Good afternoon, My Lady. Good afternoon, your Honor. My name is Emi Bossio and we are counsel for the Calpine -- excuse me, for Calpine Power L.P., which is also referred to as the fund. CLP and the fund is a massive creditor in this CCAA application, My Lady. It has over 483 million dollars in claims, and this morning My Lady reserved a judgment on whether or not there will be an additional proof of claim allowed for an extra 30 million dollars.

Of those claims, at least 142 million dollars has been acknowledged and admitted by the monitor of the Canadian debtor with respect to the CLP's toll rate claim.

CLP is a creditor of CESCA and of CCEL. The monitor's report identifies that the creditors of those companies are at most risk of shortfall. And in particular, My Lady and your Honor, I take you to the monitor's report at paragraph 28, page 12. And this is the chart where the monitor summarizes perspective recoveries underneath the proposed settlement agreement. And what is particularly important about this chart from the perspective to CLP is, first of all, that on a low scenario there's a risk for CESCA creditors, that's CLP's 378

million dollars, of a 65 percent recovery.

And if we look above there with respect to CCEL, we see that even on the high recovery scenario, CCEL's creditors, of which CLP is the single largest creditor, will recover 65 pursuant to settlement agreement. On a low recovery it's a 35 percent figure, My Lady. And this is critical because CLP is a significant, indeed massive creditor of the CCAA applicants. If we turn first to its claims with CCEL, CLP has two claims already into CCEL and the third which was dealt with this morning.

The first claim is with respect to an contractural indemnity owed by CCEL in its role as manager of CLP's assets. That is what's called the heat rate claim. And the current claim has been valued by CLP at over 115 million dollars. The second claim relates to a potential penalty that is payable by D.C. Hydro, and that amount has not yet been quantified. And the third claim relates to a recently filed statement of claim by the Canadian Power Developers Group, Inc. which was filed in May, and for which relief was sought this morning to file an additional proof of claims into CCEL in the amount of 30 million dollars.

Pursuant to monitor's analyses CCEL's creditors, on the high scenario, this is their best case scenario, would receive 65 percent of their claims. With

respect to the heat ray claim alone, that relates to a 35 percent recovery on the low scenario. That results in a shortfall to CLP of between 40 million to 74 million dollars, My Lady. If the lead is granted with respect to the claim arising from the statement of claim filed by CPDG, then that shortfall would be in the range of an additional 10.5 to 19.5 million dollars.

With respect to CLP's claims into CESCA, that claims arises as a result of what is referred to as the toll claim. That was the repudiation by CESCA of a 20 years tolling agreement with CLP. Heat monitor and the CCA debtors have acknowledged that at least 142 million dollars is owing to CLP pursuant to that claim. Pursuant to its dispute note, CLP values that claim at over 378 million dollars. Therefore, even the smallest percentage or risk to shortfall in CESCA, My Lady and your Honor, could translate into an extremely significant shortfall.

JUSTICE ROMAINE: This is all, of course, prior to the operation of the US debtor's guarantees, Ms. Bossio?

MS. BOSSIO: That's correct.

JUSTICE ROMAINE: And in fact your client, if in fact the US guarantees are taken into account, would not suffer a shortfall; is that right?

MS. BOSSIO: My Lady, you bring me to my

very next point.

There are two issues that I would like to raise with respect to the guarantee. First of all, the claim that addresses the late filed proof of claim, that was dealt with this morning. That, as far as CLP is aware, is not a claim that would be guaranteed by the United States debtors.

JUSTICE ROMAINE: Right.

MS. BOSSIO: And as a result, any shortfall in that claim, the entire claim has to be satisfied within the Canadian estates, there would be no recourse in that claim to the United States. So on the monitor's own numbers, there is potentially a 10 million to 19 million dollar shortfall.

Then with respect to the guarantee, the difficulty with the recourse to the guarantee, My Lady, is that as we understand it the recourse is proposed to be paid by way of equity in the US guarantor. And first of all, obviously, My Lady, that in and of itself is a compromise of CLP's rights. And with it, in particular, we have difficulties because there is delay associated with the resolution of that guarantee issues, but more fundamentally there is risk associated with the payment of the amounts owing under the guaranteed claims.

And specifically, the monitor's report and

the CCAA and US debtors settlement are premised on a very fundamental assumption. We've heard the reference to CLP being paid in full, but that assumes that equity is equivalent to cash, My Lady, and that, in our submission, is a flawed assumption. It is not always the case. In particular, there is risk associated with equity, and it is a compromise of the claim to pay a creditor other than in cash. And that's particularly problematic here, where we have Canadian cash assets that are flowing out of the Canadian estate and going into the US estate.

And it's flawed to assume, My Lady, that payment in equity equates to full payment, or that it equates to -- it can't relate to payment at all. I'm certain the shareholders of Enron assumed that their equity was as good as cash, or at least would have some cash value. That is not always the case. And that takes us to the fundamental problem with the settlement agreement, and that is that it places the risk on the Canadian creditors, and in particular on CLP. CLP has the risks of the shortfalls, while the certainty is flowing up through to the US equity holders.

And it's not for the US debtors and the Canadian debtors to ascribe that list to CLP, in fact in our submission they cannot. They cannot compromise our claims, they cannot import risk to our claims. Those are

not matters that can be unilaterally imposed. The determination to impose shares as a payment on a creditor, that may well be acceptable to a creditor, but it may not, and I will involves risks. And those risks and that determination is a compromise of the creditor's claim.

And as a compromise of the creditor's claim, My Lady, that takes us to the fundamental legal question, which is, given that there are clearly compromises to CLP's claims being proposed, the monitor has acknowledged on a high recovery under CCEL, there is a 65 percent recovery. What jurisdiction is it in the debtors to agree to compromise that claim, and what jurisdiction or discretion is there that exist in this court to approve that settlement agreement which would have the effect of affecting a compromise on to CLP.

My Lady, it is clear that there is no jurisdiction, and it's simply not recognized as law that debtors can agree and unilaterally compromise the claims of their creditors. Compromises may occur under Canadian law, but they must occur under the statute that allows that, which is the Companies' Creditors Arrangement Act, which we are under today, My Lady. There is not, and it cannot be the case in Canadian law that debtors can unilaterally compromise the claim of their creditors, nor can a settlement bind non parties. But that's what's purported

to occur here. The CCAA attempts to achieve -- does achieve in our submission...

(loud background noise)

JUSTICE ROMAINE: The microphone is very delicate. We seem to be getting some feedback from the telephone and would I ask you to please mute your side of the telephone call. Thank you.

I'm sorry. Go ahead, Ms. Bossio.

MS. BOSSIO: The CCAA, through its structure and through its framework, provides for a very delicate balancing of the rights of creditors and the rights of debtors.

Even though there has been much judicial comments on inherent jurisdiction and flexibilities needed in though process, no amount of flexibility and no amount of inherent jurisdiction can overrule the express requirements of that statute. And those express requirements are set out through the operation of Section 4 and Section 6. My friends have taken you through that and I won't do that again, but one thing that's very critical about Section 6, My Lady, is that Section 6 deals with the ability of the court to approve a compromise. And it doesn't speak only of plans of arrangement, but Section 6 expressly speaks of any compromise that is to be approved, My Lady.

The Canadian courts, and in particular our court of appeals master had held that there's no discretion in the courts to approve a compromise of creditors unless and until that has been put to a vote of the creditors.

JUSTICE ROMAINE: But specifically, the court held that is the court has no discretion to sanction a plan unless it's been approved, Ms. Bossio; is that correct?

MS. BOSSIO: That is correct. But in this case, My Lady, if you have a settlement agreement that has a compromised or plan that has a compromise, in my submission you cannot do indirectly, or through naming something completely different than a plan, achieve what you could not achieve through the statute. It's an indirect and an inappropriate intervention of the statute.

One of the difficulties, and what distinguishes the circumstances of a compromise of creditors' rights that we have in this case through some of the authorities that my friends have cited to you that the involve the sale of assets, is that in those circumstances the courts have been very clear about the need to determine to a very open process, a process that ensures that all the creditors understand what is going forward, that there's an open process in the market, so that the best price for the assets can be determined, and that it be transparent so

that creditors can ascertain that the best price is being accomplished.

What is troubling about this case, My Lady, is that the settlement agreement settles numerous intercompany claims, and those are settled on the basis which creditors have no knowledge and have no understanding. The intercompany claims have been unascertained, undetermined. They are uncertain claims. And so, as a creditor, we are left without the process, without the transparency of understanding whether or not, in fact, those intercompany claims have been dealt within a way that's fair to creditors.

And in our submission one of the reasons why creditors are given the right to vote, and should not be stripped of the right to vote, is because it forces that accountability on the plan, and it forces that accountability on any compromise. And that's what's lacking here, My Lady.

In summary, My Lady, CLP's claims are significant, and they are at clear risk, according to the monitor's assessment of the settlement agreement, particularly the claims of CCEL will be compromised at 65 percent.

JUSTICE ROMAINE: Ms. Bossio, isn't the monitor saying that there is very little risk to the fund,

in fact?

MS. BOSSIO: It relies on that, as I understand that report, on an assumption that the guarantees will be available and will be paid. But again, that relies on the fundamental assumption, first of all, that equity does equate to cash, which is not the case. And secondly, it does not acknowledge the fact that payment in equity is in itself a compromise of a creditor's claim. It can be -- a debtor cannot unilaterally impose the determination that a claim will be paid by equity. It cannot simply determine that and impose it upon a creditor without the creditor's consent, or in the CCAA context, without a vote of the creditor. And that is simply where the fundamental problem with the settlement agreement lies, My Lady.

In sum, CLP has a statutory right to vote on a compromise of its claims. The settlement agreement does purport to compromise those claims, and on that basis alone, it's a legal threshold issue that the court, in our respectful submission, lacks the jurisdiction and lacks the discretion to approve a settlement to which CLP is not a party, to which it has not given its consent, and which is compromises its claims.

JUSTICE ROMAINE: Thank you, Ms. Bossio.

Is there anyone else here that wishes to

speak?

Judge Lifland, I recall that one of your counsel in the United States, I think it was Mr. Fredericks, wanted to address this after the Canadian creditors had addressed it?

Do you want to deal with that?

JUDGE LIFLAND: If Mr. Fredericks --

MR. FREDERICKS: I'll be very brief, your Honor. If I may just say I that I adopt Mr. Dunphy's arguments. And for the reasons that he stated, and in particular by reason that paragraphs 5 and 16 of the US order proport to dismiss and withdraw, deal with our claims prior to their payment, that this court should decline to approve the settlement at this time.

Thank you your Honor. Thank you Madame Justice.

JUSTICE ROMAINE: Thank you.

Okay then. Mr. Meyers?

MR. MEYERS: Thank you, My Lady, your Honor. I'm cognizant of the time, and I'll try to be very brief. In trying to assist Judge Lifland to understand what the CCRC committee, Mr. Thornton analogized himself to an official creditors' committee. I've seen official creditors' committees, and that's not one.

MR. DUNPHY: Thank you.

JUSTICE ROMAINE: Excuse me, if you could hold on. Madam clerk, if you could turn down the sound again? Thank you.

Mr. Meyers, go ahead.

MR. MEYERS: CCRC is an ad hoc committee made up primarily of Harbor and ULC2 note holders, and we only know much about it because of the disclosure that it made in the United States, not even to this court today. But one of the things that makes a difference is there are things official creditors committees won't do. For example, if I can just read a line from a case, "The burden is upon Harbor to satisfy me to that they are entitled to the relief claim. And the circumstances of this case they have not fulfilled its burden, and the application for relief is hereby dismissed." That's the decision of Madame Justice Smith in the oppression remedy in Nova Scotia that Harbor lost.

It sounded like -- I was probably wrong but, it sounded like Mr. Thornton was saying that his client won that case. Now the trustee won, the trustee for the note holders won for a small portion of the note holders who had not bought into the oppression, and the debtors were ordered to hold up about 50 million dollars. Instead today the ULC2 note holders are getting paid in full.

But it goes beyond that, Mr. Thornton then said his claim for costs is being compromised, part of his claim for costs, having not won the litigation, having then brought the derivative action that was tossed out simarily, his costs are being compromised, he said in Schedule G, and he referred you to paragraph 9 of the order. It says how dare they compromise my --

MR. THORNTON: I did not make that submission, My Lady, that was the trustee's claims for oppression that were being dismissed in Schedule G.

JUSTICE ROMAINE: That may be, Mr. Meyers. Go ahead.

MR. MEYERS: The claims were tossed and not on the schedule. The trustee's claims against ULC2 are not being released at all. The oppression claim is, as a trustee as Mr. Dunphy rightly said, can only claim a hundred cents on the dollar, including everything that is made up in the hundred cents on the dollar, and that's what's being paid. But the suggestion that Harbor won the Nova Scotia litigation, that it has an entitlement to costs that's being released in this proceeding and therefore is subject to compromise, is simply not the facts.

Mr. Thornton questioned the urgency of this. Incredible coming from the party who's been distracting this pound of flesh throughout. But in

addition to market risks, foreign exchange risks, there's three million reasons per month of interest accrual under the ULC2 notes that continues; not to mention the need to avoid the paralysis that has characterized some of the proceedings because of the difficult issues between the cross-border estates.

The global settlement agreement is not a plan of compromise. It's an asset realization, principally among the debtors. And the big lie, the big -- that kept coming from all of my friends this afternoon, and I don't -- I'm sorry, that's a terrible, terrible phrase. I don't mean any intention.

JUSTICE ROMAINE: Okay.

MR. MEYERS: The error that is common to all of their submissions is that they put themselves in the positions of debtor companies. Mr. Thornton says our claims up into Quintana are being compromised. The fund is creditor of CESCA. The fund is not a creditor of Quintana CCEL might be, CCEL might be; CCEL is a debtor, it's not a final. All claims are recognized as being paid in full or not being touched, not being compromised.

Mr. Thornton says in paragraph 34 of his brief that if its established that the settlement can be implement such that all CESCA creditors will recover a hundred percent of their valid claims from the Canadian

estates, then implementation of the settlement would not, at this point, effect a compromise of CESCA's creditor claims. There's no compromise if you are paid a hundred percent. The fact that asset realization may not yield a hundred cent recovery is not a compromise.

These creditors have bought into companies that don't necessarily have the ability to pay them in full. We are going to realize the assets. If we realized only 10 cents worth of assets, that's still not a compromise. What is a compromise is when we come to them and say we want to satisfy your claims for 10 cents. We are not asking to satisfy their claims today. There may never be the need for a plan because we hope they are going to be paid in full. We going to see what happens with the bond sale. We are going to see what happens with the toll claim. There may never be a compromise, but if there is one, there will surely be a plan on which they vote.

But all Justice Blair said in Philips is you can't compromise claims in a case without a plan. And Philips was such a different case. In that case there was a Canadian debtor who also filed in the US. So it was a Canadian debtor who proposes a plan of arrangement under the CCAA. And in it it says you, Canadian creditor, go to the US. It threw a Canadian creditor out of Canada and into a US class that was subject to a cramdown.

And we've heard the term cramdown used rather loosely today. Cramdown, as I understand it, and I don't pretend to be an expert on, is a particular section or sections of the US Bankruptcy Code that all plan to be approved even if creditors may opposed. There is no cramdown here, nobody is being crammed down in any kind of sense. I doubt anyone was told that you're being thrown into the United States and you are subject to a proceeding that doesn't treat you as well as a Canadian proceeding. All Justice Blair said is that you can't have a Canadian plan for Canadian debtor and not let the Canadian creditors vote on it if you are going to subject it to a worse treatment somewhere else. And that is not what's happening here.

And I have an unfortunate confession to make as well, it's an Ontario, and as much as I respect Justice Blair, it might not settle the law for the whole country. It could be that My Lady thinks something different, but in any event it has nothing to do with this case, because by settling the intercompany relations among the debtors and their US affiliates, no claim of the funds, no claim of anyones' is being compromised unless it's being paid in full, and in that case, of course, it's not a compromise.

So that having the US jurisdiction

determine a claim that has a forum of Canadians, it's not a compromise. Settling the Greenfield litigation, Mr. Thornton said it was a compromise. It's a settlement of a case by our client against another client. It's not a compromise of a creditor's claim, it's a settlement. In Red Cross, also written by Justice Blair, the same judge that wrote Philip, well aware of the difference between Section 11 and Section 4, Section 6 of the CCAA, Justice Blair made it clear that you can't realize on assets and use the court's authority either the discretionary power to stay under Section 11, which includes an injunction to deal with assets realization, or inherent jurisdiction in order to reorganize affairs among the creditor's positions and realize on assets.

In Air Canada the restructuring agreement that was approved included a cross collateralization of DIP priority, a priority determination that cost 22 million dollars to the creditors. Mr. Thornton said it was nothing, it's all just GE, it gave it priority. One of the things he complains about in this case is there's a priority determination, well that's what was done in Air Canada.

In Stelco the pension funding agreements set Stelco's obligations in the future, how much it had to pay, because a priority is deemed trust in future,

perfected creditor realization, because there would only be so much value left to give to the creditors. As long as a transaction is fair and reasonable and does not compromise the creditors' claims, the court has jurisdiction to do it.

I want to deal very briefly with something that Mr. Thornton said about the notice of revisions, that this is somehow a collateral attack on what was done April 4th, because it's nothing of the sort. Ms. Bossio tried to say that the debtors have admitted the claims and no supervisions. Of course that's nothing as far as I know of, we've set an amount of value that we would be prepared to have claims accepted at had there been no notice of dispute filed.

And the whole issue on April 4th was we were in an early stage where the notice of revisions had been sent, but no notice of dispute yet, and it's the notice of dispute that triggered the judicial phase, the judicial determination phase. And in our submission, the fund is simply the author of its own misfortune. It had the opportunity to deal with us at that time, instead it filed a notice of dispute which results in standing for guarantors. We talked about that on April 4th. That if they said that -- I said in particular on April 4th, if he delivers is notice of dispute and we have to bring a motion, Mr. Griffin will have all of his ability at that

point to state his client's peace, and hopefully at that point they will have said they are a guarantor.

It was clear on April 4th, once we went into the court proceeding, that the US would come into the process. And, in fact, My Lady, if I could just quote from your reasons, on balance I think I'm inclined to dismiss the application, that was Mr. Griffin's application opposing the notice of revision. I believe the claims process should continue as it has continued, and that does preclude, of course, any kind of agreement between the US debtors and the Canadian debtors with respect to US standing with respect to these issues. There's no collateral attack on the claims procedures order. It was always intended, and right in your endorsement, that if we got to the judicial phase if they couldn't settle with us, then there was going to have to be an assessments of standing.

Mr. Dunphy's submissions reflect the unfortunate rigidity of the position of a trustee that we saw in the US with ULC1 trustee, and Mr. Dunphy didn't make quibble about it. He has one thing he can do. Well, he's going to be paid in full. He looks at paragraphs 21 and 25 of the order and says why are they assessing the amount of my claim? What is it they are holding for me? Well, 21 cents is the amount that we admit, we agreed we owe him.

And 25 is a court order that we shall establish and fund, as appropriate with consent of the monitor and escrow account or other reserve, for the payment of such amounts to the extent they are disputed. Well, My Lady is going to order us to establish an escrow in the amount disputed, and we've agreed on all those amounts.

So my submission, apart from being the least practical entities involved in these proceeding, the -- sorry.

(loud background noise)

JUSTICE ROMAINE: That's okay, Mr. Meyers.

MR. MEYERS: The submissions of the trustee are not correct and not an appropriate response.

Then he said why do you have to dismiss some of my claims before I'm paid in full? And the answer is sitting in the monitor's report. It's the rock and the hard place we've had through these proceedings. Everybody claims everywhere. Markers all over the place. The monitor says when you drill down and get to who really owes what to who and you flow the money this way it works. But I can't flow the money until the other claims against those debtors are gone so that we know where the money is going. So as long as there's a practical assurance, an assurance satisfy to My Lady that's fair and reasonable, and to your Honor, as long as there is a practical assurance that these

funds are going to be paid, we have to take the other claims out of the way in order to create the flow for the waterfall to come, otherwise it's a chicken and egg, he can never be satisfied because no claims can ever go away until you're paid, and we can't be paid until the claims go away. So it's about five years of litigation instead.

Well, what happens if the CCAA debtors change something? My Lady, they will be here in a flash. And if we've change something before we've committed to you, put in this voluminous material, with the monitor watching every step, everyone will understand what the relief available to it is.

As to the referral to the US, just a brief point that Sections 18.6 sub 2 and sub 4 give you ample jurisdiction. They are not trumped by Section 12 or 4 of the sections in the statute, if anything Sections 18.6 and 4 are even more specific, and the later. Many claims have had Canadian claims to go to the US and US claims go to Canada for resolution. In our case the US debtors, guaranteed claims which are American claims against an American debtor are coming here? It's an example of comedy at its best to settle.

Subject to my Lady's questions or if your Honor has any questions, those are my submission.

JUSTICE ROMAINE: Mr. Meyers, I have just

one question, and that is there seems to be a difference between the Canadian order and the US order with respect to the release of the oppression claims and how that will work. Am I missing something? Is there an --

MR. MEYERS: I had understood during the break --

JUSTICE ROMAINE: -- a resolution?

MR. MEYERS: -- that there was a discussion with the US. I don't know if Mr. Seligman could answer it.

JUSTICE ROMAINE: Perhaps Mr. Seligman could answer it.

MR. MEYERS: Perhaps we can take one moment to look into the issue of that.

JUSTICE ROMAINE: Adjourned.

Go ahead, Judge Lifland.

JUDGE LIFLAND: Go ahead, Mr. Seligman, if you can respond.

MR. SELIGMAN: We are in the process, your Honor, of revising the order to try to account for the ULC1's hopefully resolution. I believe we are trying to pick up that change there. I just do need to confirm it, but the idea is that they should be completely conforming, so we'll have to just double check it. But if there's any disparity, there shouldn't be.

JUDGE LIFLAND: Well, you are talking about

now only about the ULC1 potential settlement. What Madam Justice Romaine and I are concerned about is that the orders, assuming that the settlements are approved, are parallel in every respect and do not diverge so that stakeholders have different outcomes depending upon their participation in the orders.

MR. SELIGMAN: Your Honor, there shouldn't be. We are just double checking it, but I can represent that the intent is that the orders are exact, and we will go back and comb through the order and double check that all the cross references are the same, but they should be identical. That was the principal when we were drafting the proposed orders.

JUDGE LIFLAND: The point that's being made is will the revised order capture the impression that there are different outcomes based upon the way the orders are now?

MR. SELIGMAN: Yes. We are in the process of revising them and that we will fix those, to the extent there's any discrepancy, and make sure that the orders are exactly the same in both jurisdictions. And we will have revised orders that we will make sure to hand up and we will have red lines that shows those corrections.

JUSTICE ROMAINE: Okay. Judge Lifland, I'm sorry we are having problems hearing you. I get the gist

of what your questions were from Mr. Seligman's answers.

But could I perhaps ask, Mr. Seligman, is the intention that the Canadian order provisions will be the ones that apply here, or is that still under discussion?

MR. SELIGMAN: I apologize, but I just have to double checks the cross references, but they should be identical in both jurisdictions. So perhaps I can report back to the court on that in a moment, but I just do need to double check, but they should be exactly the same. I just don't have the latest version of the order right here at counsel's table.

JUSTICE ROMAINE: Okay.

MR. THORNTON: Thornton, initial R.

My friend, Mr. Meyers, had mentioned that I misstated something in the Air Canada case. I want to clarify that less there be any doubt about that. And, in fact, I believe that Mr. Meyers is in error that the cross collateralization in the Air Canada case for certain aircraft leases in fact was imposed as part of the DIP order earlier on in the piece. When the large restructuring agreement was put in place there was a further cross collateralization which came into effect upon implementation which was after the exit and after the vote.

JUSTICE ROMAINE: Thank you.

MR. MEYERS: I might have --

JUSTICE ROMAINE: Okay. Mr. Gorman?

MR. GORMAN: Yes, my Land and your Honor, it's Howard Gorman of the ULC1 creditor's committee.

I think part of the problem here is the settlement agreement which largely resolves intercompany claims like intercompany assets. We didn't have a creditors vote when we went to sell the ULC1 bonds that were held by the CCRC. We had court application. We've had argument. We've had court determination. Similarly, when the B units were sold, it ended up virtually dealing with all of the assets in common, we don't have a creditors vote then, we have the court direction. The end result is you get the assets, the monitor puts together a distribution amount, and you then have the ranges.

If we had a warehouse that sold for a million dollars, the monitor would say we have between 3 and 5 million dollars in claims, that means if we sell the warehouse a million dollars you'll get between 33 and 20 cents, we'll determine those claims in the future, and if there's a shortfall, we'll have a vote; there's a compromise at that time.

What the settlement agreement does is realize the company's assets, and the monitor's report where it says there is a shortfall isn't saying anything

more than when looking at the this as the court, as a party looking at the agreement, what the potential outcome is, depending upon how the claims are ultimately resolved.

When you hear Mr. Thornton's lists of things that he thinks are being compromised, what jurisdiction claims will be in, how -- from CLP, how they are their shortfall is calculated, that's not anything we get to vote on. They don't want my 2 billion votes determining where to have their claims heard. They don't want my 2 billion votes determining what their make whole claim is worth. And that is why that is not a part of it, that is a further step down the road, and that exactly demonstrates why the settlement agreement is a realization of the assets and it's a step forward to the end, it's not the end. Thank you.

JUSTICE ROMAINE: Thank you.

Judge Lifland, I think we are now over to you.

JUDGE LIFLAND: We have one remaining item, and I'll hear from the parties. They have been attempting to work out the objection to the settlement filed by HSBC, which I think is the only remaining objection on the merits, other than Mr. Eckstein's comments.

MR. SELIGMAN: Yes, your Honor. And just to, I want to just clarify. We did pick up that

discrepancy between the orders, it was the timing of the effect of the claim which was on schedule G. This was paragraph 16 of the proposed US order, and at paragraph 5 which talks about the date of effectiveness of various provisions. We have clarified that paragraph 16 is effective upon a date the Canadian debtors and the US debtors have executed and filed certificates with the court advising that all the conditions in the settlement agreement have either been waived or satisfied, et cetera it's in paragraph 5. So that should now match with the Canadian order.

MR. ECKSTEIN: Your Honor, excuse me can I ask? I noticed that Mr. Seligman has drafts of the modified order. I'm assuming I am going to have an opportunity to at least get a copy of the order that's been circulated?

JUDGE LIFLAND: That's a good assumption.

MR. ECKSTEIN: Thank you.

MR. SELIGMAN: Yes. Your Honor, I believe we are -- if I can could just have one moment your Honor.

JUDGE LIFLAND: Maybe it's appropriate for us to take a five minute recess while we see whether we have a settlement or not.

MR. SELIGMAN: Your Honor, I believe we do, but yes, a five minute recess just to confirm that would be

good.

JUDGE LIFLAND: Is that all right, My Lady?

JUSTICE ROMAINE: Yes, thank you. Five minutes?

JUDGE LIFLAND: Yes.

THE CANADIAN CLERK: Order.

(Recess taken)

JUSTICE ROMAINE: The Calgary court is ready when New York is.

MS. HEALY: We just need one moment, please.

JUSTICE ROMAINE: Sure.

JUDGE LIFLAND: Remain seated.

Thank you all.

MR. SELIGMAN: Your Honor, David Seligman, again, on behalf of the US debtors.

Your Honor I do believe we have a settlement of the ULC1 trustee's objection. The debtors, the ULC1 indentured trustee, as well as the ULC1 ad hoc have agreed upon a revised form of order, as well as some changes to the settlement agreement that would satisfy their objection.

We have delivered those materials to the Canadian debtors. They still need to look at those and gave their signoff. I'm hopeful that we will get that,

because, again, it just deals with this parochial issues, but we need to get their approval and consent. So we have also submitted copies of the red line order in the courtroom here for all the parties present.

So I feel good enough about where we are that we don't have to proceed with their objection, and we will work we the parties to see if we can come up with a final version of the order and submit it to chambers once we coordinate with Canadian debtors' counsel and get their sign-off on the merit.

JUDGE LIFLAND: I don't exactly follow you, Mr. Seligman. There's an objection on the record that's not been withdrawn. It's subject to an approval. If I hear that it's being withdrawn subject to a pending of that approval, I can react to it.

MR. CASTELLO: Your Honor, Jeff Castello of Kelley Drye and Warren for HSBC --

JUDGE LIFLAND: I can also tell you before you finish that I'm prepared to rule if you can't resolve it in your own way.

MR. CASTELLO: Thank you, your Honor. HSBC is the indentured trustee under the indenture relating to the ULC1 notes.

Subject to what I believe might be one final nit that the Canadian attorneys are going to deal

with right now, we will withdraw the objection. And hopefully by tomorrow we will submitted a proposed form of order to the court that everybody has agreed on, if not later on tonight.

JUDGE LIFLAND: Does anybody want to be heard with respect to this conditional withdrawal of the objection?

MR. ECKSTEIN: Your Honor, to the extent the indentured trustee is going to withdraw his objection, I'm assuming that does not effect any position that any individual holder has with respect to the actions being taken by the ad hoc committee. So to the extent the individual holder is not --

JUDGE LIFLAND: That's the way I would rule, Mr. Eckstein.

MR. ECKSTEIN: So to the extent the individual holder is not participating, they are not bound by the decision of the indentured trustee to give its consent.

JUDGE LIFLAND: Yes. But I'll note that no individual holder has filed any objection.

MR. ECKSTEIN: I appreciate that, your Honor, but I don't think that there was an obligation necessarily to file an objection or to be bound by the action that's being taken.

MR. SELIGMAN: So with that, your Honor, I believe their objection is withdrawn subject to finalizing some language, which I don't believe we'll have any issues with.

And with that, your Honor, we have nothing more on behalf of the US debtors.

JUDGE LIFLAND: Very well. The objection is considered withdrawn on a contingent basis subject to a final approval.

JUSTICE ROMAINE: I'm sorry, Judge Lifland, I believe Mr. Dunphy wishes to make some statement about the order.

MR. DUNPHY: To clarify at least. Just to be clear, we obviously haven't seen anything, so we're not buying into the provisions. We've been told it's a whole package deal, but packages change I guess. But anything that effects us, I don't know, we haven't seen any changes as accepting a pig and a poke, and the order is supposed to be binding on everyone. So if there's something there to be seen, I think everyone needs to see it and ascertain whether it affects their position.

I can tell you that the truing up of the US and Canadian orders only goes part of the way to addressing the points I've raised. Our point being it's not enough to promise to be paid, it is to be paid.

JUSTICE ROMAINE: I understand.

Mr. Robinson, can you help with the issue of the changes?

MR. ROBINSON: I can, My Lady. For the record Larry Robinson.

I understand from the folks in the courtroom that there have been some revised order provision of the proposed Canadian order sent up. It's being looked at at the moment. And also a proposed revision to the settlement agreement to deal with this American objection issue.

I am feeling awkward here because I'm standing discussing changes to an order when your Ladyship and his Honor have not made a ruling on the applications themselves. But were I to presume, and it's a presumption, my partner, I apologize if it's an incorrect assumption, I would presume that an order of the sort that we are seeking were to be granted in Canada by your Ladyship, I think we are a bit of time away from indicating to you what changes might be needed to that form from the form that we originally presented to you, all being driven out of this accommodation in the ULC1 trustee's position.

I may have simply added to the confusion, but I think that's where we are at the moment. I don't know what your Ladyship's time is or his Honor's time is,

but I suspect where we are at is that the form of order is not driving your decision making process, and I don't know whether, were the applications to be granted, whether we are within ten minutes or half an hour. I see some nodding. I think we are probably within ten minutes to half an hour of having a form of order to present to you, and the other parties, obviously, that we believe is a modification simply to address the one point that Mr. Dunphy has addressed with -- I'm sorry, to address the one objection by the ULC1 trustee. I think that's the status at this point, your Ladyship. That is all.

MR. LANCE: My Lady, I may have something to add to that.

JUSTICE ROMAINE: Mr. Lance?

MR. LANCE: For the record, I'm Canadian counsel for the US ULC1 indentured trustee, and so I've seen some of these orders that we've been working on all day.

The changes, as far as we're concerned, really address the liability issues to the indentured trustee. I don't think anyone else is going to have that much interest in them.

JUDGE LIFLAND: They are internal, as I understand it.

MR. LANCE: We are close to finishing them.

JUSTICE ROMAINE: I'm sorry. Judge Lifland?

JUDGE LIFLAND: Those issues, I think, are very internal and parochial to the trustee, so I don't think they go at all to the settlement. As a matter of fact, however they compromise out and rework their issues, I don't think there is anything that really goes to the merits of the settlement.

MR. SELIGMAN: That's correct, your Honor. If your Honor wishes I can take five, I can take one minute and I can walk through, at least just for the benefit of your Honor, the changes that we have made to the order.

JUDGE LIFLAND: That may be appropriate, because I think it's really much ado about not very much at all.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: So, I'll just walk through, I'm looking at a red line here, which -- so I know everyone in the US court has something to look at, but let me just see if I can identify a couple of the changes, again they are parochial.

For example, in recital G, on page 3, it should be approximately page 3 of the form of the US proposed order, at the end of the paragraph, and -- excuse me just one second.

Your Honor, may I approach and just hand up a copy to your Honor?

(Handing)

MR. SELIGMAN: In paragraph G, at the end of the recital on page 3, we just added that the terms of the settlement are embodied and memorialized in a settlement agreement draft which was attached as Exhibit B to the motion. So again, that just cross references the settlement agreement itself.

On page 4 in paragraph L, there are literally some changes to defined terms. For example, capitalizing the word holders, referring to the approval motions, just cross referencing in definitions that were in the motions, so those, I think, are of no consequence.

There is a new paragraph M, as in Mary, on page 4 which just recites that the holders of the majority of the ULC1 bonds have directed the indentured trustee to take certain actions, and those actions include withdrawal of the objection, support of the settlement motion, and a statement in support of the settlement at the settlement hearing. Also adding provisions that if and when the order should be entered, to execute and deliver the settlement agreement on behalf of all holders of the ULC1 bonds and to execute such other and further documents and to take such further actions as the holders may direct the indentured

trustee to take.

Further, in paragraph 3 of the proposed order at the bottom of my page 5, we changed the definition of HSBC, and instead to refers to it as the indentured trustee.

Paragraph 4 there are some changes to the defined term ancillary documents because it had already been defined earlier.

In paragraph 5, that was the conforming change that I spoke about earlier. We have removed the reference in the first line of paragraph 5 to paragraph 16. That clears up the timing issue that I spoke to you about before.

There are some other changes to those paragraph numbers that basically account for the fact that there are some changes in the order of the paragraphs and numbers of the paragraphs in the order.

Moving on to page 8 in paragraph 11, there are some clarification of the exculpation that it applies both to the indentured trustee as well as its present and former directors, officers and employees, et cetera, and just clarifies the extent to which the exculpation applies to the schedule. Instead of just causes of action, claims, et cetera; it refers to causes of action, debts, demands, judgments, et cetera; it's just the standard provisions

that you would expect to see in an exculpation.

The next is to paragraph 21 on my page 11. That paragraph basically had an injunction with respect to any claim or cause of action against the US trustee in relation to the CCRC senior notes that also include the indentured trustee.

There's a new paragraph 25 that's been inserted on page 12 that basically copies and pastes language from the settlement agreement, that's the operative provision giving the ULC1 and the indentured trustee the 3 and a half billion dollar claim against the estate.

On page 16, paragraphs 35, 36, 37 and 38, there is just a change to the defined term. We had referred to the second lien committee, which was the ad hoc committee of second lien holders in the US, instead we refer to it as the Calpine second lien holders. That was a cross reference to a cash collateral order, we were just using the same definition. And that's just a defined term issue that we needed to clarify.

And then there's a provision in paragraph 42, a new paragraph 42 on page 19, which states that any future plan will incorporate this order in the settlement agreement.

So again, I think that a lot of these

changes relate to the agreement between the US debtors, the ULC1 indentured trustee, and the ad hoc committee with respect to the direction of the ULC1 indentured trustee to withdraw its objection and to sign off on settlement agreement.

And again, we will circulate this to -- it has been circulated to the Canadian debtors, just dealing with electronic transmissions takes a little while for them to get the latest version. They have seen interim versions over the course of the hearing, but we understand that they need to give their final sign-off. We hope that we are able to get that. We do believe that we will get that. And so we think that we can submit an order when we get those issues clarified, which will hopefully be in the next hour.

JUDGE LIFLAND: Very well.

JUSTICE ROMAINE: Thank you.

JUDGE LIFLAND: Consider the HSBC objection withdrawn.

MR. ECKSTEIN: Your Honor, if I may, having seen this for the first time, these changes, I do want to make one or two observations for the record.

I do note paragraph M has the court making a finding that a majority in the aggregate principal amount of the ULC1 bonds is given a direction. We certainly

haven't seen any indication as to what amount of holdings have participated in this process. We simply have a naked finding that a majority have been given a direction. I want note that the record is completely absent of any indication that there's a majority.

Number two, I think it's significant because paragraph 11 provides for a complete and irrevocable indemnity and release of the trustee by all holders. And to the extent there is going to be a release with respect to all holders, including those who are not participating in this direction, it's significant, your Honor, to at least have some record and know that there are in fact holders who are giving this direction and who they are, because we don't have any record of that in this case.

Thirdly, your Honor, it does say with respect to CCRC, which I think is more on the Canadian side, and I am just curious about the use of the word in paragraph 15, it says "In the event there's an entitlement to accrued interest fees and the like that have not been resolved," it says, "CCRC may establish a fund." I had understood that they were going to establish a fund. And it just seems curious to me that the order was using the word may, when at a minimal, if this is going to proceed, it should say that they will establish a funds. And I would suggest that that modification be considered.

JUDGE LIFLAND: Take the last first.

MR. SELIGMAN: What's that?

JUDGE LIFLAND: Take the last observe first.

MR. SELIGMAN: Well, your Honor, that's an issue obviously for the Canadian debtors, but that's not been a change in the proposed order it has always been that way, so I think we can stand on that that was something not raised previously.

MR. ECKSTEIN: Excuse me, your Honor. We objected to the motion. I don't think we were expected to fly spec the order.

MR. FREDERICKS: And I also believe that -- this is Ian Fredericks for the ULC2 indentured trustee.

I also believe that we did raise that in our papers, that the escrow should be established and that it should not be discretionary. And I believe Mr. Dunphy also addressed that in his submissions.

MR. SELIGMAN: Your Honor, that --

JUDGE LIFLAND: That should not be a deal breaker.

MR. SELIGMAN: Right. Obviously that is -- it's a directive as to CCRC, one of the Canadian debtors. I guess we can deal with that. Obviously that's not my -- that's not the US debtors' issue to sign-off on that.

Perhaps we can refer that to Canadian debtors' counsel in a moment.

JUDGE LIFLAND: Well, it's precatory, it's suggested by the US court, but you are correct that is more the for the Canadian debtor to accept.

Let's get to the other forms of objection by Mr. Eckstein with respect to wanting to know about the majority.

MR. SELIGMAN: Well, your Honor, the holdings of the ULC1 ad hoc committee, which they allege in their papers they represent a majority, they were filed with this court under seal. So I think your Honor has them and can take notice of them.

JUDGE LIFLAND: I do have them, Mr. Eckstein. I do take notice of them, and I do find from those papers they purport to represent the majority. And they have communicated that, I believe, to the indentured trustee in full detail.

MR. ECKSTEIN: Your Honor, I was not aware of that fact. And obviously I haven't seen anything that was filed under seal, so I am not in a position to respond to whatever was filed, your Honor.

JUDGE LIFLAND: Is there anything else?

MR. SELIGMAN: I think those were the issues raised by Mr. Eckstein.

JUDGE LIFLAND: With respect to what I have left on my plate, and that is the objections. One is withdrawn. To the extent that there are any others, I will rule on the other objections.

And perhaps My Lady and I might prepare for about five minutes and then come back and inform you as to how we decide to further proceed.

JUSTICE ROMAINE: Judge Lifland, if I can say, I believe there are a couple of comments to be made with respect to the changes here. If we can just allow that first.

JUDGE LIFLAND: Certainly.

JUSTICE ROMAINE: Mr. Carfagnini wishes to speak.

Go ahead, Mr. Carfagnini.

MR. CARFAGNINI: Jay Carfagnini for the Canadian debtors. I just want to say there are some changes that are going to have to be made to the Canadian order to conform. We are happy to take those changes certainly to the US counsel. And perhaps what would make sense is for the US to appear before Judge Lifland when it suits them and us to submit the orders to you for Canada. These are not, in our view, substantive change, and we are confident by the cooperation that we've received from counsel so far, will be achieved again.

On the one point raised by Mr. Seligman and Mr. Eckstein about the funding of the escrow, the term will be shall. We are happy to do that. That is the intention and always has been.

JUSTICE ROMAINE: Okay. Anything, Mr. Dunphy? Mr. Thornton?

MR. THORNTON: No.

JUSTICE ROMAINE: Thank you.

Judge Lifland, you are suggesting that we now adjourn for how long?

JUDGE LIFLAND: About five or ten minutes. And we can come back and either rule or advise the people whether there is any need for any further proceeding.

JUSTICE ROMAINE: Okay. Let's take ten minutes, if you don't mind?

JUDGE LIFLAND: Sure.

(Recess taken)

THE CLERK: We are ready in Calgary whenever you are.

MS. HEALY: Okay.

JUSTICE ROMAINE: Thank you. Please be seated.

JUDGE LIFLAND: Thank you all for your patients. What happened to the microphone?

Can you hear me?

JUSTICE ROMAINE: We can hear you better than we could before.

JUDGE LIFLAND: I understand there was a part missing.

JUSTICE ROMAINE: Of the microphone.

JUDGE LIFLAND: Of the microphone. I thank you all.

(Laughter.)

JUSTICE ROMAINE: It's been a long day, Judge Lifland.

JUDGE LIFLAND: Even longer here. It's well passed the dinner hour here, who probably spent the last 10 minutes phoning home saying hold dinner for them.

We are here in this segment of the proceeding do deal with the settlement that comes under Rule 9019 of the Bankruptcy Code. And as our Second Circuit Court of Appeals recently noted, there is little doubt that the settlements of disputed claims facilitate the efficient functioning of the judicial systems. In Chapter 11 bankruptcies, settlements also help clear a path for the efficient administration of the bankruptcy estate, including any eventual plan of reorganization. Before pre-plan settlements can take effect, however, they must be approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Motorola, Inc. against Official Committee of

Unsecured Creditors known as (In re Iridium Operating LLC) 478 F.3d 452,455 Second Circuit 2007 a short time ago.

Bankruptcy Rule 9019 has a "clear purpose.... to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court." Id. In determining whether to approve a proposed settlement, the court's responsibility is not to decide the numerous issues of law and fact implicated by the settlement "but rather to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Cosoff against Rodman (In re W.T. Grant Co.) 699 F2.d 599, 608 (Second Circuit 1983.)

Courts in the Second Circuit have developed standards to evaluate if a settlement as fair and equitable based upon the original framework announced by the United States Supreme Court in TMT Trailer Ferry. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. against Anderson, 390 U.S. 414 (1968). Those interrelated factors are: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attended expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected classes' relative benefits and

degree to which either creditors do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting, and the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arms-length bargaining. In re Iridium Operating LLC 478 F.3rd at 461-462 citing TMT Trailer Ferry, 390 U.S. at424.

Here the settlement resolves all material disputes between the US debtors and the Canadian debtors without the costly and time consuming cross-border litigation that would otherwise ensue. The settlement will cause the elimination of billions of dollars of claims against the US debtors' estates, enable the debtors to proceed with the Greenfield Energy Center project and give the debtors a 75 million dollar charge against the net proceeds realized by the Canadian debtors from the sale of the CCRC ULC1 senior notes. Although the settlement does not resolve the guarantee claims by the fund against the US debtors, it creates a process for resolving those claims. The settlement also provides for an equitable division between the US and Canadian debtors of the proceeds of the sale of Calpine's subsidiary Thomassen Turbine Systems, and may possibly result in a distribution to US debtors on

account of their equity interest in certain of the Canadian debtors and allows the US debtors to move forward with the confirmation process.

The settlement agreement has universal support in the US by creditors, equity holders, ad hoc committee of second lien debt holders and the note holders. The creditors' committee and the equity committee have both filed statements in support of the settlement. The only US objection was filed by HSBC as indentured trustee for ULC1 notes but that objection was resolved by the parties. The settlement provides for payment in full of all principal and interest (including compound interest) owing under the ULC1 notes allowing the trustee's claim in the amount of approximately 3.5 billion dollars, which is 1.65 times the filed amount of the trustee's claim for the principal amount of the ULC1 bonds outstanding (i.e. approximately 2.12 billion dollars). The form of currency of the ULC1 bondholders will receive in the Chapter 11 cases is an issue to be addressed in the context of plan confirmation, where ULC1 bondholders and others will have the opportunity to vote for or against a plan as provided by the Bankruptcy Code.

Holders of a majority of each series of the ULC1 notes have delivered to HSBC a direction and indemnity letter directing HSBC the enter into the settlement

agreement and indemnifying HSBC against any losses suffered as a result of doing so. In addition, wide spread notice was given to all note holders directly by mail and through extensive publication and none have objected.

Accordingly, I find that the settlement is fair and equitable, well above the lowest rung in a range of reasonableness, and indeed well within the zone of reasonableness, and indeed is in the best interest of the debtors, their estate, creditors and stakeholders.

And I will entertain the order approving the settlement consistent within the like order to be submitted to Canadian court.

That is my ruling.

JUSTICE ROMAINE: Thank you, Judge Lifland.

I will give my decision orally with brief reasons, more detailed written reasons will follow later this week dealing more specifically with the various objections raised by the ad hoc committee, the ULC2 trustee and the Fund.

I start by accepting that if the global settlement agreement were a plan of arrangement or compromise, a vote by creditors would be necessary under Canadian law. However, I am satisfied, after careful analysis of its terms, that the settlement agreement is not a plan compromise or arrangement with creditors.

Under the terms of the settlement agreement objecting creditors either will be paid in full and thus not compromised, or will continue to have the same claims against the same entities. Those claims will be adjudicated, and if they are determined to be valid, the settlement agreement provides a mechanism for their full payment or satisfaction, other than for the possibility of a relatively small deficiency for some creditors of CESCA whose claims are not guaranteed by the US creditors. Those creditors have not objected to the settlement agreement, and, in fact, the largest group, the gas transportation claimants, have appeared before me today to support the approval of the settlement agreement on the basis that it improves their chances of recovery, resolving as it does, all the major cross-border issues that have impeded the progress of this preceding.

I am satisfied that no rights are being confiscated under the settlement. Some claims are eliminated, but only with the full consent of the parties directly involved in those specific claims. The existing claims of the ULC trustee are replaced with redesignated claim; however, the financial effect of the redesignated claims is the same. The ULC2 trustee's right to assert the full amount of its claims remains, and the Canadian debtors and the US debtors have agreed to hold funds in escrow

sufficient to satisfy the entirety of those claims once settled or judicially determined.

It is true that the settlement will have implications for the value of the Canadian estate. On an overall basis the effect of the settlement on the funds available for distribution to Canadian creditors is positive; however, the settlement also has implications for the funds available to creditors on an entity by entity basis. Settlements often do affect the size of the estate available for distribution, whether they are settlements of a single issue such as a simple claim of a lien holder or this settlement of the major issues that have impeded the resolution of this very complex cross-border insolvency. Settlements sometimes result in less money being available to non-settling creditors, that is why they require court approval and consideration of whether the settlement is fair, reasonable and beneficial to creditors as a whole.

It is clear that court approval of settlements can be, and often is, given over the objections of one or more parties. The Court's ability to do this is a recognition of its authority to act in the greater good, particularly in the insolvency context. Viewed against this test, the settlement agreement is a remarkable step forward in resolving this CCAA filing. It eliminates approximately 7.4 billion dollars in claims against the

CCAA debtors. It resolves the major issues between the Canadian debtors and the US debtors that had stalled meaningful progress and asset realization and claims resolution. Most significantly, it unlocks the Canadian proceeding and provides the mechanism for the resolution by adjudication or settlement of the remaining issues and significant creditor claims and the clarification of priorities.

The monitor has concluded, through careful and thorough analysis, that the likely outcome of the implementation of the settlement agreement is payment in full of all Canadian creditors. As the ad hoc committee of creditors of Calpine Canada Resources Company concedes, the settlement removes the issues that the members of the committee have recognized for many months as the major impediment to progress.

The sale of the CCRC ULC1 notes is a necessary precondition to resolution of this matter. But contrary to the ad hoc committee's submissions, that sale cannot occur otherwise than in the context of a settlement with those parties whose claims directly affect the notes themselves. I'm satisfied that the settlement agreement is a reasonable and indeed necessary path out of the deadlock. I am persuaded that the settlement agreement provides clear benefits to the Canadian creditors of the CCAA applicants

as a whole, and that on an individual basis no creditor is worse off as a result the agreement. While it does not guaranty full payment of claims, the settlement agreement substantially reduces the risk that this goal will not be achieved. Crucially the settlement agreement is supported and recommended unequivocally by the monitor who was involved in the negotiations and who has analyzed its terms thoroughly.

I am mindful that the settlement agreement is not without risk to the fund; however, that the outstanding risk falls upon the fund does not make the settlement unfair. As the applicants point out, particularly in the insolvency context, equity is not always equality. Given the monitor's assessment that the risk of less than full payment to the CESCA creditors is relatively remote, I am satisfied that such risk does not obviate the fairness of the settlement.

This settlement agreement is without precedent in this breath and scope. This is perhaps appropriate given the enormous complexity and highly intwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to precede cautiously and with careful consideration; nevertheless, we must proceed

towards the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.

In my view the settlement agreement represents enormous progress, and I commend all parties for the efforts necessary to achieve it. I'm prepared to approve the settlement agreement.

Okay. Judge Lifland?

JUDGE LIFLAND: Thank you, My Lady. I, too, would like to express my appreciation to all, both pro and con with respect to the settlement. I think the advocacy has been excellent, the argument excellent, and the effort that was put in in coordinating and cooperating in order to get to this point and to clarify issues has been rewarding for this side of the bench, as well as, I assume, the others. And it goes again to demonstrate the desirability of approaching these cross-border matters through the medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately.

Thank you all. And thank you, My Lady.

JUSTICE ROMAINE: Thank you, Judge Lifland.

MR. CARFAGNINI: My Lady, just one last -- this is Peter Linder on behalf of the Canadian debtors.

Just one last motion that I would like to bring on behalf of all here, and its done both before you and before Judge Lifland. And in my usual style it's without notice, but I want to bring this notice of thanks on behalf of all participants for hearing us today, and to thank your clerks for assisting us in carrying this joint border joint hearing.

JUSTICE ROMAINE: Thank you, Mr. Carfagnini.

MR. LINDER: My Lady?

JUSTICE ROMAINE: Is this something that Judge Lifland should hear?

MR. LINDER: I believe it is, My Lady.

JUSTICE ROMAINE: Okay.

MR. LINDER: Judge Lifland, Justice Romaine, first of all I would like to support the motion of thanks to both of you for sitting through a very long day and for obviously giving this matter great attention. It's Peter Linder on behalf of Calpine Power L.P. And my instructions are immediately seek leave to appeal the order that's been granted today by this court, and to expedite an appeal forward of it.

As such, My Lady, under the practice of the court and under Rule 341 of the overall rules court, the practice is first to seek an appeal or to seek a stay of your order on the basis that in the absence of a stay, any appeal would be rendered nugatory.

My Lady, as you are likely aware, the test for stay pending appeal is tripartite test. I have an excerpt for action both under Rule 340 and under Rule 508 that perhaps I can just hand up.

MR. CARFAGNINI: Perhaps I can get clarification. My friend is seeking the stay from this court today, or advising this court that he's going to be seeking a stay from the Court of Appeals.

JUSTICE ROMAINE: Mr. Linder, do you want to answer that?

MR. LINDER: May I answer?

JUSTICE ROMAINE: Go ahead.

MR. LINDER: My Lady, Rule 341 of the overall rules of the court allow us to seek a stay initially from this court, the court that granted the order --

JUDGE LIFLAND: May I interject?

As far as I know, the order has not been signed by either court. And it is, under our procedure, that you appeal from an order.

MR. LINDER: Quite so, your Honor. However, under our practice, we would typically raise this issue at the earliest possible time, and we would seek a stay from the judge that granted the order.

JUSTICE ROMAINE: Two things. Thank you, Judge Lifland.

I think what I would like to do is finish the procedure with respect to the orders and the business that we have today. I understand the necessity of you bringing your application for a stay quickly. I doubt that Judge Lifland needs to be part of that, so after we've finished with the orders, let's finish this cross-border joint hearing and then I'll hear you on the stay, Mr. Linder.

MR. LINDER: Thank you, My Lady, that's more than fair.

JUSTICE ROMAINE: Thank you.

MR. SELIGMAN: Your Honor, David Seligman. We're going to finalize the orders and circulate them both to chambers most likely first thing in the morning. So we will send those over as soon as we are done with those.

And I would like to express, Mr. Carfagnini beat me to the punch, but I would like to express my thanks especially to the court and their staff for staying late on a Tuesday.

JUDGE LIFLAND: Very well, thank you all.

JUSTICE ROMAINE: Okay, thank you. Thank you, Judge Lifland. And I gather that perhaps I'll see the order in the morning as well, Mr. Meyers?

MR. MEYERS: There's still some changes on the ULC1 provisions of the settlement of the global order. The other two orders, the bond sale and the agreement sale order, have no changes.

JUSTICE ROMAINE: I'm prepared to grant those orders today.

Judge Lifland.

JUDGE LIFLAND: As am I.

JUSTICE ROMAINE: Okay. And I think we're done with the joint portion?

JUDGE LIFLAND: I think this joint hearing is concluded, and I thank you all.

JUSTICE ROMAINE: Thank you, Judge Lifland.

(Time noted: 8:00 p.m.)

C E R T I F I C A T E

STATE OF NEW YORK }
} ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2007.

Denise Nowak
Digitally signed by Denise Nowak
DN: cn=Denise Nowak, c=US
Reason: I am the author of this document
Date: 2007.08.30 15:15:04 -04'00'

_____

DENISE NOWAK

EXHIBIT 8

In re Mark Scott Constr., LLC, Case No. 03-36440 (HCD) (Bankr. N.D. Ind. Apr. 23, 2004)

CASE NO. 03-36440 HCD
United States Bankruptcy Court, N.D. Indiana

In re Mark Scott Construction, LLC (Bankr.N.D.Ind. 2004)

Decided Apr 23, 2004

CASE NO. 03-36440 HCD

April 23, 2004

Scott M. Keller, South Bend, Indiana, for debtor

J. Richard Ransel, Thorne Grodnik, LLP, Elkhart, Indiana, for debtor

Patricia E. Primmer, Oberfell Lorber, Suite, South Bend, Indiana, for creditors

R. Wyatt Mick, Jr., committee, Bingham Loughlin, P.C., Lincolnway East, Mishawaka, Indiana, for creditors

MEMORANDUM OF DECISION

HARRY DEES, Bankruptcy Judge

Before the court is the Debtor's Motion to Alter or Amend Judgment Granting Motions for Relief from Stay, filed February 6, 2004, by the chapter 11 debtor Mark Scott Construction LLC. The debtor also requested an oral argument on his motion. On March 25, 2004, the court held a hearing on the debtor's motion. It then took the motion under advisement. For the reasons that follow, the court denies the debtor's motion.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(G) over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil *2 Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

A. *Procedural Background*

This proceeding involves three creditors — Doug and Donna Campbell ("the Campbells"), Donna Kash ("Ms. Kash"), and Keith Madden and Nancy Keller Madden ("the Maddens") — who entered into construction contracts with Mark Scott Construction LLC ("MSC"), an Indiana limited liability company, to build homes for them in Michigan and who were dissatisfied with the construction and increased costs. The Campbells were the first to act by filing a lawsuit in a Michigan court. They filed a complaint (on August 15, 2003) and an amended complaint (on September 8, 2003) against both the debtor MSC and the individual Mark Lee Scott, owner of MSC, in Berrien County Trial Court, Civil Division. They alleged that the construction of their home was improper, illegal, negligent, and/or incompetent. They also alleged breach of contract, violations of Michigan statutes governing residential construction, fraud and misrepresentation. The defendants filed an answer and counterclaim on October 16, 2003. The Campbells responded by filing a Motion for

Summary Disposition on October 30, 2003. The motion alleged that the defendants-counterplaintiffs had failed to demonstrate that the contracting entity, MSC, possessed a certificate of authority to conduct business in Michigan, as required under Act 299 of P.A. 1980, M.C.L. § 339.2412.[1] They claimed that MSC was an *3 unlicensed contractor in Michigan and therefore was prohibited by the Michigan Limited Liability Company Act, M.C.L. § 450.5007, from maintaining an action against them.[2]

[1] Section 339.2412 of the Michigan Compiled Laws, which is a provision of the Residential Builders Article of the Occupational Code, states, in pertinent part:

> (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

M.C.L. § 339.2412.

[2] Section 450.5007 of the Michigan Limited Liability Company Act mandates:

> A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain an action, suit or proceeding in a court of this state until it has obtained a certificate of authority.

M.C.L. § 450.5007. The definition of a "foreign limited liability company" is "a limited liability company formed under laws other than the laws of this state." M.C.L. § 450.4102(i).

On November 10, 2003, MSC filed a voluntary chapter 11 bankruptcy petition in this court. Because the bankruptcy stayed the Campbells' state court action, the Michigan action was dismissed without prejudice on November 21, 2003.

On December 12, 2003, the Campbells filed a "Chapter 11 Motion for Relief from Stay" in this court. The motion stated that, although their state court complaint against the debtor had been dismissed, the creditors filed suit against the individual Mark Scott on December 2, 2003. They sought relief from the stay so that they might join their claims and sue Mark Scott in his individual and corporate capacity as MSC.

On December 30, 2003, Motions for Relief from Stay were filed by Ms. Kash and by the Maddens. Prior to filing those motions in the bankruptcy court, Ms. Kash had filed a complaint on December 22, 2003, against Mark Scott individually in the Cass County Circuit Court, and the Maddens had filed a complaint on December 12, 2003, against Mark Scott individually in the Berrien County Trial Court. In each of their bankruptcy court motions, the creditors sought relief from the automatic stay so that they could join their claims against the debtor MSC with the Michigan lawsuit against Mark Scott individually.

B. *Ruling on Motions for Relief From Stay*

On January 27, 2004, the court held an evidentiary hearing on the three motions seeking relief from the automatic stay. The court had before it the motions for relief from stay, MSC's objection to the motions, MSC's memorandum of law in support of its objection, and memoranda of law in support of the creditors' *4 motions for relief from stay. At the hearing, evidence and testimony were

presented by creditors Ian Douglas Campbell, Donna Turner Campbell, Donna Kash, and Nancy Keller Madden, and by Mark Lee Scott, owner of the debtor company MSC.

At the end of the proceedings, the undersigned bankruptcy judge set forth oral findings of fact and conclusions of law. For the benefit of the creditors and others in the courtroom, the judge pointed out that the applicable bankruptcy statute, 11 U.S.C. § 362(d), gave the bankruptcy court authority to lift the automatic stay for "cause," but it did not define "cause." The judge explained that, if the court determined that there was "cause" to grant the creditors' motions and to lift the automatic stay, the creditors' complaints against MSC could be taken back to the state courts in Michigan. If the court denied the motions, however, then the issues would remain in the bankruptcy court. The judge stated that the hearing was conducted not to determine the merits of the plaintiffs' claims against the debtor but rather to decide which court will make that determination.

The court found that the three parcels of real estate were in Michigan, that subcontractors' liens were filed in Michigan, that MSC's Michigan headquarters were in Macomb, Michigan, and that its present construction projects were in Michigan. It also found that any claims concerning incompetent construction, negligence, or breach of contract concerned the residential construction that took place in Michigan. The court stated that the three contracts were signed in Michigan. It concluded that the majority of the contacts surrounding the creditors' claims were in Michigan and that litigation based on Michigan law was pending in Michigan courts. It then determined, based on those significant contacts, that the proper venue for resolution of the disputes was in Michigan.

The court recognized that the construction contracts contained a choice of law provision stating that Indiana was the proper venue for deciding disputes. However, the court found that the uncontested evidence before the court was that MSC was not properly licensed in Michigan at the time it built the homes at issue. It agreed with the debtor that MSC's unlicensed status was a "technicality," but it was a required legal technicality in Michigan, and the bankruptcy court could not ignore the law. For that reason, the court pointed out, the *5 construction contracts arguably were void and, if so, the choice of law provision was not applicable. It further determined that Michigan was the better locale for all the parties. It noted that the Michigan state trial courts have more expertise concerning the interpretation of Michigan's residential building laws and regulations than the bankruptcy court does. The court took judicial notice that Cass County and Berrien County both adjoin St. Joseph County, Indiana, where this bankruptcy court sits. Therefore, the distance between the state courts and this one is not much, and the extra expense is de minimis. The court thus determined that it would be as convenient for the parties to litigate in Michigan as in South Bend, Indiana. It also found that allowing the state court litigation to continue in Michigan would not prejudice the bankruptcy estate. It noted that any judgment giving recovery to MSC would be an asset in the bankruptcy and that any recovery by the creditors would become claims against the debtor's bankruptcy estate. The impact of the state court litigation on the bankruptcy of MSC ultimately will be determined in the bankruptcy court, the judge stated. After considering those factors, the court found that there was cause to grant the creditors' motions for relief from stay.

5

On February 6, 2004, the Debtor's Motion to Alter or Amend Judgment Granting Motions For Relief from Stay was filed. It raised the following reasons for requesting that the court alter its judgment and deny the motions for relief: (1) The creditors, by failing to file supporting briefs with their motions for relief from stay, violated Local Bankruptcy Rule B-7007-1(a) and failed to meet their burden of presenting a prima facie case for

relief from stay. Furthermore, the court erred in allowing the creditors' late-filed legal briefs and in denying the debtor's request to file a post-hearing brief to address the legal arguments raised in the creditors' late-filed legal briefs. (2) The choice of law in the contracts signed by the creditors is Indiana; therefore, the court erred by relying on Michigan law. (3) The creditors failed to satisfy the factors required to prove that "cause" exists, and the court, by relying on the creditors' late-filed legal briefs, erred by not addressing those factors. (4) The court perhaps did not understand the harsh impact and manifest injustice of permitting the creditors to file litigation in Michigan. According to the debtor, MSC's "simple failure to change the name on the Michigan Builders License from `Mark Lee Scott' to `Mark Scott Construction, LLC'" precludes it from attempting to recover
6 from *6 the creditors Campbell and Kash.[3] R. 74 at 3-4. The court's granting of the motions for relief from the stay will simply increase the liabilities of MSC's bankruptcy estate if the creditors' litigation in Michigan is successful, claimed the debtor. *See id.* at 4.

[3] The court notes that Nancy Keller Madden, one of the creditors, testified that she paid the bills Mark Scott presented to her because he came to her place of work demanding that she pay him and, she testified, "he was very threatening." For that reason, the debtor has not claimed a debt owed to it by the Maddens.

Discussion

A motion to alter or amend a court's determination, filed within ten days of entry of the court's judgment, is governed by Rule 59(e), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 9023. *See* F.R.Bankr.P. 9023 (incorporating Fed.R.Civ.P. 59(e)); *see also Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1121 n. 3 (7th Cir. 2001). "The purpose of such a motion is to bring the court's attention to newly discovered evidence or to a manifest error of law or fact." Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003). *see also Cosgrove v. Bartolotta*, 150 F.3d 729, 732 (7th Cir. 1998). The movant bears the burden of demonstrating to the court the reasons for amending its judgment.

A. *Federal Rule of Bankruptcy Procedure 7007 and Local Rule B-7007-1(a) of the United States Bankruptcy Court for the Northern District of Indiana*

The debtor contended that the creditors failed to file timely briefs or supporting legal authorities with their Motions for Relief from Stay, as required by Local Bankruptcy Rule B-7007-1(a). Because the creditors violated the local rule, the debtor asserted, the court should have summarily denied the creditors' motions for relief from stay. The court also should have denied the creditors' legal briefs — filed belatedly and improperly after the debtor responded to the creditors' motions and just before the hearing, according to the debtor. In fact, the debtor claimed that it "did not know that the Homeowners would later file extensive legal
7 briefs, and the *7 Debtor had no way of anticipating what legal authorities and arguments the Homeowners might assert just before the hearing."[4] R. 74 at 3.

[4] The court finds this argument disingenuous. The Campbells' Memorandum of Law was filed on January 13, 2004, two weeks before the trial held January 27, 2004. Although the Maddens' Memorandum of Law was filed January 23, 2004, and the Kash Memorandum of Law was filed January 26, 2004, those memoranda differ from the Campbells' memorandum only in the factual statement of each party's circumstances on the first and second pages of the documents. In all other respects, they are identical. In addition, many of the points presented in those memoranda were made in the Brief in Support of Motion for Summary Disposition filed by the Campbells on October 29, 2003. Therefore, the debtor should have had no trouble anticipating the legal arguments of the creditors.

Local Rule 7007-1 of the United States Bankruptcy Court for the Northern District of Indiana is entitled "Motion Practice; Length and Form of Briefs." It states, in pertinent part:

> (a) Any motion filed within a contested matter or an adversary proceeding (e.g., motions filed pursuant to F.R.Bankr.P. 501 1(b), 7012, 7037, and 7056) shall be accompanied by a separate supporting brief.

N.D. Ind. L.B.R. B-7007-1(a). The local rule is derived from Federal Rule of Bankruptcy Procedure 7007, which states simply that "Rule 7 F.R.Civ.P. applies in adversary proceedings." Federal Rule of Civil Procedure 7, in turn, sets forth the pleadings required to initiate an adversary proceeding and general requirements concerning motions. It also forbids the use of demurrers, pleas and exceptions for insufficiency of a pleading.

A motion for relief from stay is a contested matter, not an adversary proceeding. *See* F.R.Bankr.P. 4001, 9014; *In re Northwest Aggregate Constr. Co., Inc.*, 72 B.R. 317, 318-19 (N.D. Ill. 1987). Because Bankruptcy Rule 7007 applies Rule 7 pleadings procedures to motions filed in adversary proceedings, it does not apply in this case. *See In re Castle*, 289 B.R. 882, 884 n. 1 (Bankr. E.D. Tenn. 2003) (finding that the debtor's reliance on its local 7007 rule was misplaced because the rule applies only to motions filed in adversary proceedings); *In re Farmers'Co-op of Arkansas and Oklahoma, Inc.*, 43 B.R. 619, 620 (Bankr. W.D. Ark. 1984) (finding that "the proceedings regarding contested matters are governed by Rule 9014 of the Bankruptcy Rules" and that "Rule 9014 does not make applicable Rule 7007 or Rule 7008 to contested matters; hence, the rules of pleadings generally applicable to adversary proceedings are absent here"). *8

This court's local rule B-7007-1 covers motions filed within either contested matters or adversary proceedings, such as motions for abstention, for judgment on the pleadings, for compelling discovery, and summary judgments. As the creditors noted, however, the rule applies only to motions filed within a contested matter or an adversary proceeding and does not apply to the contested matter itself. A motion for relief from the automatic stay initiates a contested matter. For that reason, Rule B-7007-1 is inapplicable.

The debtor's desire to file a brief in response to the creditors' memoranda of law was denied by this court, both because the debtor's Objection had covered some of the arguments and because stay litigation is intended to be an expedited determination to preserve the claims of creditors. The Seventh Circuit Court of Appeals has made clear that "[h]earings to determine whether the stay should be lifted are meant to be summary in character." *In re Vitreous Steel Prods. Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990); *see also In re McGaughey*, 24 F.3d 904, 906 (7th Cir. 1994). Post-hearing briefs in this case were completely unnecessary, and the court in its discretion denied them. The court has not found any reason to change its position upon reconsideration of the issue.

B. *Choice of Law*

The debtor asserted that the court further erred by choosing to follow the law of the state of Michigan when the contracts between the parties state that Indiana law is controlling. According to the debtor, the creditors "waived their right to rely on Michigan law when they executed contracts which specify that Indiana law applies." R. 74 at 6; *see also* R. 25 at 12-13.

The court finds that the construction contracts at issue contain a provision that Indiana law governs the contract:

> This agreement is being executed and delivered in the State of Indiana and shall be governed by and construed and enforced in accordance with the laws of the State of Indiana.

8

9 *9

R. 56, Ex. A, p. 10. Because the contracting parties chose the laws of Indiana to govern the contract, the court gives weight to that choice.[5] It is the beginning but not necessarily the end of the choice of law determination. The Supreme Court of Indiana has counseled that "[o]rdinarily a choice of law issue will be resolved only if it appears there is a difference in the laws of the potentially applicable jurisdictions." *Allen v. Great American Reserve Ins. Co.*, 766 N.E.2d 1157, 1162 (Ind. 2002) (resolving the choice of law issue even though there was an express provision in the contract). In this case, there are differences in the laws of Indiana and Michigan concerning the regulation of home builders. The court believes it therefore must balance the expectations of the contracting parties with a regard for the interests of Indiana and Michigan. *See Chrysler Corp. v. Skyline Industrial Servs., Inc.*, 528 N.W.2d 698, 704 (Mich. 1995).

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[5] The court notes, as well, that a federal bankruptcy court generally applies the choice of law rules of the state in which the court sits. *See In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1015 (7th Cir. 2002) (citing *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941)).

The Restatement (Second) of Conflicts of Laws provides two exceptions to the general rule that the choice of law under the contract applies. Section 187(2) provides:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice by the parties.

*10

1 Restatement Conflict of Laws, 2d, § 187(2)(b).[6] It is clear that both Indiana and Michigan have significant interests in the contractual conflicts between the parties.

[6] Indiana and Michigan courts customarily have employed the Restatement (Second) of Conflict of Laws, including §§ 187 and 188, in analyses of breaches of contract. *See, e.g., Allen*, 766 N.E.2d at 1163; *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015, 1024 (Ind.Ct.App. 1999); *Chrysler Corp.*, 528 N.W.2d at 704. In Indiana choice-of-law analysis for tort cases, however, the Supreme Court of Indiana recently has clarified that "Indiana is still primarily a *lex loci* state" and that it did not adopt the policy approach of the Restatement (Second) of Conflict of Laws but rather cited to it with examples of factors that courts might consider. *Simon v. United States*, 805 N.E.2d 798, 802 (Ind. 2004). This court recognizes the criticisms of the second Restatement, *see id.* at 804, but finds its application in this case insightful and helpful.

In contract actions in Indiana, the governing law is the "law of the forum with the most intimate contacts to the facts," as determined by a consideration of such factors as the place of contracting; the place of contract negotiation; the

place of performance; the location of the subject matter of the contract; and the domicile, residence, nationality, place of incorporation and place of business of the parties. *Bedle v. Kowars*, 796 N.E.2d 300, 302 (Ind.Ct.App. 2003); *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015, 1024 (Ind.Ct.App. 1999); *cf. In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1017 (7th Cir. 2002) (commenting that Indiana's choice-of-law rule for breach of warranty or consumer fraud suits focuses on the injury where the consumer is located rather than where the seller maintains its headquarters). Michigan's choice-of-law position is similar; it no longer chooses the law of the place of contracting, but rather focuses on the law of the place most intimately concerned with the outcome of the litigation. *See Chrysler Corp.*, 528 N.W.2d at 703 (approving the approach of §§ 187 and 188 of the Second Restatement, with their emphasis on examining the relevant contacts and policies of the interested states" because they "provide a sound basis for moving beyond formalism to an approach more in line with modern-day contracting realities"). The court therefore turns now, as it did at the hearing, to a consideration of which state has the most significant, relevant contacts and policies concerning these facts.

The court finds that, in this case, the plaintiffs live in Michigan and the debtor lists its place of business in Mishawaka, Indiana and in Macomb, Michigan. Two factors, the place of contracting
11 and the place *11 of negotiation, are not determinative, in the view of the court. The witnesses at the hearing did not emphasize where the negotiations occurred, and the court finds it likely from the testimony that some negotiating occurred in both states. The contracts were signed in Michigan by one party and in Indiana by two parties.[7] However, the parties contracted for home construction to be done in Michigan, on property located in Michigan, and the breaches occurred on that property. Therefore, the court finds that greater weight must be given to the location of the subject matter of the contract and to the place of performance of the contract. This court, following the method of analysis used in *Employers Ins. of Wausau*, 716 N.E.2d at 1024-25, determined that the number and quality of contacts favor Michigan over Indiana. For that reason, the court concluded at the hearing that the substantive law of Michigan applies to the construction contracts at issue. *See also Briggs Elec. Contracting Servs., Inc. v. Elder-Beerman Stores Corp. (In re Elder-Beerman Stores Corp.)*, 221 B.R. 404, (Bankr. S.D. Ohio 1998) (applying Michigan law, finding that Michigan had the most significant contact under the construction contract, where work was being done on Michigan property); *Travelers Ins. Companies v. Rogers*, 579 N.E.2d 1328, 1330-31 (Ind.App. 1991) (concluding Michigan law was applicable). The debtor has not succeeded in its burden of demonstrating a manifest error of law or fact that would cause the court to amend its determination.

> 7 The court's erroneous oral finding that all three parties signed their contracts in Michigan had little or no impact on the court's decision that the most significant contacts were in Michigan.

The court noted at the hearing that the undisputed facts in this case seem to demonstrate that the debtor MSC was not properly licensed as a residential builder under Michigan laws when it constructed the homes of the creditors. *See* M.C.L. § 339.601; *Annex Constr., Inc. v. Fenech*, 477 N.W.2d 103, 104 (Mich.Ct.App. 1991) (per curiam). The creditors pointed out that "contracts by a residential builder not duly licensed are not only voidable but void." Bilt-More Homes, Inc. v. French, 130 N.W.2d 907, 910 (Mich. 1964). The case law in Michigan strongly indicates that parties cannot be bound by the terms of a void contract. *See Offerdahl v. Silverstein*, 569 N.W.2d 834, 836 (Mich.App. 1997). The court is aware of the position of the Michigan Supreme Court that courts should not "create an equitable remedy for
12 a hardship created by an unambiguous, *12 validly

enacted legislative decree." *Stokes v. Millen Roofing Co.*, 649 N.W.2d 371, 377 (Mich. 2002). The debtor seems to concede the validity of these arguments in this court, but it has the right to raise defenses and challenges to the Michigan laws. The only determination made in this court is that the final interpretation of the laws of Michigan must be made in Michigan's courts, not here.[8]

[8] Even if the court had followed Indiana law, the debtor might not have fared better, for the laws of each state regulate limited liability companies. Indiana's limited liability companies, like MSC, are required to follow strict regulations under the state's licensing authorities. For example, Indiana, like Michigan, requires that a "foreign limited liability company may not transact business in Indiana until it obtains a certificate of authority from the secretary of state." Ind. Code § 23-18-11-2. Moreover, a "foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a court proceeding in Indiana until it obtains a certificate of authority." Ind. Code § 23-18-11-3. Had the tables been turned, had MSC been licensed as an LLC in Michigan and had built homes in Indiana without obtaining a certificate of authority, it would have been subject to the same statutory restrictions that it finds imposed on it in Michigan. *Compare* M.C.L. § 450.5007 with Ind. Code § 23-18-11-3. The court finds that the pertinent limited liability company laws of these two states are not in conflict. However, Indiana does not have specific laws, similar to those in Michigan, regulating residential builders. The court will not allow MSC to contract around statutory requirements by claiming to be governed by the laws of Indiana in order to avoid the explicitly relevant and applicable laws of the state of Michigan, where MSC was conducting its residential building business as a foreign limited liability company.

C. *"Cause" to Lift the Automatic Stay*

The debtor claimed that the court erred in failing to address the factors required for finding that "cause" exists for granting relief from the automatic stay. Following the factors set forth in *International Business Machines v. Fernstrom Storage Van Co. (In re Fernstrom Storage Van Co.)*, 938 F.2d 731, 735 (7th Cir. 1991), the debtor argued that the reasons for denying the creditors' motions for relief from the stay weigh in its favor: (1) great prejudice will result to MSC if the creditors are allowed to bring suit in Michigan; (2) MSC will suffer enormous hardship if the creditors are allowed to litigate in Michigan because Michigan law precludes MSC from recovering its claims against the creditors; and (3) MSC has a probability of prevailing on the merits if the claims are litigated in the bankruptcy court and MSC can focus on the amounts the creditors owe to the bankruptcy estate. *See* R. 75 at 7. *13

13

The automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a), halts or stays prepetition proceedings brought against the debtor such as the suit brought by the Campbells in Michigan. However, the stay may be terminated, modified, or conditioned "for cause," and that term, undefined in the Bankruptcy Code, "is determined on a case-by-case basis." *In re Fernstrom Storage*, 938 F.2d at 735. Whether cause exists to terminate the stay is a matter committed to the discretion of the bankruptcy court. *In re C S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995). In order to prevail, the parties requesting relief from the stay must make a prima facie case that cause exists to modify or terminate the stay. *See id.* The Seventh Circuit presented a three-prong test, asking whether:

> a) any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,
>
> b) the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor, and

> c) the creditor has a probability of prevailing on the merits.

In re Fernstrom Storage, 938 F.2d at 735 (citing cases); *see also In re Petroleum Piping Contractors, Inc.*, 211 B.R. 290, 308 (Bankr. N.D. Ind. 1997) (reviewing the factors in *Fernstrom Storage* and in other cases). Courts have created other lists of factors that a bankruptcy court may consider in determining whether the stay should be modified or lifted. For example, the Fourth Circuit included these factors:

> (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary;
>
> (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and
>
> (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992). More recently, the Second Circuit listed twelve factors to consider under § 362(d). *See Schneiderman v. Bogdanovich (In re Bogdanovich)*, 292 F.3d 104, 110 (2d Cir. 2002). 14 *14

In this case, the court made clear that the cause for lifting the automatic stay was that the construction contracts at the center of the debtor's dispute with the creditors arguably were void. The court determined that the stay should be lifted to permit the state court, with the expertise to decide such issues, to answer that question. The debtor may have defenses to the creditors' claims that the contracts are void, and the state court, rather than this court, is in the best position to judge the merits of those defenses. Once the state court decision is rendered, this federal bankruptcy court will accept it and apply it to the bankruptcy proceedings before it. *See In re Williams*, 144 F.3d 544, 550 (7th Cir. 1998) (pointing out that a bankruptcy court's determination in narrow areas of state law in which it has no particular expertise "would not be a particularly efficient use of judicial resources").

The court finds that it properly found at the hearing that cause exists to lift the automatic stay in this case and, upon its reconsideration, it finds no reason to alter or to amend its judgment.

D. *Manifest Injustice*

The debtor was concerned that this court did not understand "the harsh impact" of permitting the creditors to file litigation against the debtor in Michigan. R. 74 at 2. The debtor asserted that the "simple failure to change the name on the Michigan Builders License . . . absolutely precludes the debtor from attempting to recover anything" from the creditors and thus jeopardizes its ability to fund a successful chapter 11 reorganization. *Id.* at 3-4. It asked this court to deny the creditors' motions for relief from the stay and to retain jurisdiction over the disputes "to ensure that the Debtor can actually litigate the merits of its collection claims and to prevent injustice to the bankruptcy estate" and its other creditors, such as the subcontractors and suppliers and others. *Id.* at 6; *see also* R.75 at 8-9. Relying on *In re Federal Press Co.*, 117 B.R. 942 (Bankr. N.D. Ind. 1990), and 11 U.S.C. § 105, the debtor asked the court, using its equitable authority, to reconsider the hardship MSC would suffer and to deny the motions for relief from stay so that MSC can continue its pending adversary proceeding collection actions against the creditors and can recover estate assets for the benefit of all creditors. 15 *See* R.75 at 9-11. *15

The court assures the debtor that it understands the nature of its ruling concerning the creditors' motions to lift the automatic stay. It did not have before it the debtor's collection claims against

these same creditors, but it was cognizant that the claims each party has asserted against the other are based upon the contractual relationship between the creditors and MSC. The court has lifted the automatic stay so that Michigan courts may apply the laws of their state to determine whether those contracts with MSC, which appears to be an unlicensed residential builder, are void. That fundamental issue cannot be avoided. This court cannot consider which party will collect from the other until the germane question of the validity of the construction contracts is answered. As the Seventh Circuit made clear in *In re Williams*, a bankruptcy court does not abuse its discretion in modifying the automatic stay in cases where "all roads lead to state court":

> Had the bankruptcy court not modified the stay so that the [state court] case could go forward, likely it would then have to determine the merits to [the debtor's] right of possession [of the leased property]. With no particular expertise under this narrow area of state law, this would not be a particularly efficient use of judicial resources. Tenants might be encouraged to file a bankruptcy petition not only to forestall an eviction, but also to seek a more favorable forum for what might otherwise be a foregone conclusion.

In re Williams, 144 F.3d at 550 (stating that "[t]he sooner those issues are resolved, the sooner the parties can move on: either the landlord will be able to get its writ of possession and evict the tenant or the tenant can try to assume the now-valuable lease as part of her plan"). Moreover, the court is not persuaded to follow the well-reasoned decision *In re Federal Press Company*, 117B.R. 942(Bankr. N.D. Ind. 1990), because the facts of that case are so distinct from those herein. *Federal Press Company* involved a post-petition tort action against the debtor, one of 57 different tort claims already filed against the debtor, with more possible claims. It simply cannot be compared to the prepetition claims raised herein.

The court concludes that the debtor, by filing its motion to alter or amend judgment, actually took the opportunity to reargue the merits of its case. MSC has failed to present to the court any newly discovered evidence or a manifest error of law or fact that would justify an altering of the court's determination to lift the stay in this proceeding.

16 *16

Conclusion

For the reasons that were presented above, the court denies the Debtor's Motion to Alter or Amend Judgment Granting Motions for Relief from Stay filed by the chapter 11 debtor Mark Scott Construction, LLC. The court finds that the debtor has failed in its burden of demonstrating to the court a clear error of law or fact that must be corrected or manifest injustice that must be prevented. Accordingly, the debtor's motion is denied.

SO ORDERED.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered) **Re: Docket No. 1192**

DECLARATION OF METTA MACMILLAN-HUGHES KC IN SUPPORT OF THE MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-U.S. LAW AND OTHER ISSUES

I, Metta MacMillan-Hughes KC, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a King's Counsel, Attorney at Law and a partner of Lennox Paton. Lennox Paton is a leading offshore, full service commercial law firm providing services to clients in relation to Bahamian law..

2. I was admitted to practice at the Bar of England and Wales in 1984, to The Bahamas Bar in 1986 and as Queen's Counsel in February, 2022. I enjoy a highly successful commercial, civil and international litigation practice in insolvency, fraud claims and asset tracing, proceeds of crime litigation, insurance, tax and HNW family law proceedings. I have a particular interest in the development of the law and novel questions of law. I am currently licensed to practice law in The Bahamas and am a member in good standing.

3. I respectfully submit this declaration (the "**Declaration**") in support of the *Motion*

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX.

of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay does not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in The Supreme Court of The Commonwealth of The Bahamas Seeking Resolution of Non-U.S. Law and Other Issues (the "**Motion**"),[2] filed concurrently herewith.

4. The statements made in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by the professionals in these cases, or my opinion based upon my experience, knowledge, and information concerning multi-jurisdictional disputes, Bahamian law, English, and Antiguan law. I declare that the following statements are true to the best of my knowledge, information and belief formed after a reasonable inquiry under the circumstances.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the JPLs in the above-captioned chapter 11 cases. If called as a witness I would testify truthfully to the matters stated in this Declaration.

A. The Non-U.S. Law Customer Issues

6. The Application sets out several novel questions that are governed by the laws of England, Antigua & Barbuda ("**Antigua**"), and The Bahamas. Greaves Decl. Exhibit A. The governing law of the terms of the 2019 Terms of Service is Antiguan law. Greaves Decl. Exhibit C (2019 Terms of Service) ¶ 27. The governing law of the 2022 Terms of Service is English Law. Greaves Decl. Exhibit D (2022 Terms of Service) ¶ 38.11. In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("**IBC**") in liquidation. Trust issues are also likely to be

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

governed by Bahamian, English or Antiguan law, which is also a question that the Bahamas Court will need to and has the capability to adjudicate.

B. The Bahamian Legal System

7. The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. The legal systems of both The Bahamas and Antigua are based on English common law.

8. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom.

9. The Bahamas Court is familiar with the English and Commonwealth common law applicable to the Non-U.S. Law Customer Issues set out in the Application and, where applicable regularly applies such common law in its determinations.

10. The Non-U.S. Law Customer Issues contemplated by the Application involve complex and novel issues of English, Antiguan, or Bahamian law relating to cryptocurrency, some of which I believe no court in the Commonwealth has previously adjudicated on. Accordingly, I anticipate that the determination of these issues are likely to generate appeals

therefrom, which ultimately would, subject to such permission as is required, be heard by the Privy Council.

C. Procedure in the Bahamas Court After Filing the Application

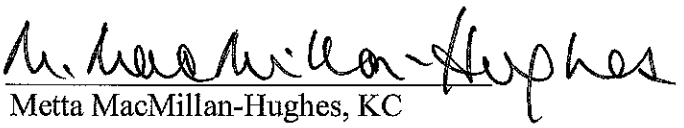
11. When the JPLs file the Application, the Bahamas Court will schedule a Case Management Hearing the purpose of which will be to schedule a hearing date and to give directions. I am informed by the JPLs that all interested parties/classes of parties having an interest in the application (including customers who have already submitted claims in FTX's Digital's Claims Portal) will have the right to appear on the Case Management hearing and on the Application and to be heard individually or in a representative capacity.

12. It is my understanding that the Bahamas Court has facilitated swift hearings in this matter to date and expedited its decisions therein and will continue to do so. While it is difficult to say with certainty how long it will take the Court to rule, the return date for FTX Digital's winding up petition is August 10, 2023, and I would expect the Bahamas Court to render its decision on the various issues raised in the Application before then.

13. The laws of The Bahamas provide for a robust appeal process. After the Bahamas Court rules, all interested parties, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) from the decision to the Bahamian Court of Appeal and ultimately to the Privy Council.

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

Dated: March 29, 2023



Metta MacMillan-Hughes, KC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 1192**

DECLARATION OF PETER GREAVES IN SUPPORT OF THE MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-U.S. LAW AND OTHER ISSUES

I, Peter Greaves, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in the Restructuring and Insolvency practice of PwC, based in Hong Kong. I am PwC's restructuring and insolvency leader for the Asia Pacific region. I have more than thirty years of corporate restructuring and insolvency experience across a range of industries and jurisdictions.

2. Kevin G. Cambridge, Brian C. Simms KC, and I are the joint provisional liquidators (the "**JPLs**") of FTX Digital Markets Ltd. ("**FTX Digital**") duly appointed by the Supreme Court of The Bahamas (the "**Bahamas Court**"). FTX Digital, formed on July 22, 2021, is an International Business Company incorporated in the Commonwealth of The Bahamas and

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

operating as a digital assets business under the Digital Assets and Registered Exchanges Act of 2020 (the "**DARE Act**").

3. I submit this declaration (the "**Declaration**") in support of the *Motion of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in The Supreme Court of The Commonwealth of The Bahamas Seeking Resolution of Non-U.S. Law and Other Issues* (the "**Motion**")[2].

4. The statements made in this Declaration are based on the knowledge I have obtained in the course of carrying out my duties as JPL and the work of professionals retained by the JPLs and working under my supervision.

5. I am over the age of 18 and authorized to submit this Declaration on behalf of the JPLs in the above-captioned Chapter 11 Cases. If called as a witness, I would testify truthfully to the matters stated in this Declaration.

A. Commencement of FTX Digital's Provisional Liquidation and Appointment of the JPLs

6. On November 10, 2022, the Securities Commission of The Bahamas (the "**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act. On that date, the SCB petitioned the Bahamas Court for the winding up and provisional liquidation of FTX Digital, which was granted (the "**Provisional Liquidation**") and the Bahamas Court appointed Brian Simms KC as provisional liquidator. The next day, FTX Trading Ltd. ("**FTX Trading**"), along with the other U.S. Debtors, commenced these cases. On November 14, 2022, the Bahamas Court

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

also appointed Kevin G. Cambridge and myself as joint provisional liquidators. Pursuant to the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors.

7. On November 15, 2022, soon after our appointment, the JPLs filed a petition on behalf of FTX Digital for recognition of a foreign proceeding under chapter 15 in the United States Bankruptcy Court for the Southern District of New York (the "**Chapter 15 Case**"). On November 28, 2022, this Court entered an agreed order to transfer venue of the Chapter 15 Case to this Court [Case No. 22-11217]. On February 15, 2023, this Court recognized FTX Digital's Provisional Liquidation as a foreign main proceeding and the JPLs as the foreign representatives of the FTX Digital estate in the U.S.

8. Immediately following our appointment, the JPLs began investigating all aspects of the relationship between FTX Digital and FTX Trading. Thus, the JPLs have needed to (i) identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors, (ii) determine the legal relationship between FTX Digital and those who are identified as such, and (iii) recover assets for all FTX Digital's stakeholders, to be distributed in accordance with Bahamian law and procedure.

B. FTX Trading

9. FTX Trading was incorporated on April 2, 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Immediately following its formation, FTX Trading was headquartered, along with the rest of the FTX group of companies (the "**FTX Group**"), in the Hong Kong Special Administrative Region, People's Republic of China.

10. FTX Trading was originally responsible for running FTX's international digital asset exchange platform (the "**FTX International Platform**") — the platform through which the

FTX Group did business with somewhere between 2.5 million to upwards of 7.4 million customers, all located outside the United States ("**International Customers**"). Its business was to operate for non-U.S. customers and permitted these non-U.S. customers to engage in various digital asset trading and exchange activities where users could enter into both spot transactions of cryptocurrency assets and also to transact derivative products including "perpetual futures," "options," "move contracts," and "leveraged tokens." At the time of FTX Trading's incorporation, no jurisdiction had a sufficiently regulated exchange system for the institutional funds that the FTX Group's founders sought to attract.

11. U.S. persons were not permitted to trade on the FTX International Platform (that is, the platform accessible at FTX.com). FTX Trading never carried on any business in the United States, and explicitly forbade U.S. persons from using the FTX International Platform, as it was not licensed to offer services to U.S. customers. Therefore, the JPLs believe that all of the customers affected by the directions application that the JPLs propose to file in The Bahamas (the "**Application**") are not U.S. citizens. A true and correct copy of the Application is attached hereto as Exhibit A-1. A true and correct copy of the Draft Affidavit of Brian C. Simms KC, which the JPLS propose to file in support of the Application (the "**Application Affidavit**") is attached hereto as Exhibit A-2.

C. FTX Digital and the Migration

12. On December 14, 2020, the Commonwealth of The Bahamas enacted a comprehensive licensing and regulatory regime for the digital asset industry pursuant to the DARE Act. As discussed below, the FTX Group decided to move its international exchange business, to the full extent possible under the DARE Act, from FTX Trading to FTX Digital, in order to legally operate out of The Bahamas and comply with Bahamian regulations and law. Thus, following the

enactment of the DARE Act, by July 22, 2021, FTX Digital was incorporated in The Bahamas. Although it appears that FTX Trading was operating out of The Bahamas at the time, based on our investigation FTX Trading never registered as a foreign company under Bahamian law and holds no DARE Act licenses.

13. In August 2021, FTX Digital prepared a document called "FTX Digital Markets Limited Customer Migration Plan" (the "**Migration Plan**") approved by then-CEO of FTX Digital, Ryan Salame. A true and correct copy of the Migration Plan is attached hereto as Exhibit B.

14. The FTX Group began to execute on that plan by, among other things, moving the FTX Group's management team to The Bahamas and establishing the headquarters of the FTX Group there. Starting in July 2021, at least 38 individuals, including, importantly, all three of the co-founders, senior management, and key employees began moving from Hong Kong to The Bahamas and transferred their employment from other FTX Group entities, to become employees of FTX Digital. Before the appointment of the JPLs, FTX Digital employed 83 individuals, most of whom resided in The Bahamas.

15. On September 10, 2021, FTX Digital was registered as a Digital Asset Business under the DARE Act, becoming the only FTX Group entity regulated to run the FTX International Platform for most of the products on the platform. Entities licensed under the DARE Act are publicly registered. The DARE Act proscribes the carrying on of a digital asset business in or from within The Bahamas unless registered under the DARE Act.

16. Before May 2022, International Customers entered into contracts with FTX Trading by accepting FTX Trading's terms of use ("**2019 Terms of Service**"). A true and correct copy of the 2019 Terms of Service is attached as Exhibit C. On May 13, 2022, new terms of

service ("**2022 Terms of Service**") were uploaded to the FTX.com site. A true and correct copy of the 2022 Terms of Service is attached hereto as Exhibit D. The 2022 Terms of Service explicitly specified that FTX Digital was the "Service Provider" for nearly all digital asset product lines offered on the FTX International Platform, and permitted FTX Trading to novate its position under the Terms of Service to another party, including FTX Digital. 2022 Terms of Service ¶ 37.2, Schedules 2-7. FTX Trading remained the service provider for the NFT Market (Schedule 11) and the NFT Portal (Schedule 12) (together, the "**Unregulated Services**") because the DARE Act did not permit the Unregulated Services to be migrated to FTX Digital. FTX Trading also remained the service provider for the leveraged tokens spot market (Schedule 8), the BVOL/iBVOL volatility market (Schedule 9) (the "**Other Services**," and together with the Unregulated Services, the "**Remaining FTX Trading Services**"). Based on the information available to the JPLs to date, the Remaining FTX Trading Services that stayed with FTX Trading represented no more than 10% of the business on the FTX International Platform.

17. Between November 2021 and June 2022, FTX Digital opened certain bank accounts in FTX Digital's name (the "**FTX Digital Accounts**") which were used to receive and send fiat currency from and to International Customers. Starting in January 2022, it was clear that International Customers were using the FTX Digital Accounts to on-ramp (deposit) and off-ramp (withdraw) fiat to and from their accounts on the International Platform. Based on our investigations to date, during the period January 20, 2022 through November 12, 2022, the FTX Digital Accounts maintained in FTX Digital's name had receipts of $13.4 billion and outflows of the same amount. From January 20, 2022 through October 31, 2022, the institutional International

Customer account in FTX Digital's name had receipts of $9.2 billion and withdrawals of $8.9 billion.

18. Since the FTX Group conspicuously relocated its headquarters to The Bahamas in 2021, The Bahamas remained the nerve center of FTX's business operations. It is understood that FTX Trading operated out of The Bahamas before portions of the International Customers were migrated to FTX Digital.

D. The JPLs' Bahamas Application seeking Leave to File the Motion

19. Until the Non-U.S Law Customer Issues set out in the Application are decided, we cannot progress FTX Digital's Provisional Liquidation. If the stay does apply to the Application, maintaining it would effectively stop the Provisional Liquidation because it cannot progress until the JPLs ascertain the identity of their creditors or their estate's assets.

20. The JPLs have sought for months to jointly tee up these issues with the U.S. Debtors. Having had no engagement on the topic, counsel to the JPLs sent the U.S. Debtors' counsel a draft of the Application on March 9, 2023. A true and correct copy of the JPLs' March 9 letter to the U.S. Debtors' counsel is attached hereto as Exhibit E. The U.S. Debtors' counsel responded on March 11, 2023, that all of the matters in the Application must be handled in Delaware. A true and correct copy of the U.S. Debtors' March 11 letter is attached hereto as Exhibit F. On March 13, 2023, counsel to the JPLs wrote to the U.S. Debtors again, to address the U.S. Debtors' misunderstanding of the Application and proposed a date for a telephonic conference to further discuss these issues. A true and correct copy of the JPLs' March 13 letter to the U.S. Debtors' Counsel is attached hereto as Exhibit G. On March 15, 2023, the JPLs, their counsel,

counsel for the U.S. Debtors, and John Ray, held a telephonic conference regarding the Application and a proposed path for cooperation.

21. On March 15, 2023 the JPLs filed an application with the Bahamas Court seeking leave to file this Motion (the "**Bahamas Lift Stay Application**"). A hearing on the Bahamas Lift Stay Application was scheduled and held on March 20, 2023. Counsel for the U.S. Debtors were provided notice of the Bahamas Lift Stay Application and appeared at the hearing. They did not have any objections to entry of an order granting the Bahamas Lift Stay Application (the "**Bahamas Lift Stay Order**") and therefore the Bahamas Court entered the Bahamas Lift Stay Order on March 21, 2023. A true and correct copy of the Bahamas Lift Stay Order is attached hereto as Exhibit H.

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

Dated: March 29, 2023

/s/ Peter Greaves
Peter Greaves
Joint Provisional Liquidator of FTX Digital Markets Ltd. (acting as agent without personal liability)

EXHIBIT A-1

Application

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

SUMMONS

LET ALL PARTIES concerned attend before **His Lordship the Honourable Chief Justice Sir Ian Winder Chief Justice** of the Supreme Court of the Commonwealth of The Bahamas, in Chambers at the Supreme Court of The Bahamas, Annex 1, Nassau, The Bahamas on _____ the _____ day of _____A.D., **2023** at _____o'clock in the _____-noon or as soon thereafter as Counsel can be heard on an application on behalf of the Joint Provisional Liquidators (the "**JPLs**") of FTX Digital Markets Ltd ("**FTX DM**") pursuant to *the* ***Companies (Winding Up Amendment) Act 2011, section 199(4)*** and ***the Companies Liquidation Rules 2012, O.4, r.5(2)****, and* ***Supreme Court Act, section 15*** and/or under the inherent jurisdiction of the Court for binding directions and declarations as to the following matters:

1. How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated

13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

2. What is the applicable governing law by which the questions set out at paragraph 1 fall to be determined?

3. Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:

a. Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);

b. those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "**Schedules**") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;

c. the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);

d. digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and

e. digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

4. In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:

a. what is applicable governing law ;

b. does FTX DM hold such assets for its own account or on trust;

c. if FTX DM holds any such assets on trust:

i. what assets are subject to the trust;

ii. how much flexibility does FTX DM as trustee have, for example:

1. is there a requirement to segregate that asset;

2. is there a right to use that asset for any purpose;

iii. is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

iv. does each User have the right to trace their property into specific assets held on trust; and

v. what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

d. can cryptocurrency and/or fiat be held by FTX DM as bailee?

5. Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

6. For the purposes of determining the questions set out at paragraphs 1 to 5, a direction pursuant to **CPR Part 21.4**, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

7. An order that the costs of and occasioned by this Summons be provided for.

DATED this **[x]** day of **March** A.D., **2023**

REGISTRAR

This Summons was taken out by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the
Companies (Winding Up Amendment) Act, 2011

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COM/com/00060

LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Joint Provisional Liquidators

EXHIBIT A-2

Fifth Affidavit In Support of Application

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.

(A Registered Digital Asset Business)

FIFTH AFFIDAVIT OF BRIAN C. SIMMS KC

I, BRIAN SIMMS KC, of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas make Oath and Say as follows:

Introduction

1. Kevin G. Cambridge, Peter Greaves, and I are the duly appointed joint provisional liquidators ("**JPLs**" or "**Joint Provisional Liquidators**") of FTX Digital Markets Ltd. ("**FTX DM**"), a company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (as amended) (the "**DARE Act**").

2. I make this affidavit in support of the JPLs' application for directions pursuant to the Companies Liquidation Rules, 2019, O.4, r.5(2) in relation to a number of issues that have arisen concerning the rights and obligations of FTX DM as explained in more detail below.

3. The facts and matters referred to herein are, unless otherwise stated, within my own knowledge or are obtained from documents in my possession or the legal team at Lennox Paton or investigations carried out by, or on behalf of, the JPLs in relation to the affairs of FTX DM and are true to the best of my knowledge, information and belief. Those investigations are on-going. Nothing in this affidavit is intended to, or does, waive any legal professional or other privilege of FTX DM.

4. There is now produced and shown to me marked **"BCS-1"** a paginated bundle of documents to which I shall refer in the course of my affidavit. References to page numbers in this affidavit are references to page numbers in the said paginated bundle unless otherwise stated. The directions sought by the JPLs concern (i) the parameters of the FTX DM estate; (ii) the rights and obligations of the JPLs in relation to the FTX DM estate; (iii) who the users/customers of FTX DM are; (iv) the nature of the rights and obligations of the users/customers of FTX DM, including in particular are the FTX DM customer creditors of FTX DM or beneficiaries of assets held on any trust by FTX DM; and (v) the relationship of the users/customers of FTX DM to each other and/or other creditors or stakeholders of FTX DM.

5. The directions sought by the JPLs are central to the provisional liquidation of FTX DM. In the absence of directions from this Honourable Court the provisional liquidation cannot be satisfactorily progressed as required by the orders made by this Honourable Court.

6. The JPLs acknowledge that one or more of the issues raised by this Summons may touch on issues arising in the estates of the Chapter 11 Debtors and that they may seek the determination of those issues in the Delaware Bankruptcy Court. Should a conflict arise between directions given to the JPLs by this Honourable Court in relation to the FTX DM estate and any determination by the Delaware Bankruptcy Court in relation to the Chapter 11 Debtor estates, it may be necessary in due course for judicial communications to take place between this Honourable Court and the Delaware Bankruptcy Court pursuant to the Judicial Insolvency Network or other guidelines in order to resolve any conflict.

7. At this stage, however, the JPLs seek directions in relation to the further conduct of the provisional liquidation of FTX DM and on matters which are overwhelmingly likely to be governed by English law, the laws of The Bahamas or possibly the laws of Antigua and

Barbuda. The issues are complex and might well be subject to appeal from this Honourable Court to, eventually, the Privy Council. The Privy Council is the final court of appeal from the Courts of The Bahamas and Antigua and Barbuda. Rulings of the Privy Council on English law are also, in effect, final, because the justices of the Privy Council also sit as justices of the Supreme Court of England, Wales and Northern Ireland and, therefore, are highly unlikely to reach different conclusions on the same issues. The JPLs desire that the issues raised by this Summons are determined by this Honourable Court, being the Court with the conduct of the provisional liquidation of FTX DM and the Court from which, if necessary, an appeal will ultimately lie to the Privy Council with final authority to determine these issues.

8. The JPLs have had several conversations with Counsel for the Securities Commission of The Bahamas (the "**SCB**") in relation to when the JPLs would make an application to determine the ownership of the digital assets currently held by the SCB. The SCB has been concerned about the administrative costs of holding the digital assets and wishes to have the ownership issue resolved.

9. The Supplemental Order of the Court filed on 21 November 2022 in a separate Action brought by the SCB (Supreme Court Action No. Com/com/ of 2022) provided that the SCB shall be regarded as acting as trustee in the administration of trust assets within the meaning of the Trustee Act, for the benefit of the clients and/or creditors of FTX DM, pending directions for the continued safe custody of the said assets issued by this Honourable Court to the JPLs and/or the Commission in the proceeding for the winding-up of FTX DM or further order.

10. The JPLs consider that in the event an application by the SCB was made it would be likely to cover a narrower range of issues than the Summons, leading to a fragmentation of issues and possible duplication. Accordingly, another reason for the issue of this Summons now is to address issues of concern to the SCB which the SCB desire to be resolved.

Background

11. FTX DM is a company within the meaning of the Companies (Winding Up Amendment) Act, 2011 and is in provisional liquidation in the Commonwealth of The Bahamas pursuant to a petition for the winding up of FTX DM presented on 10 November 2022 by

SCB which was accompanied by an application to appoint a provisional liquidator. On 10 November 2022 the Honourable Mr. Chief Justice Winder of the Supreme Court of the Commonwealth of The Bahamas made an order appointing me as a provisional liquidator of FTX DM. On 14 November 2022, on my application the Honourable Mr. Chief Justice Winder appointed Mr. Kevin G. Cambridge and Mr. Peter Greaves as additional provisional liquidators. The orders of appointment are at **BCS-1**, pages **[1] to [8]**).

12. At the time of appointment of the JPLs, FTX DM was registered to provide, and was providing, services on an on-line "*cryptocurrency derivatives exchange*" platform, (the "**FTX International Platform**"). FTX DM has been registered to provide such services since 10 September 2021.

13. On 11 and 14 November 2022, companies (other than FTX DM) in the FTX group (the "**Chapter 11 Debtors**"), filed in the United States Bankruptcy Court for the District of Delaware (the "**Delaware Bankruptcy Court**") voluntary petitions (the "**Chapter 11 Cases**") for relief under title 11 of the United States Code 11 U.S.C. §§101 *et seq* (the "**US Bankruptcy Code**"). The names of the Chapter 11 Debtors are contained in Annex A at pages **[9]-[11]** of Exhibit **BCS-1** and a group structure chart of the FTX group prepared by the US Debtors (not the JPLs) is at page **[12]** of Exhibit **BCS-1.**

The Summons for Directions

14. There are a number of issues pertaining to the rights of FTX DM, including in respect of its customers (the "**customers**", "**Customers**", or "**Users**"), which give rise to issues of fact and law in respect of which the JPLs respectfully seek this Court's guidance.

15. The directions sought are as follows:

(1) How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated 13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

(2) What is the applicable governing law by which the questions set out at paragraph (1) fall to be determined?

(3) Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:

(a) Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);

(b) those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "Schedules") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;

(c) the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);

(d) digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and

(e) digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

(4) In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:

(a) what is applicable governing law ;

(b) does FTX DM hold such assets for its own account or on trust;

(c) if FTX DM holds any such assets on trust:

(i) what assets are subject to the trust;

(ii) how much flexibility does FTX DM as trustee have, for example:

(A) is there a requirement to segregate that asset;

(B) is there a right to use that asset for any purpose;

(iii) is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

(iv) does each User have the right to trace their property into specific assets held on trust; and

(v) what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

(d) can cryptocurrency and/or fiat be held by FTX DM as bailee?

(5) Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

(6) For the purposes of determining the questions set out at paragraphs (1) to (5), a direction pursuant to CPR Part 21.4, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

16. This affidavit is divided into the following sections:

(1) Brief overview of digital assets

(2) The history of FTX.com

(3) Transfer of fiat to (or from) the FTX International Platform (before migration)

(4) Transfer of digital assets to (or from) the FTX International Platform

(5) FTX private keys

(6) Transactions in digital assets on the FTX International Platform

(7) Migration to The Bahamas (including incorporation of FTX DM and its registration under the Digital Assets and Registered Exchanges Act, 2020 ("**DARE Act**")

(8) FTX customer KYC update

(9) Company bank accounts used for the FTX International Platform

(10) Amendments to the Feb ToS

(11) Role of FTX DM in relation to the Specified Services

(12) Obligor in respect of Users' Accounts

(13) Owner of assets (digital assets and fiat/account debts)

(14) Rights of owner to use such assets

(15) Nature of the rights of Users

(16) Appointment of representative parties.

17. Certain of the matters summarised above are dependent upon legal analysis. This affidavit does not seek to set out the detail of that legal analysis, but indicates the broad outlines of it, which will be expanded upon in due course.

18. At this time the JPLs have access to limited information but we envisage obtaining more information in relation to FTX DM held on Amazon Web Services ("**AWS**") and Google Workspace servers, currently in the control of the Chapter 11 Debtors or one or more of them. While the Chapter 11 Debtors have recently shared substantial data pursuant to the Cooperation Agreement entered into by the JPLs and the Chapter 11 Debtors dated 6 January 2023 and approved by this Court on 10 February 2023, such data is still being evaluated. This process may take another month. Unfortunately, the Chapter 11 Debtors have not yet made available any of FTX DM's emails or slack messages to which the JPLs believe they are entitled. Pending receipt and consideration of further information from the Chapter 11 Debtors, this affidavit sets out the factual position to the best of the JPLs' present understanding. Upon receipt and review of the further information that the JPLs

expect the Chapter 11 Debtors will make available to them, the JPLs anticipate further evidence being filed in relation to the matters which are the subject of this affidavit.

(1) Brief overview of digital assets

19. Digital assets are increasingly important in modern society. They are used for an expanding variety of purposes — including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights — and in growing volumes, *See* pages [x]-[x] of Exhibit **"BCS-1"**.

20. Perhaps the most well-known digital asset is Bitcoin. Although often spoken about as if it were a "coin", it is at base just a ledger entry – a ledger entry on a public electronic ledger maintained on a decentralised basis by a self-defining group of computers which co-ordinate with one another through the application of particular software code. That code aims to ensure that in practice there is only one accurate copy of the ledger, which is achieved through cryptography and the application of "game theory". The ledger is made up of blocks of data comprising transactions in Bitcoin, and when new transactions occur they are gathered together in a new block of data which then supersedes the previous one in the chain, with one block in the Bitcoin blockchain being added approximately every 10 minutes. The ledger of Bitcoin transactions is therefore commonly called a "blockchain", and transactions in Bitcoin reflected in that ledger are commonly called "on-chain" transactions.

21. An on-chain transaction of, for example, the transfer of one Bitcoin from X to Y will at its simplest involve the following: X's Bitcoin will be recorded on the ledger as being held at a particular "public address" specified on the blockchain. That public address (sometimes called a "public key") is a string of 64 hexidecimal characters (0-9 and A-F), which does not name X. However, X can prove to Y that X owns that Bitcoin because X controls the "private key" necessary to authorise transactions in that Bitcoin held at that public address. The "private key" is like a password, and is another string of 64 hexidecimal characters. To effect the transaction, Y will give X the "public address" to which Y wishes the Bitcoin to "move" – that is, so that the next published block on the blockchain then shows that that Bitcoin is no longer held at the public address to which X controls the relevant private key, but is now held at another public address, being the public address nominated by Y. One assumes that Y controls the relevant private key of the public address nominated by Y (although it could be possible for Y to "give it away"

by transferring it to a public address to which a third party controls the private key).[1] Once X has the public address nominated by Y, then X can authorise that "transfer" (the publication of a new block with Bitcoin being recorded on the ledger as being held at the public address nominated by Y) by "signing" the transaction through application of X's private key. This is discussed further, in relation to the FTX International Platform, in Section 6 below.

22. In practice, parties can and do also agree to transfer digital assets between themselves without involving the blockchain at all – often referred to as "off-chain" transactions. So, for example, X may simply agree by contract to transfer X's Bitcoin to Y. There is a question as to how this contract would be performed, but it would be possible for X to provide control over the private key relating to the public address at which that Bitcoin is recorded on the ledger to Y, so that Y then controls the relevant private key (for instance, if the private key is saved onto a usb drive, X could physically transfer the usb drive to Y). This is discussed further, in relation to the FTX International Platform, in Section 6 below.

23. The question as to whether Bitcoin, and other digital assets like it, are "property" for the purposes of law, and if so, who owns such property, are questions of legal analysis which are beyond the scope of this affidavit. However, currently the weight of English judicial authority and commentary (including influential analyses by the Law Commission of England and Wales) is that digital assets like Bitcoin are "property". Moreover, English and some Commonwealth case law recognises that it is property which can be held on trust – that is, it is property which satisfies the "first certainty" of the "three certainties" for the voluntary creation of a trust: it is subject-matter which is sufficiently certain to be able to be held on trust.

24. However, it is thought that the relevant private key is not itself property but is just a piece of information (the relevant 64 hexidecimal string) that gives access to the property that is the digital asset.

25. In this affidavit, I use the term "**digital assets**" to refer to what is commonly called "cryptocurrency", "cryptotokens", "cryptocoins", "tokens", "coins" and "virtual assets",

[1] If Y did not want to "give it away" but simply got his public address wrong by mistake, such that Y does not control the private key of the incorrectly specified public address, then Y would "lose" the Bitcoin entirely.

and all tokens or coins accepted on the FTX International Platform, including FTT and Serum, two particular tokens created by entities related to FTX DM.

26. Fiat currency – that is, currencies issued by (or under the authority of) sovereign states – will be referred to as "**fiat**".

(2) The history of FTX.com

27. FTX Trading Ltd ("**FTX Trading**") was incorporated on 2 April 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua and Barbuda (the "**Antigua Act**"). At page **[13]** of Exhibit **"BCS-1"** is a copy of FTX Trading's Certificate of Incorporation.

28. Immediately following its formation, FTX Trading was then based in the Hong Kong Special Administrative Region of China ("**HKSAR**"), where the FTX group was headquartered. Its business was the provision of the FTX International Platform on the FTX.com website.

29. By 2021, a US version of the FTX Platform (the "**US Platform**") had been created which was directed towards US users, as the original FTX Platform barred US users (and users from certain other jurisdictions). The original FTX platform, running via the FTX.com website, therefore became the digital asset exchange platform for all users located outside the United States (the FTX International Platform). Based on analysis of platform data reviewed to date, by 2022, over 9 million customers had Accounts on the FTX International Platform and on the US Platform, with most (possibly more than 7.5 million) being customers of the FTX International Platform. Issues arising from this Summons concern only the FTX International Platform.

30. The FTX International Platform permitted non-U.S. customers to engage in various trading activities, including spot trading of supported digital assets, spot margin trading, settlement of over-the-counter (or "off-exchange") trades directly between users, trading in various derivative contracts, including futures (including in particular "**perpetual futures**"), call and put options, so-called "volatility" contracts (the value of which was tied to the overall price movements during a specified period for specified assets), "leveraged" tokens (i.e., tokens evidencing leveraged positions in relation to a futures contract), "volatility" tokens and trading in "non-fungible tokens" or NFTs, *See pages [x]-[x]* of Exhibit **"BCS-1"**

31. A description of how trades were carried out on the FTX International Platform is given in Section 6 below.

32. An early description of the FTX International Platform is that set out in the FTX White Paper dated 25 June 2019 at pages **[14]-[22]** of Exhibit **"BCS-1"**.

33. Prospective users of the FTX International Platform would have to register on the FTX.com website. US customers were not able to open accounts on the FTX International Platform, therefore the FTX International Platform never provided services to US customers. The process of that registration entailed such registered users accepting the then-current ToS.

34. Those ToS referred to accounts maintained on the FTX International Platform in those Users' names into which both fiat and digital assets could (subject to the following) be credited or debited ("**Accounts**").

35. The earliest ToS did not permit Users to transfer fiat to the FTX International Platform. The Accounts therefore would only have credits recorded in digital assets. At pages **[23]-[41]** of Exhibit **"BCS-1"** is a copy of the earliest ToS from March 2020. That is not surprising since, originally FTX Trading did not have a fiat bank account to which users of the FTX International Platform could be directed when transferring fiat.

36. By amendment to the ToS dated 3 December 2021, FTX Trading stated that the FTX International Platform did then "support" various fiat. At pages **[42]-[59]** of Exhibit **"BCS-1"** is a copy of the 3 December 2021 ToS.

(3) Transfer of fiat to (or from) the FTX International Platform – the "fiat@ftx.com" account

37. From a point in time that is presently unclear to the JPLs, but may in fact have pre-dated the 3 December 2021 amendment to the ToS, Users who wished to transfer fiat onto the FTX International Platform were directed to transfer fiat in USD (and possibly other currencies) to an account, or possibly a number of accounts, in the name of Alameda Research Ltd ("**ARL**"), Alameda Research LLC ("**ARLLC**", parent of ARL) or other subsidiaries of ARLLC (the "**Alameda Bank Account**", and the account-holder of that account or those accounts, the "**Alameda Account-holder**"). ARLLC is wholly owned by Sam Bankman-Fried ("**SBF**"), Gary Wang and Nishad Singh (all three, the "**Co-**

founders"). The Alameda Bank Account was, it seems, maintained with Silvergate Bank.

38. The fiat received in the Alameda Bank Account was not then transferred as a matter of course to FTX Trading. Rather such receipts were simply reflected as debits in an account on the FTX International Platform designated as "**fiat@ftx.com**". It is a matter of legal analysis what that evidences, but it would appear to evidence at least a liquidated debt owing by ARL to FTX Trading. In addition, given the circumstances in which Users transferred fiat to ARL, it is possible that the Alameda Account-holder held such fiat under some form of trust, for FTX Trading and/or those Users.

39. Upon each such receipt of fiat from Users into the Alameda Bank Account, the Alameda Account-holder would notify FTX Trading, so as to enable FTX Trading then to credit the transferor User's Account on the FTX International Platform. It is a matter of legal analysis whether the credits recorded in those Accounts evidenced a liquidated debt owing from FTX Trading to those Users or something more (that is discussed in Section 15 below).

40. Requests from Users to withdraw fiat standing to the credit of their Accounts, would trigger a request to the Alameda Account-holder to transfer that amount back to the User.

41. There is also evidence that an account with Silvergate Bank in the name of West Realm Shires Services Inc ("**West Realm**") was opened in about April 2021 and used to receive USD from at least some Users of the FTX International Platform. (West Realm is a subsidiary of West Realm Shires Inc, 77.75% owned by the Co-founders. West Realm was the operator of the US Platform).

42. In fact, the FTX International Platform treated USD fiat as fungible (interchangeable) with certain USD-linked stablecoins, in particular USDC (USD Coin), BUSD (Binance USD), USDP (USD Paxos), GUSD (Gemini USD) and TUSD (True USD), and a User who had a credit balance in the User's Account in USD fiat, could choose to withdraw the equivalent amount in any of those USD stablecoins, or vice versa.

43. Transfer of fiat to the FTX International Platform from the second half of 2021 is discussed in Section 9 below.

(4) Transfer of digital assets to (or from) the FTX International Platform

44. When a User wished to transfer digital assets to the FTX International Platform, the User would make a transfer request by selecting various options on the website of the FTX International Platform, and then the code on which the FTX International Platform runs would generate a unique public address on the relevant blockchain for the particular digital asset to be transferred.

45. Upon the digital asset being received at that public address, the code running the FTX International Platform would then credit that User's Account on the FTX International Platform with the same amount of digital assets. (The question of the nature of the User's rights in respect of credit balances in the Account is dealt with in Section 15 below.)

46. Turning back to the public address at which the digital assets were sent by the User: the private key associated with that public address was controlled entirely by code which ran the FTX International Platform and by individuals who, the JPLs' investigations so far reveal, were all based in the HKSAR until they re-located to The Bahamas and became employees of FTX DM in late 2021/early 2022.

47. It would appear that when a User effected an on-chain transfer of a digital asset to that public address generated by the FTX International Platform for the receipt of digital assets, that constituted (at least – but subject to the discussion in Section 15 below) the transfer of full legal title to the digital asset away from that User.

48. Once that digital asset was received at that public address, if the digital asset was something other than Bitcoin, then the balance of each such public address was regularly "swept" into one or more "omnibus accounts" – that is, it was transferred on the relevant blockchain from that initial public address which had been generated for just one User to a public address used by the FTX International Platform for the holding of digital assets of that type from multiple Users. As a consequence, the transferring User's digital assets were then mixed in that "omnibus account".

49. If the digital asset was Bitcoin, however, it would remain in an initial public address (because the transaction costs of a sweep of Bitcoin made it inefficient) but all such public addresses would be treated as if they were a single mixed fund of Bitcoin transferred by any User. Withdrawal requests by a User in respect of Bitcoin would be fulfilled by the transfer of any Bitcoin, not necessarily the same Bitcoin that that User may have originally transferred nor even from the same public address into which that User may

have originally transferred Bitcoin. All such public addresses would be controlled by a small number of private keys.[2]

50. Where a User wished to transfer digital assets standing to the credit of the User's Account off the FTX International Platform, the User would have to supply a public address to which that transfer could be made on-chain, and the transaction would be signed by application of the relevant private key held in the FTX International Platform's code.

(5) FTX private keys

51. The private keys for each of the "omnibus accounts" (at least one for each digital asset type for each blockchain) and each Bitcoin public address would be held on-line in a way in which the code could access, so that transactions requested on the FTX International Platform's website (principally, withdrawal requests) could be automatically executed (and approved by the application of the relevant private key). These "omnibus accounts" and Bitcoin public addresses were regarded as "hot wallets" since their private keys were held on-line.

52. Not all transactions could be executed automatically. The code had some in-built thresholds (such as size of transaction) which would require manual intervention by individuals before the transaction was executed.

53. If the aggregate of digital assets held in these hot wallets exceeded a certain amount, the excess would be transferred into "warm wallets". In practice these warm wallets would only hold Bitcoin, Ether, and FTT since the holding in other digital assets never triggered a transfer out of the hot wallets.

54. The warm wallets were other public addresses on the relevant blockchains, where the relevant private keys were not directly accessible by the code on which the FTX International Platform ran, but the private keys were in the control of the Co-founders. Those private keys were however still kept on line albeit in an encrypted form.

55. There were also "cold wallets" which held excess Bitcoin, Ether and FTT, where again the private keys were only accessible by the Co-founders, albeit that those private keys were (despite the designation as "cold") kept on-line in an encrypted form. The JPLs are still

[2] This is technically possible because the public address/private key pair is in fact always generated starting from a private key, and a private key can generate a number of public addresses controlled by the same private key.

investigating how in practice the warm and cold wallets differed from each other in practice.

56. In practice, if a hot wallet was short of a digital asset which a User had requested be withdrawn, then rather than the warm or cold wallets being drawn on, a "Slack"[3] message would be sent by the FTX settlement team to (among others) Alameda (it is not clear whether this was ARLLC, ARL or another subsidiary of ARLLC), and the Alameda entity would transfer to the hot wallet the requisite quantity of digital assets. It does not appear that a fee was charged for providing this service.

(6) Transactions in digital assets on the FTX International Platform

57. Transactions in digital assets on the FTX International Platform, or transactions from fiat to digital assets or digital assets to fiat on the FTX International Platform, would typically be executed simply by way of debit and credit entries to the relevant Users' Accounts on the platform. There would not be any matching transactions on the chain to mirror those recorded in the Accounts.

58. Some of the transactions were "futures" which would not involve the spot exchange of fiat or digital asset for other digital assets, but rather were contracts entered into on terms set out on the FTX International Platform's website. The JPLs are still investigating the pattern of trading on the FTX International Platform but at present believe that the "perpetual future" was the service which generated the most income and volume on the FTX International Platform.

59. It is a question of legal analysis of the May ToS and the LTB Collateral Agreement (defined below), in light of the relevant factual background and any relevant market practice, whether such perpetual futures were contracts between a User and another User, or between a User and FTX DM which provided that service.

60. What is clear, however, is that futures trading like this required Users to post margin – that is, subject digital assets which they had standing to the credit of their Account to a security arrangement in favour of the counterparty to that futures trade (whoever that counterparty was).

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[3] Third party messaging service.

61. On 1 June 2020, FTX Trading and LT Baskets Ltd (a company incorporated in Antigua and Barbuda) ("**LTB**") (now a Chapter 11 Debtor) entered a Collateral Agreement relating to the holding of collateral that Users would have to provide in respect of leveraged and margined products on the FTX International Platform (the "**LTB Collateral Agreement**"). This provides that when a User was required to post margin, FTX Trading would transfer certain tokens to LTB, who would hold them on behalf of the counterparty in whose favour that margin was being posted. It would appear that, once margin was posted and the digital assets transferred to LTB, LTB held them on trust for the User's counterparty. At pages **[141]-[144]** of Exhibit **"BCS-1"** is a copy of the LTB Collateral Agreement.

(7) Migration to The Bahamas

62. In 2020, The Bahamas adopted a licensing and regulatory regime for the digital asset industry pursuant to the DARE Act.

63. On 22 July 2021, FTX DM was incorporated in The Bahamas.

64. In August 2021, FTX DM prepared a document entitled "FTX Digital Markets Limited Customer Migration Plan" (the "**Migration Plan**"), which stated that the objective was "*to migrate customers to its business from FTX* [Trading]". The Migration Plan envisaged KYC on-boarding and new terms of service. "*Front end and back end systems should also reflect a shift of activity to FDM as smoothly as possible, subject to regulatory consideration*". The Migration Plan also envisaged that users of the FTX International Platform would be required to accept the new terms of service, and that the migration would be complete by 2023, but with all "institutional" users being migrated by Q2 2022. At pages **[145]-[149]** of Exhibit **"BCS-1"** is a copy of the Migration Plan.

65. On 10 September 2021, FTX DM was registered as a digital asset business under the DARE Act. FTX DM was the only FTX entity licensed to run a digital assets business under the DARE Act and it was licensed to carry out the majority of the products on the FTX International Platform. On 10 November 2022, the SCB suspended FTX DM's registration.

66. On 20 September 2021, SBF, the 100% owner of Paper Bird Inc, which was the 75% owner of FTX Trading, announced that "FTX" would be moving the headquarters of the FTX International Platform from the HKSAR to The Bahamas. Four days later, SBF re-

emphasized the relocation by tagging the official FTX twitter account and stating "[w]*e're really excited to be setting up @FTX_Official's headquarters in the Bahamas*!" At pages **[150]-[151]** of Exhibit **"BCS-1"** are copies of the tweets from SBF.

67. The incorporation of FTX DM and the move of the Co-founders to The Bahamas was principally in order to bring the FTX International Platform under the regulatory regime of the DARE Act.

68. The first employee of FTX DM was employed in September 2021. The Co-founders became employees of FTX DM, as did approximately 80 other individuals working for FTX DM in The Bahamas.

69. In October 2022, *The Bahamas Tribune* reported that FTX DM's headquarters would be located on a "*4.95 acre site, located between Bayside Executive Park's existing buildings and the Orange Hill Beach Inn, will feature two boutique hotel buildings covering a total 77,000 gross square feet and spanning seven levels, with parking area 51,000 gross square feet in size. Residential and office spaces, also spread over seven levels, will cover 116,000 gross square feet and be accompanied by a 205,000 square feet parking area.*" Additionally, it stated that "[o]*ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'.*" At pages **[152]-[153]** of Exhibit **"BCS-1"** is a copy of The Bahamas Tribune article.

70. The Bahamas Tribune further reported that eventually "*a total of 700 employees will work at the office building, of which 38 are expected to be housed in the boutique hotel and condo hotel. The remaining 662 employees are expected to live off-campus and commute to work. Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025.*" Further, "[t]*he proposed development will include a total of 612 parking spaces: Twenty-five spaces for the hotel, 75 spaces for the condo hotel and the remaining 512 spaces for the office/convention buildings.*"

71. The Bahamas Tribune stated that the campus headquarters would cost about $60 million, and it published the proposed site plans that had been submitted to the

Department of Physical Planning. At page **[154]** of Exhibit **"BCS-1"** is a copy of the proposed site plans.

72. While this campus development was underway, employees of FTX DM worked from nearby offices at Veridian Corporate Centre.

(8) FTX customer KYC update

73. S. 5(1)(a) of the Register of Beneficial Ownership Act 2018 in The Bahamas requires KYC details of UBOs holding interests of 10% or more in a corporate User, whereas before the migration and when FTX Trading was the relevant FTX entity operating in the HKSAR, only KYC details of UBOs of corporate Users who had interests of 25% or more in a User were obtained.

74. The migration process, therefore, required the manual review of all KYC details held for corporate Users to check whether they already contained KYC for UBOs who had interests of 10% or more (which could incidentally have been obtained when previously obtaining KYC for UBOs with 25% or more). If KYC records were incomplete, then individual corporate Users were contacted and asked for the additional information. If that additional information was not forthcoming, then those corporate Users' Accounts should and would (to the best of JPLs' current knowledge) be closed. There was no possibility of Users remaining Users on the FTX International Platform unless the Bahamian KYC regulations were adhered to.

75. It would appear that the only purpose behind this KYC updating process was to enable existing Users of the FTX International Platform to become customers of FTX DM.

(9) Company bank accounts used for the FTX International Platform

76. Prior to November 2021, FTX Trading had set up a USD bank account with Signature Bank, which was used to receive and send USD fiat from and to Users of the FTX International Platform, especially in 2022.

77. However, in or around November 2021, FTX DM (not FTX Trading) opened accounts in USD, CAD, SGD, HKD, EUR, GBP and CHF with Equity Bank Bahamas (the "**Equity Bank Accounts**"). The Equity Bank Accounts were marked as "client accounts", but there is evidence which makes it unclear as to the weight to be put upon those words.

However, only the accounts denominated in CAD and GBP appear to have been used, and then only to fund withdrawals. Withdrawals from those Equity Bank Accounts in those currencies were then reflected as debits to that User's Account on the FTX International Platform in the relevant currencies. The JPLs understand that, although the Equity Bank Accounts were opened, they were not used to any significant extent by the FTX International Platform.

78. In the meantime, in January 2022, FTX DM opened USD bank accounts in its name (the "**USD Silvergate Accounts**") at Silvergate Bank. The USD Silvergate Accounts comprised an account titled the "USD Custodial Account" (the bank statements for which included in their heading: "*For exclusive benefit of its customers*") and an account titled the "USD Network Account" which was designated to received fiat from those Users who also had a Silvergate account and who participated in Silvergate's "SEN" programme, allowing for immediate transfers from a User's SEN account to the USD Network Account. ("SEN" refers to "Silvergate Exchange Network" and was an account which allowed account holders to send funds immediately, 24 hours a day, to the account of another SEN account holder, such as FTX DM's USD Network Account.)

79. From January 2022, it appears that the USD Silvergate Accounts began receiving USD fiat from Users of the FTX International Platform, instead of such fiat being sent to the Alameda Bank Accounts.

80. Credits to the USD Silvergate Account were then reflected as credits to that User's Account in USD, with deposits into either or both the USD Custodial Account and the USD Network Account appearing as a single USD credit balance in the User's Account on the FTX International Platform. It appears, therefore, that the two USD Silvergate Accounts were treated as a single mixed fund of USD.

81. At some stage prior to April 2022, FTX DM opened accounts with another financial institution in CAD, EUR, GBP and CHF (the "**FI Accounts**", and together with the Equity Bank Accounts and the USD Silvergate Accounts, the "**Digital Accounts**"). The FI Accounts were marked "FBO" without any express designation as to who they were "for the benefit of".

82. From at least early April 2022 (in respect of the CAD, EUR and GBP accounts) and from early June 2022 (in respect of the CHF account) those FI Accounts began receiving and

holding fiat in those currencies from Users of the FTX International Platform and became the primary accounts for the receipt of fiat, although some fiat was still sent to the Alameda Bank Accounts. Credits to the FI Accounts in those currencies were then reflected as credits to that User's Account on the FTX International Platform in the relevant currencies.

83. It would appear that the intention behind the opening of all of these bank accounts in FTX DM's name was that the existing Users of the FTX International Platform would become customers of FTX DM.

(10) Amendments to the Feb ToS

84. As noted above, the ToS before 3 December 2021 stated that the FTX International Platform did not accept fiat currency. Aside from that change, the ToS remained the same up to and including the ToS dated 28 February 2022 (the Feb ToS). The Feb ToS made reference to the facilities which the JPLs understand were available on the FTX International Platform for many or most customers:

Services	Clause/page
Convert Digital Asset to another Digital Asset	5/3
Futures Contracts – quarterly or perpetual	6/4
Leveraged Tokens	7/4

At pages [60]-[78] of Exhibit **"BCS-1"** is a copy of the Feb ToS.

85. The Feb ToS were expressed to be governed by the laws of Antigua and Barbuda, and contained an arbitration agreement by which the parties agreed to submit to arbitration in accordance with the Antigua and Barbuda Arbitration Act (Cap 33).

86. On 13 May 2022 the entirely new May ToS were posted on the FTX International Platform's website. The May ToS were clearly intended to replace the Feb ToS in their entirety. The May ToS set out more Services offered to Users (called Specified Services) and identified which of FTX DM, FTX Trading or LTB would be providing them:

Service Provider	Specified Service	Sched
FDM	Spot Market	2
FDM	Spot Margin Trading	3
FDM	OTC/OEP Portal	4

FDM	Futures Market	5
FDM	Volatility Market (Options Contract)	6
FDM	Volatility Market (MOVE Vol Contracts)	7
FTXT	Leveraged Tokens Spot Market	8
FTXT	Volatility Market (BVOL/iBVOL Tokens)	9
LT Baskets Ltd	Issuing/redeem Leveraged/BVOL/iBVOL Tokens	10
FTXT	NFT Market	11
FTXT	NFT Listing	12

At pages **[79]-[140]** of Exhibit **"BCS-1"** is a copy of the May ToS.

87. The May ToS were expressed to be governed by English law, and contained an arbitration clause.

88. It is a question of legal analysis as to whether, and if so when, the May ToS superseded the Feb ToS. That in part turns on whether the May ToS replaced the Feb ToS as a result of legal novation or an amendment or both, and whether that occurred under powers given under the Feb ToS or the May ToS or both.

89. It would appear that:

(1) all Users who registered for the first time after 13 May 2022 were bound by (and only ever by) the May ToS;

(2) Users who had registered before 13 May 2022 were bound by the May ToS from (at the latest) when they first logged onto the FTX International Platform after 13 May 2022 to use any Service;

(3) Users who had registered before 13 May 2022 but who never logged onto the FTX International Platform to use any Service after 13 May 2022 remained bound by the Feb ToS.

90. The explanation why some Specified Services appear to have remained with FTX Trading under the May ToS appears to be that the SCB was not willing for FTX DM as a regulated entity to provide those services. For instance, NFTs fell outside the scope of the DARE Act (s. 3(2)(e)).

(11) Role of FTX DM in relation to the Specified Services

91. Some of the Services expressly referred to in the Feb ToS are stated in the May ToS to be provided by FTX DM (spot market, futures market, leveraged tokens). The other Specified Services in the May ToS are not referred to in the Feb ToS at all. The JPLs' investigations are on-going as to the extent to which some, or all, of such services not mentioned were nevertheless provided on the FTX International Platform prior to 13 May 2022.

92. It is a matter of legal analysis whether Services which, under the Feb ToS, were provided by FTX Trading and which under the May ToS were stated to be provided by FTX DM, were transferred to FTX DM, and if so by what means.

93. It appears, though, that FTX DM was intended to step into the shoes of FTX Trading in respect of those Specified Services allocated to it, to the extent that, prior to the commencement of the May ToS, they had been provided by FTX Trading. FTX DM was not acting, for example, as agent for FTX Trading, which would have been contrary to the entire purpose of the "migration".

(12) Obligor in respect of Users' Accounts

94. As noted above, in practice any credit balance on a User's Account in fiat gave the User the ability to withdraw that fiat and transfer it to an account off the FTX International Platform. Similarly, any credit balance in a digital asset gave the User the ability to request the transfer of that digital asset to a public address, in respect of which the User held the private key. This gives rise to two questions:

(1) who is obliged to transfer that fiat or those digital assets, which is the question addressed in this section; and

(2) what is the legal nature of that obligation (is it a personal obligation or a proprietary/trust obligation). That is addressed in Section 15 below.

95. Under the Feb ToS (and its predecessors) there was only one FTX entity which would have been the obligor under Users' Accounts, being FTX Trading.

96. Under the May ToS there are two principal obligors: FTX DM or FTX Trading. In addition LTB is stated to provide token issuance and redemption services for leveraged tokens and BVOL/iBVOL tokens.

97. It would appear as regards the Accounts that there is a unified obligation in respect of any one User, and therefore the obligations can only sensibly be owed by *either* FTX Trading or FTX DM, not both. Furthermore, it is apparent that FTX DM assumed the obligations to Users in respect of the Accounts in light of the matrix of facts surrounding the "migration" including (without limitation):

(1) that the KYC updating process was only necessary if Users were "migrating" to FTX DM, and the core contractual relationship was in respect of Users' Accounts;

(2) that, while "Accounts" were not part of the Services or Specified Services, nevertheless the majority of the Specified Services under the May ToS were provided by FTX DM, and the most used Specified Service (perpetual futures) was provided by FTX DM under the May ToS;

(3) that the FTX group intended to move its headquarters from HKSAR to The Bahamas and to bring itself within the regulation of the DARE Act and the SCB and FTX DM was to be the only regulated entity within the FTX group of companies. It would have been inconsistent with that intention if the important Account obligations were to remain with the unregulated FTX Trading;

(4) that the AML/CFT Risk Assessment document dated August 2021 stated (page 3) that "*FDM will operate a digital platform*" and the Marketing Policy dated August 2021 stated (page 7) that "*FDM operates one website ...*" which indicates that it is FTX DM that is principally responsible for the FTX International Platform, and hence for (among other things) the Accounts; and

(5) (as discussed in Section 13 below) that insofar as FTX DM controlled the private keys to the digital assets which had been transferred by Users to the FTX International Platform, it would be assumed to have ownership of all relevant assets. It would, therefore, have been incongruous if FTX DM did not also have the obligation constituted by the Account to transfer equivalent digital assets to the User upon a withdrawal request. If FTX DM was the obligor in respect of

digital assets standing to the credit of a User's Account, it would have been similarly incongruous if FTX DM was not also the obligor in respect of fiat standing to the credit of a User's Account. All the more so in circumstances where USD fiat was regarded as interchangeable with certain USD-linked stablecoins.

At pages **[155]-[175]** and **[176]-[185]** respectively are copies of the AML/CFT Risk Assessment and Marketing Policy respective.

(13) Owner of assets (digital assets and fiat/account debts)

98. It would appear that the legal owner of digital assets is the person who controls the relevant private key. Prior to late 2021 or early 2022, that was clearly FTX Trading. From at least 13 May 2022, it was FTX DM who owned the digital assets in light of the matrix of facts surrounding the "migration" including (without limitation):

(1) in August 2021, under the name of FTX DM, a "Safeguarding of Assets & Digital Token Management Policy" (the "**Policy Document**") was drafted which assumed that all relevant assets transferred by Users were held by FTX DM (it does not draw a distinction between new Users and existing Users);

(2) insofar as the private keys were deployed by the code, then FTX DM clearly had authority to use at least that aspect of the code; and

(3) insofar as the private keys were in the control of individuals who were based in The Bahamas and employed by FTX DM, then FTX DM had control over the private keys for that reason.

At pages **[186]-[195]** of Exhibit **"BCS-1"** is a copy of the Policy Document.

99. Once FTX DM opened its own bank accounts, fiat from Users was deposited in those accounts and so FTX DM was clearly the legal owner of those deposits as the account-holder.

100. As noted above, when Users transferred fiat to the Alameda Bank Accounts, that then constituted a debt from ARL to (originally) FTX Trading. The question is whether that cause of action against ARL then transferred to FTX DM. Since (as set out in Section 12

above), it would appear that FTX DM became the obligor under the Accounts in place of FTX Trading, it would be inconsistent with that obligation for the ARL debt not also to transfer from FTX Trading to FTX DM.

(14) Rights of owner to use such assets

101. FTX DM in fact:

(1) mixed digital assets or fiat received from Users with other digital assets or fiat received from other Users; and

(2) used such digital assets and fiat for its own purposes, without segregating them from its own digital assets/fiat.

It would seem that FTX DM, as legal owner, had the right to so deal with those assets, subject to the rights of Users discussed in Section 15 below.

(15) Nature of rights of Users

102. This is a key question for Users, as demonstrated by correspondence received from investors.

103. It is a matter of legal analysis whether Users' rights against the owner of the digital assets and fiat are personal or proprietary, in light of the relevant factual matrix, including the way in which FTX DM used the digital assets and fiat (see Section 14 above).

(1) If merely personal rights then:

(a) in the case of fiat credit balances, they would be to pay fiat as a liquidated debt, in the same way as a bank has a personal obligation to pay a depositor;

(b) in the case of digital asset credit balances, they would be to transfer to the User equivalent digital assets, in the same way as a counterparty to a repo/repurchase agreement has a contractual obligation to transfer equivalent assets under the "off-leg" of that repo.

(2) If proprietary rights then:

(a) in the case of digital assets, it is a matter of legal analysis whether it is possible for Users:

(i) to retain full legal and beneficial title, in the same way that a bailor retains full beneficial and legal title to bailed goods; or

(ii) only to retain a beneficial interest, under a trust; and

(b) in the case of fiat, whether it is a beneficial interest under a trust.

104. The situation might differ as between the Feb ToS (and previous ToS) and the May ToS.

105. The Feb ToS do not contain any express reference to Users retaining any proprietary interest in digital assets or fiat once the User has transferred them to the FTX International Platform.

106. It is presently unclear if and when the Policy Document was published on the FTX website but it states (among other things) that FTX DM "*will ensure that*":

(1) "*Customer assets (both fiat and virtual assets) are segregated from its assets*";

(2) "*All third-party providers are aware that customer funds do not represent property of FDM* [FTX DM] *and are therefore protected from third-party creditors*"; and

(3) "*All third-party providers are aware that customer assets are held in trust*".

107. It states that "*Customer monies will be appropriately ring-fenced to protect from: ... The unlikely event FDM becomes insolvent*".

108. The May ToS introduced cl 8.2.6 which provides:

> *"All Digital Assets are held in your Account on the following basis:*
>
> *(A)* ***Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading***. ***As the owner of Digital Assets*** *in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.*

*(B) **None** of the Digital Assets in your Account are **the property of**, or shall or may be loaned to, **FTX Trading**; FTX Trading does not represent or treat Digital Assets in User's Accounts **as belonging to FTX Trading**.*

(C) You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party."

109. It is a question of legal analysis whether it is possible to have a bailment of digital assets and whether the May ToS creates a valid bailment of digital assets.

110. The Policy Document by contrast implies that a trust of both digital assets and fiat is intended. However, it is at present unclear to the JPLs whether the Policy Document was expressly incorporated into any ToS.

111. It is a question of legal analysis whether, in light of the Policy Document, cl 8.2.6 should be recharacterized as an intention merely to reserve to the Users the beneficial interest, not "title".

112. By contrast, the May ToS specifically refers to the creation of a trust in one particular, narrow circumstance (cl 9.2). Moreover, the LTB Collateral Agreement might be seen to be inconsistent with FTX Trading (and, to the extent FTX DM steps into FTX Trading's shoes, FTX DM) holding digital assets on trust prior to the relevant User posting them as collateral, since if those digital assets were always held on trust, then the trustee could simply declare that it now held them for the counterparty for so long as the margin had to be posted. It would not be necessary for the digital assets to be transferred to another entity entirely (LTB) to hold on trust for the counterparty.

(16) Appointment of representative creditors

113. It may be seen from the description of the various complex issues in this case that this application is one where the Court is likely to be assisted by adversarial argument.

114. Persons with claims or potential claims against FTX DM will, or may, wish to be heard on the following questions, including whether:

(1) Users who registered on the FTX International Platform for the first time on or after 13 May 2022 were bound only by the May ToS;

(2) Users who registered on the FTX International Platform prior to 13 May 2022 and continued to use it after 13 May 2022 were bound by the May ToS from (at the latest) when they first logged onto the FTX International Platform after 13 May 2022 and used any Service;

(3) Users who had registered prior 13 May 2022 but who never logged onto the FTX International Platform to use any Service after 13 May 2022 remained bound by the Feb ToS;

(4) The counterparty in respect of perpetual future contracts transacted on the FTX International Platform on or after 13 May 2022 was FTX DM or a User; and

(5) Any User has a trust claim or other type of proprietary claim against FTX DM.

115. As to sub-paragraph 114(5) above, certain people have made claims that their assets are held on trust. After this application has been issued the JPLs intend to contact these parties to inquire whether one or more would be prepared to act as a representative party to advance arguments that Users' assets are held on trust by FTX DM and, if yes, the rights and obligations associated with the trust.

116. As to the appointment of representative parties in relation to the issues identified at sub-paragraphs 114(1) to (4) above, after issue of this Summons, prior to the first hearing of the application the JPLs will seek to engage with appropriate representative parties who might be willing to act in a representative capacity.

117. In the event that the Court appoints one or more representative parties in relation to certain issues, in order to assist the Court and in the interests of ensuring that all arguments are canvassed before the Court and saving costs, the JPLs would propose advancing arguments against those being advanced by the representative parties. So, for example, the JPLs would advance arguments against the proposition that digital assets and fiat currency are held on trust, alternatively, if there is a trust, the JPLs would advance arguments on the type of trust and the availability or otherwise of tracing. JPLs reserve the right to put an affirmative case on any questions arising from this Summons which the JPLs consider affect issues fundamental to the liquidation including the rights of persons other than Users/Customers.

118. If no representative party is willing to appear on any particular issue the JPLs would seek to address both sides of the argument. It is obviously important for the Court to hear both sides of the argument. It is also important that the Court hears arguments on behalf of unsecured creditors.

Conclusion

119. There is some urgency in obtaining the directions sought in this Summons. Until directions have been given by this Honourable Court, there will be no clarity as to the rights of Users or of the assets to which FTX DM is entitled. The issues are complicated and are likely to take some time to unravel. Given the sums involved, as indicated above, there are also likely to be one or more appeals from the directions of this Honourable Court. For these reasons the JPLs have made this application without having information that is currently in the control of the Chapter 11 Debtors. However, as information is released by the Chapter 11 Debtors it is anticipated that the factual position will become clearer as the application progresses. If it does, then the JPLs will file further evidence updating the factual position.

SWORN TO before me this)
[x] day of **March**, 2023 at)
Nassau, N.P., The Bahamas)

.....

Before me,

.....

NOTARY PUBLIC

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

CERTIFICATE

I hereby certify that the attached are true copies of **Exhibits "BCS-1"** referred to in the Fifth Affidavit of Brian Simms KC sworn before me this **15th day** of **March A.D., 2023.**

NOTARY PUBLIC

EXHIBIT B

Migration Plan

FTX DIGITAL MARKETS LIMITED

CUSTOMER MIGRATION PLAN

Document History		
Date	**Version**	**Description**
August 2021	v1.0	N/A.

Confidentiality

All information contained in this document shall be kept in confidence. No part of this document is to be altered or copied without the written agreement of FDM Digital Markets Limited (**FDM**). None of this information shall be divulged to persons other than to authorised employees and contractors of FDM on a need to know basis. The release of this document to other parties must be authorised by FDM, and only once an NDA has been signed with that party.

Review & Approvals

This document requires review and approval as it may be released to third parties as part of FDM's planning and decision management process. The following representatives of FDM have approved this document:

Name	**Title**	**Date Approved**
Ryan Salame	CEO	24 August 2021

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INTRODUCTION

This policy outlines FDM's approach to the migration of customers from FTX Trading Limited (**FTX**). In developing this policy, FDM has considered the operational, technical and regulatory aspects of its approach to the migration.

OBJECTIVE

This policy's objectives are to:

- Present FDM's plan to migrate customers to its business from FTX.

APPORTIONMENT OF RESPONSIBILITIES

FDM clearly defines the roles and responsibilities of all individuals with oversight of, and/or involvement in, the migration of customers.

FDM'S RESPONSIBILITIES

FDM is ultimately responsible for the onboarding of customers according to the firm's AML/CFT Policy.

FDM's key roles and responsibilities in relation to the migration of customers are outlined below:

- Appropriately communicating the new terms of service to its customers.
- Ensuring customers are risk assessed and onboarded according to the AML/CFT Policy.
- Ensuring any gaps in the due diligence requirements are filled.

SENIOR MANAGEMENT RESPONSIBILITIES

The CEO is the primary person responsible for the migration of customers from FTX to FDM. To do so, the CEO will appoint a person(s) with sufficient seniority, skills, and experience to oversee the process of migration. The Compliance Officer and MLRO will play a key part in the migration of customers from FTX to FDM, particularly regarding customers who are considered high risk and/or a PEP.

FDM will engage with FTX senior management in order to have a clear understanding of the transition objectives and milestones from the parent.

The CEO and CO will engage with FTX customer support and marketing in order to ensure both FTX and FDM are aligned on the transition, from messaging to the operational execution. The ultimate objective is a smooth transition from a user experience perspective. Front end and back end systems should also reflect a shift of activity to FDM as smoothly as possible, subject to regulatory considerations.

TERMS OF SERVICE

Customers who will be migrated from FTX to FDM will be required to accept new terms of service and the sharing of information from FTX to FDM prior to onboarding. As the migration commences, customers will be notified of the change and will be given a period of 90 days to raise any queries, comments, or concerns to the centralised customer support team, before accepting the new terms of service and sharing of information or withdrawing their funds. If customers do not actively accept the new terms of service or the sharing of

information within 90 days and do not remove all of their funds, they will be assumed to have accepted the new terms of service and be migrated.

GAP ANALYSIS

FDM will conduct a gap analysis to identify any differences between the due diligence conducted on customers by FTX and the requirements of FDM. During the migration process, customers will be required to provide any additional due diligence information that FDM would need to obtain in order to comply with the requirements of its AML/CFT Policy. Customers who are unable to provide the required information during their respective migration window, will have their FDM account restricted, unless mitigating circumstances apply.

RISK ASSESSMENT

Customers who migrate to FDM will be risk assessed according to its AML/CFT Policy, following the risk assessment, the customer will be assigned their relevant risk score. As part of the risk assessment, customers will be screened for any PEP and/or sanctions matches. If any matches are discovered, the relevant actions will be taken according to the AML/CFT Policy.

MIGRATION PLAN

The FDM migration hierarchy is based on customers trading volume, followed by customer type (i.e. institutional or retail). In order to ensure a smooth and well-managed transition, the migration is expected to be completed by 2023.

High volume users represent a small number of customers which provide a high amount of volume and hence revenue to FDM, as such they will be prioritised and migrated first. The other institutional customers will follow, also representing a small number of higher volume customers.

Once institutional customers have been migrated, FDM will focus on migrating individuals. Low risk individuals will be migrated first as there will be less friction in terms of due diligence requirements, and it is believed most of these customers will not require further due diligence other than that which is shared from FTX to FDM. Medium and high risk individual customers will be the last to be migrated. These customers may require further due diligence documents and reviews by the CO/MLRO.

Please see the table below for the expected time frame for the migration of customers. FDM will provide quarterly updates to the Securities Commission of the Bahamas (**SCB**) with the actual number of customers that have been successfully migrated.

Customer Type	Number of Clients to be Migrated (expected)	Migration Commencement Date	Expected Migration Completion Date	Actual Customers Migrated to Date
High volume (institutional)	Fee VIP & Tier 6	Q4 21	Q1 22	
Other Institutional	Fee Tiers 2-5	Q1 22	Q2 22	
Individual low risk	All Fee Tiers	Q2 22	Q3 22	
Individual medium risk	All Fee Tiers	Q3 22	Q4 22	
Individual high risk	All Fee Tiers	Q4 22	Q1 23	

EXHIBIT C

2019 Terms of Service

FTX EXCHANGE: TERMS OF SERVICE

The following terms and conditions of service (the "**Terms**") constitute an agreement between you and FTX Trading LTD ("**FTX Trading**," "**we**," or "**us**"), a company incorporated in Antigua and Barbuda, and apply to your use of FTX Cryptocurrency Derivatives Exchange ("**FTX**" or the "**Exchange**") as a user ("**User**", "**you**" or "**your**") to buy, sell, exchange, hold, or otherwise transact in Digital Assets (as defined below), use the FTX Application Programming Interface ("**API**"), or use any other services offered through the FTX website (ftx.com) (the "**Site**") (together, the "**Services**"). By registering for an FTX account ("**Account**") or using the Services, you agree that you have read, understood, and accept these Terms as well as our Privacy Policy and Security Policy, and you acknowledge and agree that you will be bound by such terms and policies.

Our Services are not offered to entities or persons who have their registered office or place of residence in the United States of America or any Restricted Territory as defined in Section 33.

As used throughout these Terms, "Digital Assets" means bitcoin, ethereum or any other digital asset, cryptocurrency, virtual currency, or token that are available to transact in using the Exchange and "fiat currency" means any government issued national currency. FTT is the exchange token of the FTX ecosystem and is not offered in the United States or to U.S. persons. Before beginning to use the Exchange or any other products or services offered by FTX Trading, you should ensure you have reviewed the fee schedule.

Section 27 of these Terms governs how they may be changed over time. If after reading these Terms in their entirety you are still unsure of anything or you have any questions, please feel free to contact us.

1. APPLICABLE LAWS AND REGULATIONS

Your conduct on the Exchange is subject to the laws, regulations, and rules of any applicable governmental or regulatory authority, including, without limitation, all applicable tax, anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") provisions.

You agree and understand that by opening an Account and using the Services in any capacity, you shall act in compliance with and be legally bound by these Terms and all applicable laws and regulations (including without limitation those stated in this Section 1, where applicable), and failure to do so may result in the suspension of your ability to use the Services or the closure of your Account. For the avoidance of doubt, continued use of your Account, and the receipt of all trading fee discounts and rebates, is conditioned on your continued compliance at all times with these Terms and all applicable laws and regulations.

2. ELIGIBILITY

If you are registering to use the Services as an individual, you must be at least 18 years of age, and you must not have been previously been suspended or removed from the Exchange or any other service or product offered by FTX Trading or its affiliate entities, to enter into this Agreement.

If you are registering to use the Services on behalf of a legal entity, you represent and warrant that (i) such legal entity is duly organized and validly existing under the applicable laws of the jurisdiction of its organization; (ii) you are duly authorized by such legal entity to act on its behalf; and (iii) such organization (and any affiliate entity) must not have been previously suspended or removed from the Services or any other service or product offered by FTX Trading or its affiliate entities, to enter into this Agreement.

By accessing or using the Services, you further represent and warrant that you are not a Restricted Person nor are you a resident of a Restricted Territory (each as defined in Section 33) and you will not be using the Services for any illegal activity including, but not limited to, those Restricted Activities listed under Section 19.

Notwithstanding the foregoing, FTX Trading may determine not to make the Services, in whole or in part, available in every market, either in its sole discretion or due to legal or regulatory requirements, depending on your location.

3. REGISTRATION PROCESS; IDENTITY VERIFICATION

When registering your Account, you must provide current, complete, and accurate information for all required elements on the registration page, including your full legal name. You are the only person authorized to use your Account and you may not share your Account credentials with any other person. You also agree to provide us, when registering an Account and on an ongoing basis, with any additional information we request for the purposes of identity verification and the detection of money laundering, terrorist financing, fraud, or any other financial crime, including without limitation a copy of your government issued photo ID or evidence of residency such as a lease or utility bill. You permit us to keep a record of such information and authorize us to make any inquiries, directly or through third parties, that we consider necessary to verify your identity or protect you and/or us against fraud or other financial crime, and to take action we reasonably deem necessary based on the results of such inquiries. When we carry out these inquiries, you acknowledge and agree that your personal information may be disclosed to credit reference and fraud prevention or financial crime agencies and that these agencies may respond to our inquiries in full.

In certain circumstances, we may require you to submit additional information about yourself, your business, or your transactions, provide records, and complete other verification steps (such process, "**Enhanced Due Diligence**"). You represent and warrant that any and all information provided to us pursuant to these Terms or otherwise is true, accurate and not misleading in any respect. If any such information changes, it is your obligation to update such information as soon as possible. Failure to provide such information in a timely fashion may result in the suspension of your ability to use the Services (until you provide such information) or the closure of your Account.

We reserve the right to maintain your account registration information after you close your Account for business and regulatory compliance purposes, subject to applicable law and regulation.

4. AML AND CTF COMPLIANCE

Our AML and CTF procedures are guided by all applicable rules and regulations regarding AML and CTF. These standards are designed to prevent the use of the FTX platform for money laundering or terrorist financing activities. We take compliance very seriously and it is our policy to take all the necessary steps to prohibit fraudulent transactions, report suspicious activities, and actively engage in the prevention of money laundering and any related acts that facilitate money laundering, terrorist financing or any other financial crimes.

5. INITIAL FUNDING; THIRD PARTY TRANSFERS

In order to fund your Account and begin trading, you must first procure Digital Assets. FTX supports deposits and withdrawals for a number of Digital Assets, including certain U.S. Dollar-pegged Digital Assets (each a "**Stablecoin**"). You may deposit Stablecoins that you already own by generating an address within your Account and sending your Stablecoins to such address, after which they should appear in your "USD Stablecoins (USD)" balance. The Exchange may support various fiat currencies for deposit, withdrawal, and/or trading, using wire transfers, credit cards, or other appropriate methods. A partial list of fiat currencies supported by the Exchange can be found here.

FTX enables you to exchange ("**Convert**") one Digital Asset for another Digital Asset. When you request to Convert a Digital Asset or Stablecoin, you will be quoted a price for such conversion. The price quoted will depend on market conditions, and you are under no obligation to execute a trade at any price quoted to you. FTX Trading makes no promises as to the timing or availability of the ability to convert Digital Assets via the Exchange.

It is your responsibility to ensure you send all Digital Assets, including Stablecoins, to the correct address provided for that particular Digital Asset. If you send a Digital Asset to an address that does not correspond to that exact Digital Asset (such as an address not associated with your account or the specific Digital Asset sent), such Digital Asset may be lost forever. If you send a Digital Asset from your Account to an external address that does not correspond to that exact Digital Asset, such Digital Asset may be lost forever.

You assume all liability for any losses incurred as a result of sending Digital Assets to an incorrect address (such as an address not associated with your account or an address not associated with the specific Digital Asset). FTX Trading is not responsible for any losses or for taking any actions to attempt to recover such Digital Assets. If the funds are recoverable, we may in our sole discretion attempt to recover the funds, but such recovery efforts are in no way guaranteed. Please also be aware that if you attempt to deposit ETH to your Account by sending it via a smart contract, your funds may not be automatically credited, and may take time to recover. Should you encounter any of these issues, you may contact us us to request assistance.

FTX Trading makes no representations or warranties regarding the amount of time that may be required to complete transfer of your Digital Assets from a third party wallet or other source and have said Digital Assets become available in your Account.

When you elect to transfer Digital Assets from your Account to a third party wallet or other location, it is always possible the party administering the new location may reject your transfer or that the transfer may fail due to technical or other issues affecting our platform. You agree that you shall not hold FTX Trading liable for any damages arising from a rejected transfer.

6. FUTURES CONTRACTS

The futures listed by FTX include three contracts for each Digital Asset or index (each a "**Futures Contract**"). These include two quarterly Futures Contracts (with expiration at the end of the current and subsequent quarters) as well as perpetual Futures Contracts.

Futures trading on FTX is high risk. In order to trade Futures Contracts on FTX, you must post collateral. Depending on market movements, your position may be liquidated and you may sustain a total loss of Digital Assets. This is because futures trading is highly leveraged, with a relatively small amount of funds used to establish a position in a Digital Asset or index having a much greater value. If you are uncomfortable with this level of risk, you should not trade futures contracts.

You agree to maintain a sufficient amount of Digital Assets at all times to meet FTX's margin requirements, as such requirements may be modified from time to time. If the value of the collateral in your Account falls below the maintenance margin requirement, FTX Trading may seize and liquidate any or all of your positions and assets to reduce your leverage. If, after your positions and assets are liquidated, your Account still contains insufficient Digital Assets to restore your margin ratio to the required amount, you will be responsible for any additional Digital Assets owed.

FTX Trading may, in its sole discretion, perform measures to mitigate potential losses to you on your behalf, including, but not limited to closing futures positions held in any Digital Asset or index that FTX Trading plans to delist from the Exchange in accordance with Section 20.

Under certain market conditions, it may be difficult or impossible to liquidate a position. This can occur, for example, if there is insufficient liquidity in the market or due to technical issues on our platform. In the event that market conditions make it impossible to execute such orders, you may be unable to limit your losses. The use of leverage can lead to large losses as well as gains.

7. LEVERAGED TOKENS

Leveraged Tokens are "ERC-20" digital tokens issued by FTX Trading that operate on the Ethereum blockchain ("**Leveraged Tokens**"). FTX offers Leveraged Tokens for each underlying Digital Asset or index ("**Underlying**"). Each Leveraged Token has an associated account on FTX that takes leveraged positions on perpetual futures contracts, and can be created or redeemed for its share of the Digital Assets of that account.

Users may create Leveraged Tokens by depositing Stablecoins and redeem Leveraged Tokens for an equivalent amount of Stablecoins. The Leveraged Token will automatically rebalance to add or remove exposure based on the size of the creation or redemption. Users are charged or

credited an amount of Stablecoins equal to the number of Leveraged Tokens being created or redeemed multiplied by the Net Asset Value of the Leveraged Token as of the creation or redemption time.

Leveraged Tokens seek (but under no circumstances guarantee) daily results, before fees and expenses, that correspond to 300% or 3x ("**BULL**"), -100% or -1x ("**HEDGE**"), or -300% or -3x ("**BEAR**") of the daily return of the Underlying (in U.S. Dollars) for a single day, not for any other period. A Leveraged Token's returns for a period longer than a single day will be the result of its return for each day, compounded over that period, and could differ in amount and direction from the return of the Underlying over the same period.

A Leveraged Token's returns may also deviate from expected returns in a period shorter than a single day for reasons including, but not limited to, scheduled or unscheduled rebalancing. Scheduled rebalancing occurs once daily in order to maintain the Leveraged Token's intended exposure to the market price of the Underlying. Unscheduled rebalancing may occur, for example, if the market price of the Underlying moves more than 10% in either direction within a single day in order to maintain the Leveraged Token's intended returns.

8. FORKS AND DISTRIBUTIONS

As a result of the decentralized and open source nature of Digital Assets it is possible that sudden, unexpected, or controversial changes ("**Forks**") can be made to any Digital Asset that may change the usability, functions, value or even name of a given Digital Asset. Such Forks may result in multiple versions of a Digital Asset and could lead to the dominance of one or more such versions of a Digital Asset (each a "**Dominant Digital Asset**") and the partial or total abandonment or loss of value of any other versions of such Digital Asset (each a "**Non-Dominant Digital Asset**").

FTX Trading is under no obligation to support a Fork of a Digital Asset that you hold in your Account, whether or not any resulting version of such forked Digital Asset is a Dominant Digital Asset or Non-Dominant Digital Asset or holds value at or following such Fork. Forks of Digital Assets can be frequent, contentious and unpredictable, and therefore cannot be consistently supported on FTX. When trading or holding Digital Assets using your Account, you should operate under the assumption that FTX will never support any Fork of such Digital Asset.

If FTX Trading elects, in its sole discretion, to support a Fork of a Digital Asset, it may choose to do so by making a public announcement through its Site or otherwise notifying customers, and shall bear no liability for any real or potential losses that may result based on the decision to support such Fork or the timing of implementation of support. If FTX Trading, in its sole discretion, does not elect to support a Fork of a given Digital Asset, including the determination to support, continue to support, or cease to support any Dominant Digital Asset or Non-Dominant Digital Asset, FTX Trading assumes no responsibility or liability whatsoever for any losses or other issues that might arise from an unsupported Fork of a Digital Asset.

FTX does not generally offer support for the distribution of assets based on a triggering fact or event, such as the possession of another asset (each an "**Airdrop**"), the provision of rewards or other similar payment for participation in a Digital Asset's protocol ("**Staking Rewards**"), or any other distributions or dividends that Users might otherwise be entitled to claim based on their use or possession of a Digital Asset outside of the FTX platform (collectively, "**Digital Asset Distributions**"). FTX Trading may, in its sole discretion, elect to support any Digital Asset Distribution, but is under no obligation to do so and shall bear no liability to Users for failing to do so, or for initiating and subsequently terminating such support.

In the event of a Fork of a Digital Asset, we may be forced to suspend all activities relating to such Digital Asset (including trades, deposits, and withdrawals) on FTX for an extended period of time, until FTX Trading has determined in its sole discretion that such functionality can be restored ("**Downtime**"). This Downtime may occur at the time that a Fork of a given Digital Asset occurs, potentially with little to no warning. During such Downtime, you understand that you may not be able to trade, deposit, or withdraw the Digital Asset subject to such Fork. FTX Trading does not bear any liability for losses incurred during any Downtime due to the inability to trade or otherwise transfer Digital Assets.

9. ATTACKS ON BLOCKCHAIN NETWORKS

FTX Trading cannot prevent or mitigate attacks on blockchain networks and has no obligation to engage in activity in relation to such attacks. In the event of an attack, FTX Trading reserves the right to take commercially reasonable actions, including, but not limited to, if we confirm that a Digital Asset's network is compromised or under attack, immediately halting trading, deposits, and withdrawals for such Digital Asset. If such an attack caused the Digital Asset to greatly decrease in value, we may discontinue trading in such Digital Asset entirely.

Resolutions concerning deposits, withdrawals and User balances for a Digital Asset that has had its network attacked will be determined on a case-by-case basis by FTX Trading in its sole discretion. FTX Trading makes no representation and does not warrant the safety of FTX and you assume all liability for any lost value or stolen property.

10. API USE

Subject to your compliance with these Terms and any other agreement which may be in place between you and FTX Trading related to your use of the API, FTX Trading hereby grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license, to use the API solely for the purposes of trading on FTX. You agree to not use the API or data provided through the API for any other commercial purpose. You access and use the API entirely at your own risk, and FTX Trading will not be responsible for any actions you take based on the API.

FTX Trading may, at its sole discretion, set limits on the number of API calls that you can make, for example, to maintain market stability and integrity. You acknowledge and agree that if you exceed these limits, FTX Trading may moderate your activity or cease offering you access to the API (or any other API offered by FTX Trading), each in its sole discretion. FTX Trading may immediately suspend or terminate your access to the API without notice if we believe you are in

violation of these Terms or any other agreement which may be in place between you and FTX Trading related to your use of the API.

11. ACCOUNT SUSPENSION AND CLOSURE

FTX Trading may, in its sole and absolute discretion, without liability to you or any third party, refuse to let you open an Account, suspend your Account, or terminate your Account or your use of one or more of the Services. Such actions may be taken as a result of a number of factors, including without limitation account inactivity, failure to respond to customer support requests, failure to positively identify you, a court order, or your violation of these Terms. We may also temporarily suspend access to your Account, in the event that a technical problem causes system outage or Account errors, until the problem is resolved.

You may terminate this agreement at any time by closing your Account in accordance with these Terms. In order to do so, you should contact us for assistance in closing your Account. You may not close an Account if we determine, in our sole discretion, that such closure is being performed in an effort to evade a legal or regulatory investigation or to avoid paying any amounts otherwise due to FTX Trading.

We encourage you to withdraw any remaining balance of Digital Assets prior to issuing a request to close your Account. We reserve the right to restrict or refuse to permit withdrawals from your Account if (i) your Account has otherwise been suspended or closed by us in accordance with these Terms; (ii) to do so would be prohibited by law or court order, or we have determined that the Digital Assets in you Account were obtained fraudulently; or (iii) you have not completed the required identity verification procedure. You can check whether or not your identity has been verified by reviewing your verification status under the “Settings” section of your Account. Upon closure or suspension of your Account, you authorize FTX Trading to cancel or suspend pending transactions.

In the event that you or FTX Trading terminates this agreement or your access to the Services, or deactivates or closes your Account, you remain liable for all activity conducted with or in connection with your Account while it was open and for all amounts due in connection with such activity.

12. RISK DISCLOSURES

The following risks associated with Digital Assets and the Services is not exhaustive.

No advice

FTX Trading does not advise on the merits of any particular transactions, trading risks, or tax consequences, and FTX Trading does not provide any other financial, investment, or legal advice in connection with the Services. To the extent that we or our representatives provide trading recommendations, market commentary, or any other information, the act of doing so is incidental to your relationship with us and such information should not be construed as investment or financial advice. Any decision to buy or sell Digital Assets is the User’s decision and FTX Trading will not be liable for any loss suffered.

You accept the risk of trading Digital Assets. In entering into any transaction on FTX, you represent that you have been, are, and will be solely responsible for making your own independent appraisal and investigations into the risks of the transaction and the underlying Digital Asset. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any transaction or any underlying Digital Asset.

Digital Asset transfers and volatility

Trading in Digital Assets can be extremely risky and volatile. Digital Assets may have unique features that make them more or less likely to fluctuate in value. Factors beyond FTX Trading's control, such as regulatory activity, market manipulation, or unexplainable price volatility, may affect market liquidity for a particular Digital Asset. Blockchain networks may go offline as a result of bugs, Forks, or other unforeseeable reasons. As a general matter, Users with limited trading experience and low risk tolerance should not engage in active trading on FTX. Speculating on the value of Digital Assets is high risk and Users should never trade more than they can afford to lose.

Understanding Digital Assets requires advanced technical knowledge. Digital Assets are often described in exceedingly technical language that requires a comprehensive understanding of applied cryptography and computer code in order to appreciate the inherent risks. The listing of a Digital Asset on FTX does not indicate FTX Trading's approval or disapproval of the underlying technology regarding any Digital Asset and should not be used as a substitute for your own understanding of the risks specific to each Digital Asset. We provide no warranty as to the suitability of the Digital Asset traded under these Terms and assume no fiduciary duty to Users in connection with such use of the Services.

Users accept all consequences of sending Digital Assets to an address off the FTX platform. Digital Asset transactions may not be reversible. Once you send Digital Assets to an address, you accept the risk that you may lose access to your Digital Assets indefinitely. For example, an address may have been entered incorrectly and the true owner of the address may never be discovered, or an address may belong to an entity that will not return your Digital Assets, or may return your Digital Assets but first requires action on your part, such as verification of your identity.

Futures and leveraged products

Trading of Futures Contracts and Leveraged Tokens may not be suitable for all Users and should only be used by those who understand the consequences of seeking daily inverse or leveraged results.

Futures Contracts involve margin and leverage, and as such, you may feel the effects of any losses immediately. If movements in the markets for a Futures Contract or the underlying Digital Asset decrease the value of your position in such Future Contract, you may be required to have or make additional collateral available as margin. If your Account is under the minimum

margin requirements set by the Exchange, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your Account.

Unlike Futures Contracts, Leveraged Tokens do not require Users to trade on margin. However, they remain subject to certain risks that you should understand before trading, including but not limited to:

- *Market Price Variance Risk:* Holders buy and sell Leveraged Tokens in the secondary market at market prices, which may be different from the value of the underlying Digital Asset. The market price for a Leveraged Token will fluctuate in response to changes in the value of the token's holdings, supply and demand for the token and other market factors.

- *Inverse Correlation Risk:* Holders of Leveraged Tokens that target an inverse return will lose money when the price of the Digital Asset rises, a result that is opposite from holding the underlying asset.

- *Portfolio Turnover Risk:* Leveraged Tokens may incur high portfolio turnover to manage the exposure to the underlying Digital Asset. Additionally, active market trading of a Leveraged Token's holding may cause more frequent creation or redemption activities that could, in certain circumstances, increase the number of portfolio transactions. High levels of transactions increase transaction costs. Each of these factors could have a negative impact on the performance of a Leveraged Token.

- *Interest Rates:* Leveraged Tokens take positions in futures contracts to achieve their desired leverage. These futures might trade at a premium or discount to spot markets in the applicable Digital Asset as a reflection of prevailing interest rates in cryptocurrency markets. Thus, a Leveraged Token could outperform or underperform the Digital Asset's returns due to a divergence between the two markets.

Supply and value of Digital Assets

The value of Digital Assets may be derived from the continued willingness of market participants to exchange Digital Assets for Digital Assets, which may result in the potential for permanent and total loss of value of a particular Digital Asset should the market for that Digital Asset disappear.

You acknowledge and agree that Digital Assets and/or FTX features available in one jurisdiction may not be available for trading or to access, as applicable, in another.

Blacklisted addresses and forfeited funds

Leveraged Tokens are Digital Assets built on the Ethereum blockchain. FTX Trading reserves the right to "blacklist" certain addresses and freeze associated Leveraged Tokens (temporarily or permanently) that it determines, in its sole discretion, are associated with illegal activity or activity that otherwise violates these Terms ("**Blacklisted Addresses**"). In the event that you send Leveraged Tokens to a Blacklisted Address, or receive Leveraged Tokens from a

Blacklisted Address, FTX Trading may freeze such Leveraged Tokens and take steps to terminate your Account.

In certain circumstances, FTX Trading may deem it necessary to report such suspected illegal activity to applicable law enforcement agencies and you may forfeit any rights associated with your Leveraged Tokens, including the ability to redeem your Leveraged Tokens for U.S. Dollars. FTX Trading may also be forced to freeze Leveraged Tokens in the event that we receive a legal order from a valid government authority requiring us to do so.

Software protocols and operational challenges

The software protocols that underlie Digital Assets are typically open source projects, which means that (i) the development and control of such Digital Assets is outside of FTX's control and (ii) such software protocols are subject to sudden and dramatic changes that might have a significant impact on the availability, usability or value of a given Digital Asset.

You are aware of and accept the risk of operational challenges. FTX may experience sophisticated cyber attacks, unexpected surges in activity or other operational or technical difficulties that may cause interruptions to the Services. You understand that the Services may experience operational issues that lead to delays. You agree to accept the risk of transaction failure resulting from unanticipated or heightened technical difficulties, including those resulting from sophisticated attacks. You agree not to hold FTX Trading accountable for any related losses.

All Users understand that the technology underlying Digital Assets is subject to change at any time, and such changes may affect your assets stored on our platform. You claim full responsibility for monitoring such technological changes and understanding their consequences for your Digital Assets. Users conduct all trading on their own account and FTX Trading does not take any responsibility for any loss or damage incurred as a result of your use of any Services or your failure to understand the risks involved associated with Digital Assets use generally or your use of our Services

Compliance

You are responsible for complying with applicable law. You agree that FTX is not responsible for determining whether or which laws may apply to your transactions, including but not limited to tax law. You are solely responsible for reporting and paying any taxes arising from your use of the Services.

Legislative and regulatory changes

Legislative and regulatory changes or actions at the domestic or international level may adversely affect the use, transfer, exchange, and value of Digital Assets.

No deposit protection

Neither Digital Assets nor any fiat currency held in your Account is eligible for any public or private deposit insurance protection.

Digital Asset Distributions not supported

Certain Digital Assets are built on protocols that support Digital Asset Distributions, including, but not limited to, Forks, Staking Rewards and Airdrops (as defined in Section 8 above). FTX Trading is not obligated to support any such Digital Asset Distributions for Users. If you hold these Digital Assets in your Account, you thereby forfeit the ability to claim any Digital Asset Distributions from FTX. If you hold Digital Assets with proof-of-stake or delegated proof-of-stake consensus algorithms, FTX Trading may in its sole discretion stake these Digital Assets without any obligation to distribute Staking Rewards to you. Staking may subject your Digital Assets to additional risks and FTX is not responsible for losses you may incur related to staking.

13. RIGHT TO CHANGE OR REMOVE FEATURES AND SUSPEND OR DELAY TRANSACTIONS

We reserve the right to change, suspend, or discontinue any aspect of the Services at any time and in any jurisdiction, including hours of operation or availability of any feature, without notice and without liability. We may decline to process any order and may limit or suspend your use of one or more Services at any time, in our sole discretion. Suspension of your use of any of the Services will not affect your rights and obligations pursuant to these Terms.

We may, in our sole discretion, decline to process orders if (i) we believe the transaction is suspicious; (ii) the transaction may involve fraud or misconduct; (iii) it violates applicable laws; or (vi) it violates these Terms. Where permitted by law, we will notify you by the end of the business day if we have suspended processing your orders and, if possible, provide our reasons for doing so and anything you can do to correct any errors leading to the stoppage.

14. FEES

In consideration for the use of the Services, you agree to pay to FTX the appropriate fees, as set forth in our fee schedule displayed on the Site ("**Fee Schedule**"), which FTX Trading may revise or update in its sole discretion from time to time. On request, FTX may make available an alternative fee schedule ("**Alternative Fee Schedule**") to Users who satisfy certain criteria (such as in relation to trading volume), which are determined by FTX in its sole discretion from time to time. You authorize FTX to deduct any applicable fees from your Account at the time you make a given transaction. Changes to the Fee Schedule or Alternative Fee Schedule are effective as of the date set forth in any revision and will apply prospectively from that date forward.

15. PROMOTIONS

FTX Trading does not, as a general rule, participate in promotions without an official pronouncement, either on the Site or elsewhere. You shall obtain prior written approval prior to releasing any statements, written media releases, public announcements and public disclosures, including promotional or marketing materials, relating to FTX.

16. SECURITY OF USER INFORMATION

You are responsible for maintaining the confidentiality and security of any and all account names, User IDs, passwords, and any other security feature that you use to access the Services. You are responsible for (i) keeping your email address up to date in your Account profile and (ii) maintaining the confidentiality of your User information and the security of your Account, which includes the enabling of all relevant security features. You agree to notify FTX immediately if you become aware of any unauthorized use of the Services or any other breach of security regarding the Services. FTX Trading will not be liable for any loss or damage arising from your failure to protect your Account or your User information.

We shall not bear any liability for any damage or interruptions caused by any computer viruses, spyware, or other malware that may affect your computer or other equipment, or any phishing, spoofing, or other attack. If you question the authenticity of a communication purporting to be from FTX, you should login to your Account through the Site, not by clicking links contained in emails.

17. PRIVACY POLICY

We are committed to protecting your personal information and to helping you understand exactly how your personal information is being used. You should carefully read our Privacy Policy, which provides details on how your personal information is collected, stored, protected, and used.

18. RESTRICTED ACTIVITIES

In connection with your use of the Services, you will not:

- violate or assist any party in violating any law, statute, ordinance, regulation or any rule of any self-regulatory or similar organization of which you are or are required to be a member through your use of the Services;
- provide false, inaccurate, incomplete or misleading information;
- infringe upon FTX's or any third party's copyright, patent, trademark, or intellectual property rights;
- engage in any illegal activity, including without limitation illegal gambling, money laundering, fraud, blackmail, extortion, ransoming data, the financing of terrorism, other violent activities or any prohibited market practices;
- distribute unsolicited or unauthorized advertising or promotional material, written media releases, public announcements and public disclosures, junk mail, spam or chain letters;
- use a web crawler or similar technique to access our Services or to extract data;
- reverse engineer or disassemble any aspect of the Site, the API, or the Services in an effort to access any source code, underlying ideas and concepts and algorithms;
- perform any unauthorized vulnerability, penetration or similar testing on the API;

- take any action that imposes an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data or information;
- transmit or upload any material to the Site that contains viruses, Trojan horses, worms, or any other harmful or deleterious programs;
- otherwise attempt to gain unauthorized access to or use of the Site, the API, other FTX Accounts, computer systems, or networks connected to the Site, through password mining or any other means;
- transfer any rights granted to you under these Terms;
- engage in any other activity which, in our reasonable opinion, amounts to or may amount to market abuse including without limitation the carrying out of fictitious transactions or wash trades, front running or engaging in disorderly market conduct; or
- engage in any behavior which is unlawful, violates these Terms, or is otherwise deemed unacceptable by FTX Trading in its sole discretion.

19. ELECTRONIC TRADING TERMS

FTX Trading may, in its sole discretion, choose to discontinue support for a currently listed or supported Digital Asset, Leveraged Token, or Futures Contract at any time, based on a number of factors, including changes in characteristics.

A transaction on FTX may fail for several reasons, including without limitation to change in prices, insufficient margin, or unanticipated technical difficulties. FTX Trading makes no representation or warranty that any transaction will be executed properly. We are under no circumstances liable for any loss or injury suffered by a failure of a transaction to complete properly or in a timely manner. Further, we are in no way responsible for notifying you of a transaction failure, although you are able to see any such failures on the Site. You have full responsibility to determine and inquire into the failure of any transaction which you initiate.

In the event that you receive any data, information, or software through our Services other than that which you are entitled to receive pursuant to these Terms, you will immediately notify us and will not use, in any way whatsoever, such data, information or software. If you request a withdrawal of Digital Assets and we cannot comply with it without closing some part of your open positions, we will not comply with the request until you have closed sufficient positions to allow you to make the withdrawal.

We may refuse to execute a trade, or impose trade amount limits or restrictions at any time, in our sole discretion without notice. Specifically, we reserve the right to refuse to process, or the right to cancel or reverse, any transaction, as well as to revoke access to a User's deposit address on FTX, where we suspect the transaction involves money laundering, terrorist financing, fraud, or any other type of crime or if we suspect the transaction relates to a prohibited use as stated in these Terms. FTX Trading reserves the right to halt deposit activity at our sole discretion. A User may not change, withdraw, or cancel its authorization to make a transaction, except with respect to partially filled orders.

FTX Trading may correct, reverse, or cancel any trade impacted by an error in processing a User's transaction or otherwise. The User's remedy in the event of an error will be limited to

seeking to cancel an order or obtaining a refund of any amounts charged to the User. FTX Trading cannot guarantee such cancellations or refunds will always be possible.

FTX provides Users with a platform that allows their orders to be matched with the orders of other Users. Orders may be partially filled or may be filled by a number of orders, depending on the trading activity at the time an order is placed. FTX's relationship with you under these Terms is as a trading platform provider only and does not act as principal or counterparty with respect to trades entered into on the platform. Notwithstanding the foregoing, (i) FTX Trading may act as a counterparty for limited trades made for the purpose of liquidating fees collected on User trades, and (ii) affiliates of FTX may execute trades on the platform; provided, however, that such affiliates shall not be afforded any priority in trade execution.

The Digital Assets available for purchase through the Services may be subject to high or low transaction volume, liquidity, and volatility at any time for potentially extended periods. You acknowledge that while FTX Trading uses commercially reasonable methods to provide exchange rate information to you through our Services, the exchange rate information we provide may differ from prevailing exchange rates made available by third parties. Similarly, the actual market rate at the time of your trade may be different from the indicated prevailing rate. You agree that you assume all risks and potential losses associated with price fluctuations or differences in actual versus indicated rates.

20. COMMUNICATIONS

These Terms are provided to you and concluded in English. We will communicate with you in English for all matters related to your use of our Services unless we elect, in our sole discretion, to provide support for other languages.

21. FEEDBACK

You acknowledge and agree that any materials, including without limitation questions, comments, feedback, suggestions, ideas, plans, notes, drawings, original or creative materials or other information or commentary you provide on our platform or one of our social media accounts, regarding FTX or the Services (collectively, "**Feedback**") that are provided by you, whether by email, posting to the Site or social channels, or otherwise, are non-confidential and will become the sole property of FTX Trading. FTX Trading will own exclusive rights, including all intellectual property rights, and will be entitled to the unrestricted use and dissemination of such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

22. OWNERSHIP OF DIGITAL ASSETS

You hereby represent and warrant to us that any Digital Assets used by you in connection with the Services are either owned by you or that you are validly authorized to carry out transactions using such Digital Assets and that all transactions initiated with your Account are for your own Account and not on behalf of any other person or entity.

23. TAXES

You will be able to see a record of your transactions via your Account which you may wish to use for the purposes of making any required tax filings or payments. It is your responsibility to determine what, if any, taxes apply to your activities on the Exchange, and to collect, report, and remit the correct tax to the appropriate tax authority. FTX Trading is not responsible for determining whether taxes apply to your transaction, or for collecting, reporting, or remitting any taxes arising from any transaction.

24. INDEMNIFICATION; RELEASE

You agree to indemnify and hold FTX Trading, its affiliates, and service providers, and each of their officers, directors, agents, joint venturers, employees, and representatives harmless from any claim or demand (including attorneys' fees and any losses, fines, fees, or penalties imposed by any regulatory authority) arising out of your breach of these Terms, or your violation of any law or regulation.

For the purpose of this Section 24, the term "**losses**" means all net costs reasonably incurred by us or the other persons referred to in this Section which are the result of the matters set out in this Section 24 and which may relate to any claims, demands, causes of action, debt, cost, expense or other liability, including reasonable legal fees (without duplication).

If you have a dispute with one or more Users or third parties, you release FTX Trading (and its affiliates and service providers, and each of their officers, directors, agents, joint ventures, employees, and representatives) from any and all claims, demands, and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes. If you have a dispute with anyone other than FTX Trading, you release us from liability associated with that dispute.

25. LIMITATION OF LIABILITY; NO WARRANTY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT FTX TRADING AND OUR AFFILIATES AND SERVICE PROVIDERS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES, AND REPRESENTATIVES WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF FTX TRADING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR (IV) ANY OTHER MATTER RELATING TO THE SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES OR WITH THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICES AND CLOSE YOUR ACCOUNT. THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED. FTX TRADING, OUR AFFILIATES, AND OUR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, JOINT VENTURERS, EMPLOYEES, AND SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. FTX TRADING MAKES NO WARRANTY THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (III) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU WILL MEET YOUR EXPECTATIONS.

26. FORCE MAJEURE

FTX Trading shall have no liability for any failure or delay resulting from any abnormal or unforeseeable circumstances outside our reasonable control, the consequences of which would have been unavoidable despite all efforts to the contrary, including without limitation governmental action or acts of terrorism, earthquake, fire, flood, or other acts of God, labor conditions, delays or failures caused by problems with another system or network, mechanical breakdown or data-processing failures or where we are bound by other legal obligations.

27. GOVERNING LAW; VENUE AND ARBITRATION

The laws of Antigua and Barbuda shall govern these Terms. Except as otherwise required by local law, any dispute between you and FTX Trading related in any way to, or arising in any way from, our Services or these Terms ("**Dispute**") shall be finally settled on an individual, non-representative basis in binding arbitration in accordance with the Antigua and Barbuda Arbitration Act (Cap 33), as modified by these Terms or in accordance with rules on which we may mutually agree. Any arbitration shall take place in Antigua and Barbuda. The arbitrator may award any relief that a court of competent jurisdiction could award, including attorneys' fees when authorized by law.

28. AMENDMENTS

We may amend any portion of these Terms at any time by posting the revised version of these Terms with an updated revision date. The changes will become effective, and shall be deemed accepted by you, the first time you use the Services after the initial posting of the revised agreement and shall apply on a going-forward basis with respect to transactions initiated after the posting date. In the event that you do not agree with any such modification, your sole and exclusive remedy is to terminate your use of the Services and close your Account. You agree that we shall not be liable to you or any third party as a result of any losses suffered by any modification or amendment of these Terms.

29. ASSIGNMENT

You may not transfer or assign these Terms or any rights or obligations you have under these Terms without our prior written consent or otherwise and any such attempted assignment shall be void. We reserve the right to freely assign or transfer these Terms and the rights and obligations of these Terms, to any third party at any time without notice or consent. If you object to such transfer or assignment, you may stop using our Services and terminate this agreement by contacting us and requesting to close your account.

30. SURVIVAL

Upon termination of your Account or this agreement for any other reason, all rights and obligations of the parties that by their nature are continuing will survive such termination.

31. THIRD PARTY APPLICATIONS

If you grant express permission to a third party to connect to your Account, either through the third party's product or through FTX, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under this agreement. Further, you acknowledge and agree that you will not hold FTX Trading responsible for, and will indemnify FTX Trading from, any liability arising from the actions or inactions of such third party in connection with the permissions you grant.

32. SITE; THIRD PARTY CONTENT

FTX Trading strives to provide accurate and reliable information and content on the Site, but such information may not always be correct, complete, or up to date. FTX Trading will update the information on the Site as necessary to provide you with the most up to date information, but you should always independently verify such information. The Site may also contain links to third party websites, applications, events or other materials ("**Third Party Content**"). Such information is provided for your convenience and links or references to Third Party Content do not constitute an endorsement by FTX Trading of any products or services. FTX Trading shall have no liability for any losses incurred as a result of actions taken in reliance on the information contained on the Site or in any Third Party Content.

33. LIMITED LICENSE; IP RIGHTS

FTX Trading grants you a limited, non-exclusive, non-sublicensable, and non-transferable license, subject to these Terms, to access and use the Services solely for approved purposes as determined by FTX Trading. Any other use of the Services is expressly prohibited. FTX Trading and its licensors reserve all rights in the Services and you agree that these Terms do not grant you any rights in, or licenses to, the Services except for the limited license set forth above.

Except as expressly authorised by FTX Trading, you agree not to modify, reverse engineer, copy, frame, scrape, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in whole or in part. If you violate any portion of these Terms, your permission to access and use the Services may be terminated pursuant to these Terms. "FTX.com," "FTX"

and all logos related to the Services are either trademarks, or registered marks of FTX Trading or its licensors. You may not copy, imitate, or use them without FTX Trading's prior written consent. All right, title, and interest in and to the Site, any content thereon, the Services, and any and all technology or content created or derived from any of the foregoing is the exclusive property of FTX Trading and its licensors.

34. UNCLAIMED OR ABANDONED PROPERTY

If FTX Trading is holding funds in your Account, and we are unable to contact you and have no record of your use of the Services for a prolonged period of time, applicable law may require us to report these funds as unclaimed property to the applicable jurisdiction. If this occurs, FTX Trading will try to locate you at the address shown in our records, but if FTX Trading is unable to locate you, we may be required to deliver any such funds to the applicable jurisdiction as unclaimed property. FTX Trading reserves the right to deduct a dormancy fee or other administrative charges from such unclaimed funds, as permitted by applicable law.

35. LEGAL COMPLIANCE

The Services are subject to all applicable export control restrictions, and, by using the Services, you represent that your actions are not in violation of such export control restrictions. Without limiting the foregoing, you may not use the Services if (i) you are in a prohibited jurisdiction as set forth at Location Restrictions ("**Restricted Territories"**); (ii) you are a member of any sanctions list or equivalent maintained by the United States government, the United Kingdom government or by the European Union ("**Restricted Persons**"); (iii) you intend to transact with any Restricted Territories or Restricted Persons; (iv) you you are located, incorporated or otherwise established in, or a citizen or resident of a jurisdiction where it would be illegal under Applicable Law for you (by reason of your nationality, domicile, citizenship, residence or otherwise) to access or use the Services; or (v) the publication or availability of the Services is prohibited or contrary to local law or regulation, or could subject FTX to any local registration or licensing requirements.

36. ENTIRE AGREEMENT; THIRD PARTY RIGHTS

The failure of FTX Trading to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of these Terms shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and remain enforceable between the parties.

The headings and any explanatory text are for reference purposes only and in no way define, limit, construe, or describe the scope or extent of such section. These Terms, including FTX's policies governing the Services referenced herein, the Privacy Policy, and the Security Policy, constitute the entire agreement between you and FTX Trading with respect to the use of the Services.

These Terms are not intended and shall not be construed to create any rights or remedies in any parties other than you and FTX Trading and other affiliates of FTX Trading, which each shall

be a third party beneficiary of these Terms, and no other person shall assert any rights as a third party beneficiary hereunder. If some future court judgment deems any particular provision of these Terms unenforceable, the rest of the Agreement is still valid.

37. QUESTIONS AND CONTACT INFORMATION

We often post notices and relevant Services information in our Telegram channel and on our Twitter account, so we advise Users to check those channels before contacting support.

Telegram: https://t.me/FTX_Official
Twitter: https://twitter.com/FTX_Official
WeChat: ftexchange
Blog: https://blog.ftx.com/
Email: support@ftx.com

To contact us, please visit one of the links or channels above. For support with your Account, you may email us at support@ftx.com. Please provide all relevant information, including your FTX username and transaction IDs of any related deposits. Although we make no representations or provide no warranties as to the speed of response, we will get back to you as soon as possible.

EXHIBIT D

2022 Terms of Service

FTX TERMS OF SERVICE

Date: May 13, 2022

The following terms and conditions of service, together with any other documents expressly incorporated herein, (collectively, the **"Terms"**) constitute an agreement between you (**"you"**, **"your"** or **"User"**) and FTX Trading Ltd, a company incorporated and registered in Antigua and Barbuda (company number 17180) (**"FTX Trading"**, **"we"**, **"our"** or **"us"**), or a Service Provider in respect of a Specified Service, and apply to your use of:

(A) the Exchange and any Specified Service that may be offered to you by a Service Provider (collectively, the **"Platform"**), as a User to buy, sell, exchange, hold, stake, lend, borrow, send, receive or otherwise transact in (together, **"transact in"**) or list Digital Assets;

(B) the FTX Application Programming Interface (**"API"**); and

(C) any other services offered through the FTX website (ftx.com) (the **"Site"**) or any Mobile Application,

(together, the **"Services"**).

By registering for a Platform account (**"Account"**) or using the Services, you agree that you have read, understand and accept the Terms, including our Privacy Policy, Security Policy and Fee Schedule, and you acknowledge and agree that you will be bound by and comply with the Terms. Do not proceed with registering for an Account, or using the Services, if you do not understand and accept the Terms in their entirety.

Section 21 (*Right to change, suspend or discontinue Services*) and Section 22 (*Updates to Terms*) set out the terms on which we may, from time to time, change, suspend, or discontinue any aspect of the Services and amend any part of the Terms.

Our Services are not offered to Restricted Persons (as defined in Section 3.3.1(A) below) or persons who have their registered office or place of residence in the United States of America or any Restricted Territory (as defined in Section 3.3.1(A) below).

FTX Trading's relationship with you under the Terms is as a trading platform provider only. FTX Trading does not act as principal or counterparty with respect to trades entered into on the Platform. Notwithstanding the foregoing:

(A) FTX Trading may act as a counterparty for limited trades made for the purpose of liquidating fees collected on User trades; and

(B) Affiliates of FTX Trading may execute trades on the Platform provided, however, that such Affiliates shall not be afforded any priority in trade execution.

Save in certain limited circumstances set out in Section 38.13 (*Exception to arbitration*), Section 38.12 (*Arbitration*) requires all Disputes to be resolved by way of legally binding arbitration on an individual basis only and not as a claimant or class member in a purported class or representative action. There is no judge or jury in arbitration and court review of an arbitration award is limited.

The laws of some jurisdictions may limit or not permit certain provisions of the Terms, such as arbitration, indemnification, the exclusion of certain warranties or the limitation of certain liabilities. In such a case, such provisions will apply only to the maximum extent permitted by the laws of such jurisdictions.

In the Terms, unless the context otherwise requires, the definitions and rules of interpretation set out in Schedule 1 shall apply.

1. STRUCTURE OF TERMS

1.1 The Terms comprise:

1.1.1 the general terms and conditions set out above, in Sections 1 (*Structure of Terms*) to 38 (*General*), and in Schedule 1 (*Definitions and Interpretation*), which

apply generally to you, your registration and use of an Account, and your use of the Services (**"General Terms"**);

1.1.2 the policies, schedules and other documents of FTX Trading and its Affiliates incorporated by reference into the Terms, including our Privacy Policy, Security Policy and Fee Schedule (**"FTX Policies"**); and

1.1.3 the terms and conditions set out in each Service Schedule, which shall also apply to the Specified Service referred to therein.

1.2 To the extent there is any conflict or inconsistency between the modules of the Terms, such conflict or inconsistency shall be resolved in the following order of precedence, unless a term or condition set out in a document of lower precedence is expressly identified as taking precedence over a document of higher precedence: General Terms, Service Schedules, Fee Schedule, Privacy Policy**,** Security Policy and other FTX Policies.

1.3 **IMPORTANT:** You acknowledge and agree that any Specified Service referred to in a Service Schedule shall be provided to you by the Service Provider specified in that Service Schedule. In such case, the Specified Service shall be provided to you on and subject to the Terms, with references in these General Terms to "FTX Trading" (or "we", "our" or "us") being read as references to the Service Provider specified in the Service Schedule, unless the context provides otherwise, and under no circumstances shall any other person, including any Affiliate of the Service Provider, be liable to you for the performance of any of the Service Provider's obligations under the Terms.

2. RISK DISCLOSURES

Before beginning to use the Services, you should ensure you have read and understand (and you represent and warrant that you have read and understand) the following risk disclosures and the risk disclosures set out in the Service Schedules. You should note that this is not an exhaustive list of all of the risks associated with Digital Assets and the Services.

2.1 No advice and no reliance

2.1.1 FTX Trading does not advise on the merits of any particular transaction, trading risks, or tax consequences, and FTX Trading does not provide any other financial, investment, taxation or legal advice in connection with the Services. To the extent that we or our representatives provide market commentary, or any other information, the act of doing so is incidental to your relationship with us and such information should not be construed as investment or financial advice. Any decision by you to use the Services and transact in Digital Assets is your own independent decision. You represent that you are not relying on any communication (written or oral) by us as investment advice or as a recommendation to use the Services and transact in Digital Assets. FTX Trading will not be liable for any loss suffered by you or any third party.

2.1.2 You accept the risk of trading Digital Assets. In entering into any transaction on the Platform, you represent that you have been, are, and will be solely responsible for making your own independent appraisal and investigations into the risks of such transaction and the underlying Digital Asset. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any transaction entered into on the Platform or any underlying Digital Asset.

2.1.3 FTX Trading is not your broker, intermediary, agent, or advisor and has no fiduciary relationship or obligation to you in connection with any trades or other decisions or activities effected by you using the Services.

2.2 Digital Asset transfers and volatility

2.2.1 Trading in Digital Assets can be extremely risky and volatile. Digital Assets may have unique features that make them more or less likely to fluctuate in value.

Factors beyond FTX Trading's control, such as regulatory activity or unexplainable price volatility, may affect market liquidity for a particular Digital Asset. Blockchain networks may go offline as a result of bugs, Forks (as defined in Section 17 below), or other unforeseeable reasons. As a general matter, you should not engage in active trading on the Platform if you have limited trading experience or low risk tolerance. Speculating on the value of Digital Assets is high risk and you should never trade more than you can afford to lose.

2.2.2 Understanding Digital Assets requires advanced technical knowledge. Digital Assets are often described in exceedingly technical language that requires a comprehensive understanding of applied cryptography and computer code in order to appreciate the inherent risks. The listing of a Digital Asset on the Platform does not indicate FTX Trading's approval or disapproval of the underlying technology of any Digital Asset and should not be used as a substitute for your own understanding of the risks specific to each Digital Asset. We provide no warranty as to the suitability of the Digital Assets traded under the Terms and assume no fiduciary duty to you in connection with such use of the Services.

2.2.3 You accept all consequences of sending Digital Assets to an address off the Platform. Digital Asset transactions may not be reversible. Once you send Digital Assets to an address, you accept the risk that you may lose access to your Digital Assets indefinitely. For example, an address may have been entered incorrectly and the true owner of the address may never be discovered, or an address may belong to a person that will not return your Digital Assets or may return your Digital Assets but first require action on your part, such as verification of your identity or compensation.

2.3 **Supply and value of Digital Assets**

2.3.1 The value of Digital Assets may be derived from the continued willingness of market participants to exchange Digital Assets for fiat currency and other Digital Assets, which may result in the permanent and total loss of value of a particular Digital Asset should the market for that Digital Asset disappear.

2.3.2 You acknowledge and agree that Digital Assets and/or Services (in whole or in part) available in one jurisdiction may not be available for trading, use or access, as applicable, in another.

2.4 **Margin trading**

2.4.1 Margin trading is HIGH RISK. As a borrower, you may sustain a total loss of Digital Assets, fiat currency and E-Money (as defined in Section 8.3.2 below (collectively, **"Assets"**) in your Account, or owe Assets beyond what you have deposited in your Account. When you lend Assets to other Users, you risk the loss of an unpaid principal if the borrower defaults on a loan and liquidation of the borrower’s Account fails to raise sufficient Assets to cover the borrower’s debt.

2.5 **Complex products**

2.5.1 Trading of complex products, including but not limited to Futures Contracts, Options Contracts, and MOVE Volatility Contracts (each as defined in the Service Schedules) (collectively, **"Complex Products"**), may not be suitable for all Users. Complex Product trading is designed to be utilised only by sophisticated Users, such as active traders employing dynamic strategies. You should use extreme caution when trading Complex Products and only trade them if you understand how they work, including but not limited to the risks associated with margin trading, the use of leverage, the risk of shorting, and the effect of compounding and market volatility risks on leveraged products.

2.5.2 Complex Product trading entails significant risk, and you may feel the effects of losses immediately. Complex Product trading requires initial posting of collateral to meet initial margin requirements. If movements in the markets for a Complex

Product or the underlying Digital Asset decrease the value of your position in such Complex Product, you may be required to have or make additional collateral available as margin to ensure that maintenance margin requirements are met. If your Account is under the minimum margin requirements, your position may be liquidated at a loss, and you may lose all of your Assets in your Account. If there are any additional deficits in your Account, you will also be liable for all such deficits.

2.5.3 USERS WHO DO NOT UNDERSTAND LEVERAGE OR MARGIN TRADING, OR DO NOT INTEND TO ACTIVELY MANAGE THEIR PORTFOLIO, SHOULD NOT ENGAGE IN COMPLEX PRODUCT TRADING.

2.5.4 FTX TRADING AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR USE OF ANY COMPLEX PRODUCT TRADING SERVICES OFFERED ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH COMPLEX PRODUCT TRADING.

2.6 **Blacklisted addresses and forfeited Assets**

2.6.1 FTX Trading reserves the right to "blacklist" certain addresses and freeze associated Assets (temporarily or permanently) that it determines, in its sole discretion, are associated with illegal activity or activity that otherwise violates the Terms (**"Blacklisted Addresses"**). In the event that you send Assets to a Blacklisted Address or receive Assets from a Blacklisted Address, FTX Trading may freeze such Assets and take steps to terminate your Account.

2.6.2 In certain circumstances, FTX Trading may deem it necessary to report such suspected illegal activity to applicable law enforcement agencies and other Regulatory Authorities, and you may forfeit any rights associated with your Assets, including the ability to redeem or exchange your Digital Assets for other Digital Assets or fiat currency. FTX Trading may also freeze Assets held in your Account in the event that we receive a related order or request from a legal or Regulatory Authority.

2.7 **Software protocols and operational challenges**

2.7.1 The software protocols that underlie Digital Assets are typically open source projects or are otherwise operated by third parties, which means that: (i) the operations, functionalities, development and control of such Digital Assets and their underlying networks are outside of FTX Trading's control; and (ii) such software protocols are subject to sudden and dramatic changes that might have a significant impact on the availability, usability or value of a given Digital Asset.

2.7.2 You are aware of and accept the risk of operational challenges that may impact the Services. The Platform may experience sophisticated cyber-attacks, unexpected surges in activity or other operational or technical difficulties that may cause interruptions to the Services. You understand that the Services may experience operational issues that lead to delays. You agree to accept the risk of transaction failure resulting from unanticipated or heightened technical difficulties, including those resulting from sophisticated attacks. You agree not to hold FTX Trading liable for any related losses.

2.7.3 You understand that the technology underlying Digital Assets is subject to change at any time, and such changes may affect your Digital Assets stored on the Platform. You are fully responsible for monitoring such technological changes and understanding their consequences for your Digital Assets.

2.7.4 Users conduct all trading on their own account and FTX Trading does not take any responsibility for any loss or damage incurred as a result of your use of any Services or your failure to understand the risks associated with Digital Assets use generally or your use of our Services.

2.7.5 Digital Assets depend on the availability and reliability of power, connectivity, and hardware. Interruption or failure of any of these things may disrupt the networks on which the Digital Assets rely or your ability to access or transact in Digital Assets.

2.8 **Compliance**

You are responsible for complying with all Applicable Laws. You agree that FTX Trading is not responsible for determining whether or which laws and regulations may apply to your transactions, including but not limited to tax laws and regulations. You are solely responsible for reporting and paying any taxes arising from your use of the Services.

2.9 **Legislative and regulatory changes**

Legislative and regulatory changes or actions at the domestic or international level may adversely affect the use, transfer, ability to transact in, and value of Digital Assets, or your access to, and our ability to provide, the Services. You acknowledge and accept the risks that such changes may bring and that FTX Trading is not liable for any adverse impact that that you may suffer as a result.

2.10 **No deposit protection**

Neither Digital Assets nor any fiat currency or E-Money held in your Account is eligible for any public or private deposit insurance protection.

2.11 **Digital Asset Distributions not supported**

Certain Digital Assets are built on protocols that support Digital Asset Distributions (as defined in Section 17.4 below), including, but not limited to, Forks (as defined in Section 17.1 below), Staking Rewards (as defined in Section 17.4 below) and Airdrops (as defined in Section 17.4 below). FTX Trading is not obligated to support any such Digital Asset Distributions for Users. If you hold these Digital Assets in your Account, you thereby forfeit the ability to claim any Digital Asset Distributions from FTX Trading. If you hold Digital Assets with proof-of-stake or delegated proof-of-stake consensus algorithms, FTX Trading may in its sole discretion stake these Digital Assets without any obligation to distribute Staking Rewards to you. Staking may subject your Digital Assets to additional risks and FTX Trading is not liable for losses you may incur related to staking.

2.12 **Reliance on third parties**

Your use of the Services and the value of certain Digital Assets may rely on the acts of third parties or the fulfilment of related obligations by third parties. FTX Trading is not responsible for the acts or omissions of such third parties.

3. **APPLICABLE LAWS AND REGULATIONS**

3.1 **Compliance with Applicable Laws**

3.1.1 You agree and understand that by opening an Account and using the Services in any capacity, you shall act in compliance with all Applicable Laws. Failure to do so may result in the suspension of your ability to use the Services or the closure of your Account.

3.1.2 Without limitation to the above, your access to and use of your Account and the Services, and the receipt of any fee discounts and rebates, is subject to your continued compliance with all Applicable Laws, including the rules and directions of any applicable Regulatory Authority and, without limitation, all applicable tax, anti-money laundering (**"AML"**) and counter-terrorist financing (**"CTF"**) laws and regulations.

3.2 **AML and CTF procedures**

Our AML and CTF procedures are guided by all applicable rules and regulations regarding AML and CTF. These standards are designed to prevent the use of the Platform for money laundering or terrorist financing activities. We take compliance very seriously and it is our policy to take the necessary steps that we believe appropriate to prohibit fraudulent transactions, report suspicious activities, and actively engage in the prevention of money laundering and terrorist financing, any related acts that facilitate money laundering, terrorist financing or any other financial crimes.

3.3 **Export controls**

3.3.1 The Services are subject to all applicable export control restrictions and, by using the Services, you represent that your actions are not in violation of such export control restrictions. Without limiting the foregoing, you may not use the Services if:

(A) you are in a prohibited jurisdiction as set forth at Location Restrictions (**"Restricted Territories"**);

(B) you are a member of any sanctions list or equivalent maintained by the United States government, the United Kingdom government, the European Union, the Singapore government, or The Bahamas government (**"Restricted Persons"**);

(C) you intend to transact with any Restricted Territories or Restricted Persons;

(D) you are located, incorporated or otherwise established in, or a citizen or resident of a jurisdiction where it would be illegal under Applicable Law for you (by reason of your nationality, domicile, citizenship, residence or otherwise) to access or use the Services; or

(E) the publication or availability of the Services in the jurisdiction in which you are based is prohibited or contrary to local law or regulation or could subject FTX Trading to any local registration or licensing requirements.

3.3.2 We may, in our sole discretion, implement controls to restrict access to and use of the Services in any of the Restricted Territories or in any of the circumstances referred to in Section 3.3.1 above. If we determine that you are accessing or using the Services from any Restricted Territory, or any of the circumstances referred to in Section 3.3.1 above apply, we may suspend your ability to use the Services or close your Account at our discretion.

4. **ELIGIBILITY**

4.1 In order to be eligible to open an Account or use the Services (and to enter into the Terms), you must meet (and you represent and warrant that you do meet), the following eligibility criteria:

4.1.1 If you are an individual, you must be at least 18 years of age, have the capacity to accept the Terms, and not have been previously suspended or removed from access to the Services or any other service or product offered by FTX Trading or any of its Affiliates, and are otherwise eligible to use the Services under Applicable Law.

4.1.2 If you are registering to use the Services on behalf of a legal entity, then:

(A) you must be duly authorised by such legal entity to act on its behalf for the purpose of entering into the Terms;

(B) the legal entity must be duly organised and validly existing under the laws of the jurisdiction of its organisation; and

(C) the legal entity must not have been (and each of its Affiliates must not have been) previously suspended or removed from access to the

Services or any other service or product offered by FTX Trading or any of its Affiliates and must be otherwise eligible to use the Services under Applicable Law.

4.1.3 You have not: violated; been fined, debarred, sanctioned, the subject of economic sanctions-related restrictions, or otherwise penalised under; received any oral or written notice from any government concerning actual or possible violation by you under; or received any other report that you are the subject or target of sanctions, restrictions, penalties, or enforcement action or investigation under, any Applicable Law (including but not limited to AML, CTF, anti-corruption, or economic sanctions laws).

4.1.4 You do not have your registered office or place of residence in the United States of America or any Restricted Territory.

4.1.5 You are not a Restricted Person nor are you a resident of a Restricted Territory; and

4.1.6 You will not be using the Services for any illegal activity including, but not limited to, those Restricted Activities listed in Section 13 below.

4.2 If we determine that you do not fulfil any of the above criteria, then we may suspend your ability to use the Services or close your Account at our discretion.

5. REGISTRATION PROCESS; IDENTITY VERIFICATION

5.1 When registering your Account, you must provide complete, accurate, up-to-date and not misleading information for all required elements on the registration page, including your full legal name. You also agree to provide us, when registering an Account and on an ongoing basis, with any additional information we request for the purposes of identity verification and the detection of money laundering, terrorist financing, fraud, or any other financial crime, including without limitation a copy of your government issued photo ID or evidence of residency such as a lease or utility bill. You permit us to keep a record of such information and authorise us to make any enquiries, directly or through third parties that we consider necessary to verify your identity or protect you and/or us against fraud or other financial crime, and to take any action we reasonably deem necessary based on the results of such inquiries. When we carry out these enquiries, you acknowledge and agree that your personal information may be disclosed to credit reference and fraud prevention or financial crime agencies and that these agencies may respond to our inquiries in full.

5.2 In certain circumstances, we may require you to submit additional information about yourself, your business, your source of wealth, or your transactions, provide records, and complete other verification steps (such process, **"Enhanced Due Diligence"**).

5.3 You represent and warrant that any and all information provided to us in connection with registering your Account, using the Services, pursuant to the Terms or otherwise is complete, accurate, up-to-date and not misleading in any respect. If any such information changes, it is your obligation to update such information as soon as possible and provide such updates to us.

5.4 Your access to the Services and the limits that apply to your use of the Services may be altered as a result of information collected about you on an ongoing basis.

5.5 If any (or we suspect that any) of the information that you have provided to us is not complete, accurate, up-to-date or misleading in any respect, or you fail to provide updates to any information that you have provided to us to ensure that it is complete, accurate, up-to-date and not misleading in any respect on a timely basis, we may suspend your ability to use the Services or close your Account at our discretion.

5.6 We reserve the right to maintain your Account registration information after you close your Account for business and regulatory compliance purposes, subject to Applicable Laws.

6. YOUR ACCOUNT; SECURITY OF USER INFORMATION

6.1 You may access your Account (and the Services) directly via the Site, via a Mobile Application or by such other mode of access (including but not limited to through the APIs) as FTX Trading may prescribe from time to time, using the account names, User IDs, passwords, and other security features (**"User Credentials and Security Passwords"**) made available to you by FTX Trading for the purposes of enabling you to access your Account (and the Services). You are responsible for maintaining the confidentiality and security of any and all User Credentials and Security Passwords, which includes the enabling of all relevant security features. You are responsible for keeping your email address up to date in your Account profile.

6.2 You are only permitted to access your Account using your own User Credentials and Security Passwords. You must ensure that your Account is not used by any other third party and you must not share your User Credentials and Security Passwords with any third party. You are solely responsible for all activity on your Account.

6.3 You agree to notify FTX Trading immediately if you become aware of any breach of security, loss, theft or unauthorised use of your User Credentials and Security Passwords, or unauthorised use of the Services via your Account, or any other breach of security regarding the Services. FTX Trading will not be liable for any loss or damage arising from your failure to protect your Account or your User information. It is important that you regularly check your Account balance and your transaction history to ensure any unauthorised transactions or incorrect transactions are identified and notified to us at the earliest possible opportunity.

6.4 FTX Trading reserves the right to suspend your ability to use the Services or close your Account if we suspect that the person logged into your Account is not you or we become aware of or suspect that there has been any breach of security, loss, theft or unauthorised use of your User Credentials and Security Passwords.

6.5 In order to access your Account (and the Services) you must have the necessary equipment (such as a computer or smartphone) and access to the Internet. You are solely responsible for your own hardware used to access the Services and are solely liable for the integrity and proper storage of any data associated with the Services that is stored on your own hardware. You are responsible for taking appropriate action to protect your hardware and data from viruses and malicious software, and any inappropriate material. Except as provided by Applicable Law, you are solely responsible for backing up and maintaining duplicate copies of any information you store or transfer through our Services. Neither FTX Trading nor any other Indemnified Party shall be liable to you: (i) in the event that your hardware fails, is damaged or destroyed or any records or data stored on your hardware are corrupted or lost for any reason; (ii) for any damage or interruptions caused by any computer viruses, spyware, or other malware that may affect your computer or other equipment, or any phishing, spoofing, or other attack; or (iii) for your use of the Internet to connect to the Services or any technical problems, system failures, malfunctions, communication line failures, high internet traffic or demand, related issues, security breaches or any similar technical problems or defects experienced.

7. ORDER BOOK AND CONVERT

7.1 FTX Trading operates Order Books on which Orders may be placed by Users to be matched with the Orders of other Users. The Order types that FTX Trading may offer from time to time in its sole discretion include but are not limited to “market” ,”limit”, "stop-loss limit", "stop-loss market", "trailing stop" and "take profit limit" orders. FTX Trading may issue trading rules from time to time that apply to Orders placed on the Order Book, in addition to these General Terms.

7.2 The Convert function on the Platform also allows you to submit instructions ("**Convert Instructions**") to exchange (buy or sell) one spot Asset for another. Each Convert transaction is subject to the applicable Exchange Rate quoted for the given transaction and the applicable time limts for such quote. The **"Exchange Rate"** means the price of a given Digital Asset as quoted on your "Wallet" page on the Site or any Mobile Application. The

Exchange Rate is stated either as a "Buy Price" or as a "Sell Price", which is the price at which you may buy or sell the Asset, respectively.

7.3 The Exchange Rate quoted will depend on market conditions, and you are under no obligation to execute a Convert transaction at any Exchange Rate quoted to you. You acknowledge that the Buy Price Exchange Rate may not be the same as the Sell Price Exchange Rate at any given time, and that there may be a 'spread' to the quoted Exchange Rate. You agree to accept the Exchange Rate when you authorise a Convert transaction.

7.4 We do not guarantee the availability of any Exchange Rate and we do not guarantee that you will be able to buy and/or sell your Assets using Convert or on the Order Book at any particular price or time.

7.5 You are solely responsible for accurately entering any Order or Convert Instruction, including but not limited to all the necessary information in order to enable us to carry out any Order or Convert Instruction. FTX Trading is not obliged to verify the accuracy or completeness of any such information, Order or Convert Instruction.

7.6 You agree that any Order or Convert Instruction received or undertaken through your Account shall be deemed to be final and conclusive, and that FTX Trading may act upon such Order or Convert Instruction. We shall not be under any obligation to verify the identity or authority of any person giving any Order or Convert Instruction or the authenticity of such Order or Convert Instruction.

7.7 Your Orders and Convert Instructions shall be irrevocable and unconditional and shall be binding on you, and such Orders and Convert Instructions may be acted or relied upon by us irrespective of any other circumstances. As such, once you give any Order or Convert Instruction, you have no right to rescind or withdraw such Order or Convert Instruction without our written consent.

7.8 Each of your Orders and Convert Instructions shall not be considered to be received by FTX Trading unless and until it has been received by FTX Trading's server. FTX Trading's records of all Orders and Convert Instruction shall be conclusive and binding on you for all purposes.

7.9 Under no circumstances shall any of the Indemnified Parties be responsible or liable to you for any Losses suffered or incurred by you or any other person arising from any of the Indemnified Parties relying or acting upon any Order or Convert Instruction which is given or purported to be given by you, regardless of the circumstances prevailing at the time of such Order or Convert Instruction.

7.10 You hereby authorise FTX Trading to credit or debit (or provide settlement information to third parties for the purposes of the third party crediting or debiting) your Assets from your Account in accordance with your Orders and Convert Instructions. We reserve the right not to effect any transaction if you have insufficient Assets in your Account.

8. ACCOUNT FUNDING

8.1 Funding - General

8.1.1 In order to fund your Account and begin transacting in Digital Assets using the Platform, you must first procure Digital Assets (or deposit Digital Assets that you already own into your Account) and/or load fiat currency into your Account.

8.1.2 You should be aware that FTX Trading: (i) may not support the loading into and/or storing of fiat currency in your Account in all jurisdictions; and (ii) does not support the use of all fiat currencies. A partial list of fiat currencies supported by FTX Trading can be found here. This list may be amended from time to time by FTX Trading at its sole discretion.

8.1.3 Any available Assets held in your Account is available to be locked and used as collateral for margin trading, or to fund trades, in relation to any Services or part thereof offered through the Platform by FTX Trading or its Affiliates.

8.2 **Digital Assets**

8.2.1 The Platform supports deposits and withdrawals of certain Digital Assets, including certain U.S. Dollar-pegged stablecoins (each a **"USD Stablecoin"**). You may deposit Digital Assets that you already own into your Account by generating an address within your Account and sending your Digital Assets to such address, after which they should appear in your Account balance (USD Stablecoins will appear in your "USD Stablecoins (USD)" balance).

8.2.2 You may purchase Digital Assets in exchange for certain supported fiat currencies (depending on your location) by linking a valid payment method to your Account. In such circumstances, you authorise us to debit the relevant amount of fiat currency using your selected payment method(s) to complete your purchase.

8.2.3 The Platform enables you to exchange one Digital Asset for another Digital Asset, send Digital Assets to and receive Digital Assets from other Users of the Services, or third parties outside of the Platform (where permitted by FTX Trading in its sole discretion).

8.2.4 You may sell Digital Assets in exchange for certain supported fiat currencies (depending on your location). In such circumstances, you authorise us to debit your Account and to send instructions to credit your selected payment method(s) in settlement of sell transactions.

8.2.5 FTX Trading makes no representations or warranties regarding the amount of time, transaction fees or other requirements that may be required to complete the transfer of your Digital Assets to or from a third party wallet or other source and for said Digital Assets to become available in your Account.

8.2.6 All Digital Assets are held in your Account on the following basis:

(A) Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.

(B) None of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading; FTX Trading does not represent or treat Digital Assets in User's Accounts as belonging to FTX Trading.

(C) You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party.

8.2.7 FTX Trading is under no obligation to issue any replacement Digital Asset in the event that any Digital Asset, password or private key is lost, stolen, malfunctioning, destroyed or otherwise inaccessible.

8.2.8 It is your responsibility to ensure that you send all Digital Assets, to the correct address provided for that particular Digital Asset, including with respect to any Digital Assets that you send to the Platform. If you send a Digital Asset to an address that does not correspond to that exact Digital Asset (such as an address not associated with your Account or the specific Digital Asset sent), such Digital Asset may be lost forever. By sending any Digital Assets to the Platform, you attest that you will only send a supported Digital Asset to the Platform wallet address provided to you. For example, if you select an Ethereum Platform wallet address to receive funds, you attest that you are initiating an inbound transfer of Ethereum alone, and not any other forms of Digital Assets. You agree that FTX Trading incurs no obligation whatsoever with regards to sending unsupported Digital Assets to an address provided to you on the Platform. Similarly, if you

send a Digital Asset from your Account to an external address that does not correspond to that exact Digital Asset, such Digital Asset may be lost forever.

8.2.9 You assume all liability for any Losses incurred as a result of sending Digital Assets to an incorrect address (such as typos, errors, copy-paste attacks, or an address not associated with your Account, or an address not associated with the specific Digital Asset). You are solely liable for verifying the accuracy of any external wallet address, and the identity of the recipient. All outbound transfers of Digital Assets cannot be reversed once they are broadcast to the underlying blockchain network. FTX Trading does not control any blockchain network and cannot guarantee that any transfer will be confirmed or transferred successfully by the network. FTX Trading is not responsible for any losses or for taking any actions to attempt to recover any lost, stolen, misdirected or irrecoverable Digital Assets. If the Digital Assets are recoverable, we may in our sole discretion attempt to recover them, but such recovery efforts are in no way guaranteed. Please be aware that if you attempt to deposit ETH to your Account by sending it via a smart contract, your ETH may not be automatically credited, and may take time to recover, and may not be recovered at all.

8.2.10 When you elect to transfer Digital Assets from your Account to a third party wallet address or other location, it is always possible that the party administering the new location may reject your transfer or that the transfer may fail due to technical or other issues affecting the Platform. You agree that you shall not hold FTX Trading liable for any damages arising from a rejected or failed transfer.

8.2.11 You hereby represent and warrant to us that any Digital Assets used by you in connection with the Services (including any Digital Assets used to fund your Account) are either owned by you or that you are validly authorised to carry out transactions using such Digital Assets, and that all transactions initiated with your Account are for your own Account and not on behalf of any other person.

8.2.12 It is your responsibility entirely to provide us with correct details of any withdrawal address. We accept no liability resulting in you or any third party not receiving Digital Assets withdrawn by you due to you providing incorrect, erroneous, incompatible or out-of-date details.

8.3 **Fiat currency**

8.3.1 Where specified on the Site or in a Service Schedule, and depending on your location, the Platform may support various fiat currencies for deposit, withdrawal, and/or trading, using wire transfers, credit cards, or other appropriate methods.

8.3.2 Once we receive fiat currency that you load into your Account, we may issue you with an equivalent amount of electronic money (**"E-Money"**), denominated in the relevant fiat currency, which represents the fiat currency that you have loaded. This amount will be displayed in your Account.

8.3.3 E-MONEY IS NOT LEGAL TENDER. FTX TRADING IS NOT A DEPOSITORY INSTITUTION AND YOUR E-MONEY IS NOT A DEPOSIT OR INVESTMENT ACCOUNT. YOUR E-MONEY ACCOUNT IS NOT INSURED BY ANY PUBLIC OR PRIVATE DEPOSIT INSURANCE AGENCY.

8.3.4 E-Money held in your Account will not earn any interest. Your Account may hold E-Money denominated in different currencies and we will show the E-Money balance for each currency that you hold.

8.3.5 You may purchase Digital Assets by using E-Money credited to your Account (depending on your location). To carry out a Digital Asset purchase using E-Money, you must follow the relevant instructions on the Site. You authorise us to debit E-Money from your Account to complete your purchase. Although we will attempt to deliver Digital Assets to you as promptly as possible, E-Money may be debited from your Account before Digital Assets are delivered to your Account.

8.3.6 You may sell Digital Assets in exchange for certain fiat currencies (depending on your location). To carry out a Digital Asset sale, you must follow the relevant instructions on the Site. You authorise us to debit Digital Assets from your Account and send instructions to credit your Account with the relevant amount of fiat currency. Once we receive the fiat currency, we will issue you with an equivalent amount of E-Money denominated in the relevant fiat currency.

8.3.7 You may redeem all or part of any E-Money held in your Account at any time subject to outages, downtime, and other applicable policies (including the Terms), by selecting the relevant option in the Site and following the instructions. Unless agreed otherwise, funds will be transferred to the bank account you have registered with us. You hereby represent and warrant that this bank account is your own, and that you have full control over it. It is your responsibility entirely to provide us with correct details of your withdrawal account. We accept no liability resulting in you not receiving any amounts withdrawn by you due to you providing incorrect or out-of-date details.

8.3.8 If the Terms are terminated, we may redeem any E-Money remaining in your Account and attempt to transfer the equivalent amount of fiat currency to the bank account you have registered with us. Prior to redeeming E-Money from your Account, we may conduct checks for the purposes of preventing fraud, money laundering, terrorist financing and other financial crimes, and as required by Applicable Law. This may mean you are prevented or delayed from withdrawing E-Money until those checks are completed to our reasonable satisfaction in order to comply with our regulatory requirements.

9. UNCLAIMED OR ABANDONED PROPERTY

9.1 If FTX Trading is holding Assets in your Account (**"Unclaimed or Abandoned Property"**), and we are unable to contact you and have no record of your use of the Services for a prolonged period of time or your Account has been closed, Applicable Laws may require us to report such Unclaimed or Abandoned Property as unclaimed property to the applicable jurisdiction. If this occurs, FTX Trading will try to locate you using the details shown in our records in relation to your Account, but if FTX Trading is unable to locate you, we may be required to deliver any such Unclaimed or Abandoned Property to the applicable jurisdiction as unclaimed property. FTX Trading reserves the right to deduct a dormancy fee or other administrative charges from such Unclaimed or Abandoned Property, as permitted by Applicable Laws.

9.2 If FTX Trading is holding Unclaimed or Abandoned Property, and we are unable to contact you and have no record of your use of the Services for a prolonged period of time or your Account has been closed, and Applicable Laws do not require us to report such Unclaimed or Abandoned Property as unclaimed property to the applicable jurisdiction, then you acknowledge and agree that your Account may be transferred to FTX Trading, or an Affiliate of FTX Trading, as Trustee of the Unclaimed or Abandoned Property. FTX Trading or the Affiliate of FTX Trading (as applicable), as Trustee, will hold the Unclaimed or Abandoned Property on your behalf and shall, on demand, repay to you the Unclaimed or Abandoned Property subject to your payment of any dormancy fee or other administrative charges that the Trustee may deduct from the Unclaimed or Abandoned Property. If no such demand is made by you, the Trustee may pay the Unclaimed or Abandoned Property into court in the applicable jurisdiction in accordance with Applicable Laws.

9.3 If we receive legal documentation confirming your death or other information leading us to believe you have died, we will freeze your Account and during this time, no transactions may be completed until: your designated fiduciary has opened a new Account, as further described below, and the entirety of your Account has been transferred to such new account, or (ii) we have received proof in a form satisfactory to us that you have not died. If we have reason to believe you may have died but we do not have proof of your death in a form satisfactory to us, you authorise us to make enquiries, whether directly or through third parties, that we consider necessary to ascertain whether you have died. Upon receipt by us of proof satisfactory to us that you have died, the fiduciary you have designated in a

valid will or similar testamentary document will be required to open a new Account. If you have not designated a fiduciary, then we reserve the right to treat as your fiduciary any person entitled to inherit your Account, as determined by us upon receipt and review of the documentation we, in our sole and absolute discretion, deem necessary or appropriate, including (but not limited to) a will, a living trust or other similar documentation, or (ii) require an order designating a fiduciary from a court having competent jurisdiction over your estate. In the event we determine, in our sole and absolute discretion, that there is uncertainty regarding the validity of the fiduciary designation, we reserve the right to require an order resolving such issue from a court of competent jurisdiction before taking any action relating to your Account. Pursuant to the above, the opening of a new Account by a designated fiduciary is mandatory following the death of an Account owner, and you hereby agree that your fiduciary will be required to open a new Account in order to gain access to the contents of your Account.

10. DEBIT ACCOUNT BALANCE

10.1 If at any time your Account has a debit balance, you agree to pay us: (i) the applicable fees set out in the Fee Schedule; (ii) the total debit balance; and (iii) such other amounts specified in the Terms.

10.2 If you fail to pay such amounts, we may suspend your ability to use the Services or close your Account. We also reserve the right to debit your Account accordingly and/or to withhold amounts from fiat currency and Digital Assets that you may transfer to your Account.

10.3 If, after a demand is made by FTX Trading, you have not made payment of the outstanding debit balance by the time stated in the demand, then:

10.3.1 you authorise us to sell any Digital Assets or redeem any fiat currency or E-Money in your Account to recover the outstanding debit balance;

10.3.2 you agree to indemnify us and each other Indemnified Party against all Losses that we suffer or incur as a result of your not paying the outstanding debit balance; and

10.3.3 you will be liable for all costs which we incur in relation to instructing a collection agency, law firm or other third party to assist with and advise on the collection of such outstanding debit balance (where applicable).

11. THIRD PARTY PERMISSIONS TO CONNECT TO OR ACCESS YOUR ACCOUNT

If you grant express permission to a third party to connect to your Account, either through the third party's product or through the Platform, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under the Terms. Further, you acknowledge and agree that you will not hold FTX Trading responsible for, and will indemnify FTX Trading from, any liability arising from the actions or inactions of such third party in connection with the permissions you grant.

12. ACCOUNT SUSPENSION AND CLOSURE; SERVICE SUSPENSION AND TERMINATION

12.1 FTX Trading may, in its sole and absolute discretion and at any time, without liability to you or any third party:

12.1.1 refuse to let you open an Account, suspend your Account, or terminate your Account;

12.1.2 decline to process any instruction or Order submitted by you; and/or

12.1.3 limit, suspend or terminate your use of one or more, or part of, the Services.

12.2 Such actions will not relieve you from your obligations pursuant to the Terms.

12.3 Such actions may be taken as a result of a number of factors, including without limitation:

12.3.1 as a result of account inactivity, your failure to respond to customer support requests, our failure or inability to positively identify you;

12.3.2 as a result of a court order or your violation of Applicable Laws or the Terms; or

12.3.3 where we believe that a transaction is suspicious or may involve fraud, money laundering, terrorist financing or other misconduct.

12.4 If you do not agree with any actions taken by us under Section 12.1, then your sole and exclusive remedy is to terminate your use of the Services and close your Account. You agree that neither we nor any other Indemnified Party shall be liable to you or any third party for any Losses suffered as a result of any actions taken by us under Section 12.1.

12.5 Without limitation to the foregoing, we may temporarily suspend access to your Account in the event that a technical problem causes a system outage or Account errors until the problem is resolved.

12.6 Where required by Applicable Laws, we will notify you promptly if we have suspended processing your Orders or Convert Instructions and, if possible, provide our reasons for doing so and anything you can do to correct or remedy the matters giving rise to such suspension.

12.7 You may close your Account or terminate your access to and use of the Services at any time upon request to FTX Trading, in accordance with the Terms. In order to close your Account or terminate your access to and use of the Services, you should contact us for assistance. You may not close an Account if we determine, in our sole discretion, that such closure is being performed in an effort to evade a legal or regulatory investigation or to avoid paying any amounts otherwise due to FTX Trading or its Affiliates.

12.8 We encourage you to withdraw any remaining balance of Assets prior to issuing a request to close your Account. We reserve the right to restrict or refuse to permit withdrawals from your Account if:

12.8.1 your Account has otherwise been suspended or closed by us in accordance with the Terms;

12.8.2 to do so would be prohibited by Applicable Laws or court order, or we have determined that the Assets in your Account were obtained fraudulently; or

12.8.3 you have not completed the required identity verification procedure. You can check whether or not your identity has been verified by reviewing your verification status under the "Settings" section of your Account.

12.9 Upon closure or suspension of your Account, you authorise FTX Trading to cancel or suspend pending transactions.

12.10 Notwithstanding that you or FTX Trading closes or deactivates your Account or terminates or suspends your access to and use of any Services, or the termination or expiry of the Terms, you shall remain liable for all activity conducted with or in connection with your Account while it was open, and for all amounts due in connection with such activity.

13. RESTRICTED ACTIVITIES

In connection with your use of the Services, you agree that you will not:

13.1.1 violate or assist any party in violating any Applicable Laws or any rule of any self-regulatory or similar organisation of which you are or are required to be a member through your use of the Services;

13.1.2 provide false, inaccurate, incomplete, out-of-date or misleading information;

13.1.3 infringe upon FTX Trading's or any third party's copyrights, patents, trademarks, or other intellectual property rights;

13.1.4 engage in any illegal activity, including without limitation illegal gambling, money laundering, fraud, blackmail, extortion, ransoming data, the financing of terrorism, other violent activities or any prohibited market practices;

13.1.5 distribute unsolicited or unauthorised advertising or promotional material, written media releases, public announcements and public disclosures, junk mail, spam or chain letters;

13.1.6 use a web crawler or similar technique to access our Services or to extract data;

13.1.7 reverse engineer or disassemble any aspect of the Site, the API, or the Services in an effort to access any source code, underlying ideas and concepts and algorithms;

13.1.8 perform any unauthorised vulnerability, penetration or similar testing on the API or Services;

13.1.9 take any action that imposes an unreasonable or disproportionately large load on our infrastructure, or detrimentally interfere with, intercept, or expropriate any system, data or information;

13.1.10 transmit or upload any material to the Site that contains viruses, Trojan horses, worms, or any other harmful or deleterious programs;

13.1.11 otherwise attempt to gain unauthorised access to or use of the Site, the API, other FTX Accounts, computer systems, or networks connected to the Site, through password mining or any other means;

13.1.12 transfer any rights granted to you under the Terms;

13.1.13 engage in any activity which, in our reasonable opinion, amounts to or may amount to market abuse including without limitation the carrying out of fictitious transactions or wash trades, front running or engaging in disorderly market conduct;

13.1.14 engage in any behaviour which is unlawful, violates the Terms, or is otherwise deemed unacceptable by FTX Trading in its sole discretion; or

13.1.15 assist, facilitate or encourage any third party in undertaking any activity otherwise prohibited by the Terms.

14. ELECTRONIC TRADING TERMS

14.1 FTX Trading may, in its sole discretion, choose to discontinue support for a currently listed or supported Digital Asset at any time, including without limitation where there are changes in the characteristics of such Digital Asset.

14.2 A transaction on the Platform may fail for several reasons including, without limitation, as a result of a change in prices, insufficient margin, or unanticipated technical difficulties. FTX Trading makes no representation or warranty that any transaction will be executed properly. Under no circumstances are we liable for any loss or injury suffered by a failure of a transaction to complete properly or in a timely manner. Further, we are in no way responsible for notifying you of a transaction failure, although you are able to see any such failures via your Account. You have full responsibility for determining and inquiring into the failure of any transaction which you initiate.

14.3 In the event that you receive any data, information, or software through our Services other than that which you are entitled to receive pursuant to the Terms, you will immediately notify us and will not use, in any way whatsoever, such data, information or software. If you request a withdrawal of Digital Assets and we cannot comply with it without closing some part of your open positions, we will not comply with the request until you have closed sufficient positions to allow you to make the withdrawal.

14.4 We may refuse to execute a trade or impose trade amount limits or restrictions at any time, in our sole discretion without notice. Specifically, we reserve the right to refuse to process, and the right to cancel or reverse, any transaction, as well as to revoke access to a User's deposit address on the Platform, where we suspect the transaction involves money laundering, terrorist financing, fraud, or any other type of crime or if we suspect the transaction relates to a prohibited use as stated in the Terms. FTX Trading reserves the

right to halt deposit activity at our sole discretion. A User may not change, withdraw, or cancel its authorisation to make a transaction, except with respect to partially filled Orders.

14.5 FTX Trading may correct, reverse, or cancel any trade impacted by an error in processing a User's transaction or otherwise. The User's remedy in the event of an error will be limited to seeking to cancel an Order or Convert Instruction or obtaining a refund of any amounts charged to the User. FTX Trading cannot guarantee such cancellations or refunds will always be possible.

14.6 Orders placed on the Order Book may be partially filled or may be filled by one or more Orders placed on the Order Book by other Users, depending on the trading activity on the Order Book at the time an Order is placed.

14.7 The Digital Assets available for purchase through the Platform may be subject to high or low transaction volume, liquidity, and volatility at any time for potentially extended periods. You acknowledge that while FTX Trading uses commercially reasonable methods to provide Exchange Rate information to you through the Platform, the Exchange Rate information we provide may differ from prevailing exchange rates made available by third parties. Similarly, the actual market rate at the time of your trade may be different from the indicated Exchange Rate. You agree that you assume all risks and potential losses associated with price fluctuations or differences in any actual versus indicated Exchange Rates.

15. STAKING

15.1 When you hold Digital Assets on the Platform you may be given the option to "stake" these assets via staking services provided by FTX Trading or its Affiliates. You are not required to stake any Digital Assets and you can opt out of any staking services (subject to applicable early withdrawal limits or penalties as specified on the staking page for such Digital Asset). If you stake your Digital Assets, FTX Trading or its Affiliate will facilitate the staking of such Digital Assets on your behalf. You agree and acknowledge that you have no right to any staking rewards whatsoever. FTX TRADING DOES NOT GUARANTEE THAT YOU WILL RECEIVE ANY STAKING REWARDS OVER TIME, INCLUDING THE DISPLAYED STAKING REWARDS RATES.

15.2 The tax treatment of staking Digital Assets is uncertain, and it is your responsibility to determine what taxes, if any, arise from the transactions. You are solely responsible for reporting and paying any applicable taxes arising from staking services and all related transactions, and acknowledge that FTX Trading does not provide investment, legal, or tax advice to you in connection with such election to participate. You should conduct your own due diligence and consult your advisors before making any investment decision including whether to participate in staking and related transactions.

16. MARGIN TRADING

16.1 This Section 16 applies only to the extent you are permitted to engage in margin trading on the Platform. Margin trading is prohibited in certain jurisdictions, and you may not be able to engage in margin trading on the Platform. We reserve the right to amend and/or remove margin trading functionality at any time.

16.2 Margin trading is HIGH RISK. As a borrower, you may sustain a total loss of Assets or owe Assets beyond what you have deposited to your Account. The high volatility and substantial risk of illiquidity in markets means that you may not always be able to liquidate your position. You agree to maintain a sufficient amount of Assets at all times to meet our margin requirements, as such requirements may be modified from time to time. If the value of the Assets in your Account falls below the margin maintenance requirement or we determine, in our sole discretion, that your Account appears to be in danger of defaulting on a loan, we may seize and/or liquidate any or all of your positions and Assets on any balance in your Account in order to reduce your leverage or settle your debt to other Users, in which case, you may sustain a total loss of all Assets in your Account. Our liquidation mechanism is described at https://help.ftx.com/hc/en-us/articles/360027668712-Liquidations. If, after your positions and Assets are liquidated, your Account still contains

insufficient Assets to settle your debts to other Users, you will be responsible for any additional Assets owed. Intentionally defaulting on a loan may result in our reporting your activities to authorities and/or in legal prosecution.

16.3 When you lend Assets to other Users, you risk the loss of an unpaid principal if the borrower defaults on a loan and liquidation of the borrower's Account fails to raise sufficient Assets to cover the borrower's debt. Although we take precautions to prevent borrowing Users from defaulting on loans, the high volatility and substantial risk of illiquidity in markets means that we cannot make any guarantees to any Users using the Services against default.

16.4 Under certain market conditions, it may become difficult or impossible to liquidate a position. This can occur, for example, if there is insufficient liquidity in the market or due to technical issues on the Platform. Placing contingent Orders, such as "stop-loss" or "stop-limit" Orders, will not necessarily limit your losses to the intended amounts, since market conditions may make it impossible to execute such Orders. In such an event, our backstop liquidity provider program may come into play, but there is no assurance or guarantee that any such program activities will be sufficient or effective in liquidating your position. As a result, you may lose all of your Assets or incur a negative balance in your Account. In addition, even if you have not suffered any liquidations or losses, your Account balance may be subject to clawback due to losses suffered by other Users.

16.5 The use of leverage can work against you as well as for you and can lead to large losses as well as gains. Users conduct all trading, margin trading, lending, and/or borrowing on their own account and we do not take any responsibility for any loss or damage incurred as a result of your use of any Services or your failure to understand the risks associated with margin trading on the Platform.

17. FORKS AND DISTRIBUTIONS

17.1 As a result of the decentralised and open source nature of Digital Assets it is possible that sudden, unexpected, controversial or other changes (**"Forks"**) can be made to any Digital Asset that may change the usability, functions, compatibility, value or even name of a given Digital Asset. Such Forks may result in multiple versions of a Digital Asset and could lead to the dominance of one or more such versions of a Digital Asset (each a **"Dominant Digital Asset"**) and the partial or total abandonment or loss of value of any other versions of such Digital Asset (each a **"Non-Dominant Digital Asset"**).

17.2 FTX Trading is under no obligation to support a Fork of a Digital Asset that you hold in your Account, whether or not any resulting version of such forked Digital Asset is a Dominant Digital Asset or Non-Dominant Digital Asset or holds value at or following such Fork. Forks of Digital Assets can be frequent, contentious and unpredictable, and therefore cannot be consistently supported on the Platform. When trading or holding Digital Assets using your Account, you should operate under the assumption that the Platform will never support any Fork of such Digital Asset.

17.3 If FTX Trading elects, in its sole discretion, to support a Fork of a Digital Asset, it may choose to do so by making a public announcement through its Site or otherwise notifying customers and shall bear no liability for any real or potential losses that may result based on the decision to support such Fork or the timing of implementation of support. If FTX Trading, in its sole discretion, does not elect to support a Fork of a given Digital Asset, including the determination to support, continue to support, or cease to support any Dominant Digital Asset or Non-Dominant Digital Asset, FTX Trading assumes no responsibility or liability whatsoever for any losses or other issues that might arise from an unsupported Fork of a Digital Asset.

17.4 The Platform does not generally offer support for the distribution of Digital Assets based on a triggering fact or event, such as the possession of another Digital Asset (each an **"Airdrop"**), the provision of rewards or other similar payment for participation in a Digital Asset's protocol (**"Staking Rewards"**), or any other distributions or dividends that Users might otherwise be entitled to claim based on their use or possession of a Digital Asset outside of the Platform (collectively, **"Digital Asset Distributions"**). FTX Trading may, in

its sole discretion, elect to support any Digital Asset Distribution, but is under no obligation to do so and shall bear no liability to Users for failing to do so, or for initiating and subsequently terminating such support.

17.5 In the event of a Fork of a Digital Asset, we may be forced to suspend all activities relating to such Digital Asset (including trades, deposits, and withdrawals) on the Platform for an extended period of time, until FTX Trading has determined in its sole discretion that such functionality can be restored (**"Downtime"**). This Downtime may occur at the time that a Fork of a given Digital Asset occurs, potentially with little to no warning. During such Downtime, you understand that you may not be able to trade, deposit, or withdraw the Digital Asset subject to such Fork. FTX Trading does not bear any liability for losses incurred during any Downtime due to the inability to trade or otherwise transfer Digital Assets.

18. ATTACKS ON BLOCKCHAIN NETWORKS

18.1 FTX Trading cannot prevent or mitigate attacks on blockchain networks and has no obligation to engage in activity in relation to such attacks. In the event of an attack, FTX Trading reserves the right to take (or to not take) actions, including, but not limited to, immediately halting trading, deposits and withdrawals for a Digital Asset if we believe that the Digital Asset's network is compromised or under attack. If such an attack caused the Digital Asset to greatly decrease in value, we may discontinue trading in such Digital Asset entirely.

18.2 Resolutions concerning deposits, withdrawals and User balances for a Digital Asset that has had its network attacked will be determined on a case-by-case basis by FTX Trading in its sole discretion. FTX Trading makes no representation and does not warrant the safety of the Services and you assume all liability for any lost value or stolen property.

19. SITE; THIRD PARTY CONTENT

19.1 FTX Trading strives to provide accurate and reliable information and content on the Site, but such information may not always be correct, complete, or up to date. You should always carry out your own independent appraisal and investigations in relation to such information and not rely on it in any way.

19.2 The Site may also contain links to third party websites, applications, events or other materials (**"Third Party Content"**). Such information is provided for your convenience and links or references to Third Party Content do not constitute an endorsement by FTX Trading of any products or services. FTX Trading makes no representation as to the quality, suitability, functionality or legality of Third Party Content, or to any goods and services available from third party websites, and FTX Trading shall have no liability for any losses incurred as a result of actions taken in reliance on the information contained on the Site or in any Third Party Content.

19.3 We have no control over, or liability for, the delivery, quality, safety, legality or any other aspect of any goods or services that you may purchase from a third party (including other Users of the Platform). We are not responsible for ensuring that a third party buyer or seller you transact with will complete the transaction or is authorised to do so. If you experience a problem with any goods or services purchased from, or sold to, a third party purchased using Digital Assets in connection with the Services, you must resolve the dispute directly with that third party.

20. AVAILABILITY

20.1 We do not represent that you will be able to access your Account or the Services 100% of the time. Your Account and the Services are made available to you without warranty of any kind, either express or implied. There are no guarantees that access will not be interrupted, or that there will be no delays, failures, errors, omissions or loss of transmitted information. This could result in the inability to trade on the Platform for a period of time and may also lead to time delays. We may, from time to time, suspend access to your Account and the Services, for both scheduled and emergency maintenance.

20.2 You acknowledge and agree that neither FTX Trading nor any other Indemnified Party shall have any liability to you or any third party for the correctness, quality, accuracy, security, completeness, reliability, performance, timeliness, pricing or continued availability of the Services or for delays or omissions of the Services, or for the failure of any connection or communication service to provide or maintain your access to the Services, or for any interruption in or disruption of your access or any erroneous communications between FTX Trading (or any other Indemnified Party) and you, regardless of cause.

20.3 FTX Trading may determine not to make the Services, in whole or in part, available in every market, either in its sole discretion or due to legal or regulatory requirements. In addition, FTX Trading may determine not to make the Services, in whole or in part, available to you, depending on your location. If you travel to a Restricted Territory, our Services may not be available and your access to our Services may be blocked. You acknowledge that this may impact your ability to trade on the Platform and/or monitor any existing Orders or open positions or otherwise use the Services. You must not attempt in any way to circumvent any such restriction, including by use of any virtual private network to modify your internet protocol address.

21. RIGHT TO CHANGE, SUSPEND OR DISCONTINUE SERVICES

21.1 We reserve the right to change, suspend, or discontinue any aspect of the Services at any time and in any jurisdiction, including hours of operation or availability of any feature, without notice and without liability. We may advise you of any such changes, suspensions or discontinuations via your Account or the other contact details that you have provided to us but shall have no obligation to do so.

21.2 If you do not agree with any change, suspension, or discontinuance of any aspect of the Services, then your sole and exclusive remedy is to terminate your use of the Services and close your Account. You agree that neither we nor any other Indemnified Party shall be liable to you or any third party for any Losses suffered as a result of any such changes, suspensions, discontinuations or decisions.

22. UPDATES TO THE TERMS

22.1 We reserve the right to amend any part of the Terms, at any time, by posting the revised version of the Terms on the Site, with an updated revision date. The changes will become effective, and shall be deemed accepted by you, the first time you use the Services after the initial posting of the revised Terms and shall apply on a going-forward basis with respect to transactions initiated after the posting date. You acknowledge that it is your responsibility to check the Terms periodically for changes.

22.2 If you do not agree with any amendments to the Terms, your sole and exclusive remedy is to terminate your use of the Services and close your Account. You agree that neither we nor any other Indemnified Party shall be liable to you or any third party for any Losses suffered as a result of any amendment of the Terms.

23. FEES

23.1 In consideration for the use of the Services, you agree to pay to FTX Trading the appropriate fees, as set forth in our Fee Schedule displayed on the Site (**"Fee Schedule"**), which FTX Trading may revise or update in its sole discretion from time to time. If you do not agree with any amendments to the Fee Schedule, your sole and exclusive remedy is to terminate your use of the Services and close your Account.

23.2 On request, FTX Trading may make available an alternative fee schedule (**"Alternative Fee Schedule"**) to Users who satisfy certain criteria (such as in relation to trading volume), which are determined by FTX Trading in its sole discretion from time to time.

23.3 You authorise FTX Trading to deduct any applicable fees from your Account at the time you make a given transaction. Changes to the Fee Schedule or Alternative Fee Schedule are effective as of the date set forth in any revision and will apply prospectively from that date forward.

24. **TAXES**

24.1 You will be able to see a record of your transactions via your Account which you may wish to use for the purposes of making any required tax filings or payments. It is your responsibility to determine what, if any, taxes apply to your activities on the Platform, and to collect, report, and remit the correct tax to the appropriate tax authority.

24.2 FTX Trading is not responsible for determining whether taxes apply to your transaction, or for collecting, reporting, or remitting any taxes arising from any transaction.

25. **RIGHT TO USE SERVICES; API USE; THIRD PARTY APPLICATIONS**

25.1 **License**

25.1.1 FTX Trading grants you a limited, non-exclusive, non-sublicensable, and non-transferable license, subject to the Terms, to access and use the Services solely for approved purposes as determined by FTX Trading. Any other use of the Services is expressly prohibited. FTX Trading and its licensors reserve all rights in the Services, and you agree that the Terms do not grant you any rights in, or licenses to, the Services except for the limited license set forth above.

25.1.2 Except as expressly authorised by FTX Trading, you agree not to modify, reverse engineer, copy, frame, scrape, rent, lease, loan, sell, distribute, or create derivative works based on the Services, in whole or in part. If you violate any portion of the Terms, your permission to access and use the Services may be terminated pursuant to the Terms.

25.1.3 "FTX.com," "FTX" and all logos related to the Services are either trademarks, or registered marks of FTX Trading or its licensors. You may not copy, imitate, or use them without FTX Trading's prior written consent. All right, title, and interest in and to the Site and any Mobile Application, any content thereon, the Services, and any and all technology or content created or derived from any of the foregoing is the exclusive property of FTX Trading and its licensors.

25.2 **API use**

25.2.1 Subject to your compliance with the Terms and any other agreement which may be in place between you and FTX Trading relating to your use of the API, FTX Trading grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable license, to use the API solely for the purposes of trading on the Platform. You agree to not use the API or data provided through the API for any other purpose. You agree your access and use of the API shall be entirely at your own risk, and that FTX Trading will not be responsible for any liabilities that you incur as a result of the use of the API or actions you take based on the API.

25.2.2 FTX Trading may, at its sole discretion, set limits on the number of API calls that you can make, for example, to maintain market stability and integrity. You acknowledge and agree that if you exceed these limits, FTX Trading may moderate your activity or cease offering you access to the API (or any other API offered by FTX Trading), each in its sole discretion.

25.2.3 FTX Trading may immediately suspend or terminate your access to the API without notice if we believe you are in violation of the Terms or any other agreement which may be in place between you and FTX Trading related to your use of the API.

25.3 **Third Party Applications**

25.3.1 We offer our Services to users both directly and via third party websites, platforms, applications and other access portals (collectively, "**Third Party Portals**"). If you are accessing these Terms via a Third Party Portal, you agree (a) to comply with all applicable terms of service of such Third Party Portal, (b) that you are solely responsible for payment of any and all costs and fees

associated with such Third Party Portals, and (c) we do not owe you any duty of care with respect to such Third Party Portals, nor do we accept any responsibility for them.

25.3.2 If you grant express permission to a third party to connect to your Account, either through the third party's product or through the Services, you acknowledge that granting permission to a third party to take specific actions on your behalf does not relieve you of any of your responsibilities under these Terms.

25.3.3 You acknowledge and agree that you will not hold us responsible for, and will indemnify us from, any liability arising from the actions or inactions of such third party in connection with the permissions you grant. You expressly agree that your use of any Third Party Portal is at your own risk and we will not be liable to you for any inaccuracies, errors, omissions, delays, damages, claims, liabilities or losses, arising out of or in connection with your use of Third Party Portals.

25.3.4 In the event that access to the Services via any Third Party Portal is suspended, terminated or cancelled for any reason, you agree that you shall remain bound by these Terms and our Privacy Policy as a user of the Services.

26. PRIVACY POLICY

We are committed to protecting your personal information and to helping you understand exactly how your personal information is being used. You should carefully read our Privacy Policy, which provides details on how your personal information is collected, stored, protected, and used.

27. CONFIDENTIALITY

27.1 You shall treat as strictly confidential and not use or disclose any information or documents which you receive (or have received) from us, whether before, during or after the term of the Terms, and whether communicated orally, in writing, in electronic form or otherwise, relating to our business, financial situation, products and services (including the Services), expectations, processes and methods, customers or employees, in each case which is designated as being "confidential" or which by its very nature should obviously be treated as secret and confidential (together **"Confidential Information"**).

27.2 You may use the Confidential Information solely to the extent necessary to receive the benefit of the Services in accordance with the Terms.

27.3 The obligation to maintain confidentiality under this Section 27 shall not apply to any Confidential Information to the extent that such information is:

27.3.1 in the public domain through no breach of the Terms;

27.3.2 known to you at the time of disclosure without restrictions on use, or independently developed by you, and in each case, there is appropriate documentation to demonstrate either condition; or

27.3.3 required to be disclosed to a Regulatory Authority or by Applicable Laws.

27.4 If you are required under Applicable Laws or by any Regulatory Authority to disclose Confidential Information in the circumstances set out in Section 27.3.3 you shall give us such notice as is practical in the circumstances of such disclosure and shall provide all cooperation reasonably requested by us in relation to mitigating the effects of, or avoiding the requirements for, any such disclosure.

27.5 Any Confidential Information shall remain the property of FTX Trading and may be copied or reproduced only with our prior written consent.

27.6 Upon request, you shall return or destroy all materials containing our Confidential Information and, where such materials have been destroyed, confirm such destruction in writing. You shall be under no obligation to return or destroy such materials if and to the extent you are required to retain such materials under Applicable Laws, provided that you

shall notify us in writing of such requirement, giving details of the materials which have not been destroyed or returned, and this Section 27 shall continue to apply to such materials.

27.7 The parties agree and acknowledge that a breach of this Section 27 constitutes a matter of urgency for the purposes of section 12A(4) of Singapore's International Arbitration Act (Chapter 143A) both before, and after, the formation of the arbitral tribunal.

27.8 The availability of relief from an emergency arbitrator or the expedited formation of an arbitral tribunal under SIAC Rules (as defined in Section 38.12.1 below) shall not prejudice any party's right to apply to a state court or other judicial authority for any interim or conservatory measures before the formation of the arbitral tribunal and it shall not be treated as an alternative to or substitute for the exercise of such right. Where a party applies for relief from a state court or other judicial authority, the parties agree that failure to make an application for expedited appointment of the arbitral tribunal and/or for the appointment of an emergency arbitrator under the SIAC Rules shall not indicate, or be deemed to indicate, a lack of urgency. The parties also agree that any refusal by the President of the Court of Arbitration of SIAC to appoint an emergency arbitrator or allow the expedited formation of the arbitral tribunal shall not be determinative of the question of urgency.

27.9 The parties agree that an application to a state court or other judicial authority for interim or conservatory measures after the formation of the arbitral tribunal in respect of this Section 27 shall be considered "exceptional circumstances" under Rule 30.3 of the SIAC Rules. The parties also agree that an application may be made for interim relief on a non-urgent basis under section 12A(5) of Singapore's International Arbitration Act and agree that this Section 27.9 constitutes agreement in writing for the purposes of section 12A(5) of Singapore's International Arbitration Act.

28. COOKIES

By accessing the Site, you agree to use cookies in agreement with FTX Trading's Privacy Policy. The Site uses cookies to enable us to retrieve User details for each visit, and to enable the functionality of certain areas of the Site to make it easier for Users visiting the Site to access and use the Services.

29. INDEMNIFICATION; RELEASE

29.1 You shall and agree to defend, indemnify and hold harmless FTX Trading, its Affiliates and service providers and, in each case, their Personnel (collectively, **"Indemnified Parties"** and each an **"indemnified Party"**) from and against any and all claims and liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (**"Losses"** or **"Loss"**) which any Indemnified Party may suffer or incur, arising directly or indirectly out of or in connection with: (i) your use of your Account and/or the Services; (ii) your breach or anticipatory breach of the Terms; or (iii) your violation or anticipatory violation of any Applicable Laws.

29.2 You will cooperate as fully required by the Indemnified Parties in the defence of any such claims and Losses. The Indemnified Parties retain the exclusive right to assume the exclusive defence and control of any claims and Losses. You will not settle any claims and Losses without FTX Trading's prior written consent.

29.3 You hereby agree to release each of the Indemnified Parties from any and all claims and demands (and waive any rights you may have against any of the Indemnified Parties in relation to any Losses you may suffer or incur), arising directly or indirectly out of or in connection with any dispute that you have with any other User or other third party in connection with the Services (including any Digital Asset transactions) or the subject matter of the Terms.

30. LIMITATION OF LIABILITY; NO WARRANTY

30.1 NOTHING IN THE TERMS SHALL LIMIT OR EXCLUDE A PARTY'S LIABILITY:

30.1.1 FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE;

30.1.2 FOR FRAUD OR FRAUDULENT MISREPRESENTATION; OR

30.1.3 TO THE EXTENT SUCH LIABILITY CANNOT BE EXCLUDED BY APPLICABLE LAWS.

30.2 SUBJECT TO SECTION 30.1, NEITHER FTX TRADING NOR ANY OF THE OTHER INDEMNIFIED PARTIES SHALL BE LIABLE TO YOU IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR ANY OTHER CAUSE ARISING OUT OF OR IN CONNECTION WITH THE TERMS (OR ARISING OUT OF OR IN CONNECTION WITH: YOUR USE OR INABILITY TO USE THE SERVICES; THE COST OF PROCURING SUBSTITUTE GOODS AND SERVICES IN CIRCUMSTANCES WHERE YOU DO NOT OR ARE UNABLE TO USE THE SERVICES; ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; UNAUTHORISED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR ANY OTHER MATTER RELATING TO THE SERVICES) FOR:

30.2.1 INCIDENTAL, PUNITIVE, EXEMPLARY OR OTHER SPECIAL LOSS OR DAMAGE; OR LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF USE, LOSS OF BUSINESS OR CONTRACT, LOST OPPORTUNITIES, INCREASED COSTS OR EXPENSES (OR WASTED EXPENDITURE INCLUDING PRE-CONTRACT EXPENDITURE), LOSS OF SAVINGS, ANY LIABILITY VOLUNTARILY ASSUMED BY YOU, OR LOSS OF OR DAMAGE TO DATA, IN EACH CASE REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS DIRECT OR INDIRECT, FORESEEABLE OR UNFORESEEABLE, OR WHETHER FTX TRADING OR ANY OF THE OTHER INDEMNIFIED PARTIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR

30.2.2 INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE.

30.3 YOU ACKNOWLEDGE AND AGREE THAT FTX TRADING AND ITS AFFILIATES MAY RELY ON ONE OR MORE THIRD PARTY INTERMEDIARIES FOR THE PURPOSES OF PROVIDING THE SERVICES. THE THIRD PARTY INTERMEDIARIES ARE INDEPENDENT THIRD PARTIES AND ARE NOT FTX TRADING'S AGENTS OR SUBCONTRACTORS. SUBJECT TO SECTION 30.1, FTX TRADING SHALL NOT BE LIABLE FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY INTERMEDIARY, OR ANY LOSSES ARISING FROM THE FAULT OF ANY THIRD PARTY INTERMEDIARY, SUCH AS A FAILURE BY A THIRD PARTY INTERMEDIARY TO COMPLY WITH APPLICABLE LAWS OR ANY REASONABLE INSTRUCTIONS PROVIDED BY FTX TRADING.

30.4 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF FTX TRADING AND THE OTHER INDEMNIFIED PARTIES EXPRESSLY DISCLAIM ANY WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NEITHER FTX TRADING NOR ANY OTHER INDEMNIFIED PARTY MAKES ANY WARRANTY THAT:

30.4.1 THE SERVICES WILL MEET YOUR REQUIREMENTS;

30.4.2 THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; OR

30.4.3 THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU WILL MEET YOUR EXPECTATIONS.

30.5 SUBJECT TO SECTION 30.1, NEITHER FTX TRADING NOR ANY OF THE OTHER INDEMNIFIED PARTIES WILL BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS AND TAKE NO RESPONSIBILITY FOR, AND WILL NOT BE LIABLE TO YOU FOR, ANY USE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: USER ERROR SUCH AS FORGOTTEN PASSWORDS, INCORRECTLY CONSTRUCTED TRANSACTIONS, OR MISTYPED WALLET ADDRESSES; SERVER FAILURE OR DATA LOSS; CRYPTOCURRENCY WALLETS OR CORRUPT FILES; UNAUTHORISED ACCESS TO SERVICES; OR ANY THIRD PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST YOUR COMPUTER OR ANY BLOCKCHAIN NETWORK UNDERLYING THE SERVICES.

31. COUNTRY-SPECIFIC ADDENDA

If you are a resident of Australia, Japan, or South Africa, additional terms and conditions will apply to your use of the Services as set forth in the Schedules attached hereto.

32. COMMUNICATIONS IN ENGLISH

The Terms are provided to you and concluded in English. We will communicate with you in English for all matters related to your use of our Services unless we elect, in our sole discretion, to provide support for other languages.

33. FEEDBACK

You acknowledge and agree that any materials, including without limitation questions, comments, feedback, suggestions, ideas, plans, notes, drawings, original or creative materials or other information or commentary you provide to us or one of our social media accounts, regarding the Services (collectively, **"Feedback"**) that are provided by you, whether by email, posting to the Site or social channels, or otherwise, are non-confidential and will become the sole property of FTX Trading. FTX Trading will own exclusive rights, including all intellectual property rights, in and to such Feedback, and will be entitled to the unrestricted use and dissemination of such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

34. QUESTIONS AND CONTACT INFORMATION

34.1 We often post notices and relevant Services information in our Telegram channel and on our Twitter account, so we advise You to check those channels before contacting support.

Telegram: https://t.me/FTX_Official

Twitter: https://twitter.com/FTX_Official

WeChat: ftexchange

Blog: https://blog.ftx.com/

34.2 To contact us, please visit one of the links or channels above. For support with your Account, you may submit a support ticket at https://ftx.com/support. For legal and media inquiries, please contact legal@ftx.com and media@ftx.com, respectively. Please provide all relevant information, including your Account username and transaction IDs of any related deposits. Although we make no representations or provide no warranties as to the speed of response, we will endeavour to get back to you as soon as possible.

35. PROMOTIONS

FTX Trading does not, as a general rule, participate in promotions without an official pronouncement, either on the Site or elsewhere. You shall obtain prior written approval prior to releasing any statements, written media releases, public announcements and public disclosures, including promotional or marketing materials, relating to the Platform.

36. FORCE MAJEURE AND RELIEF EVENTS

36.1 FTX Trading shall not be responsible (and shall have no liability) for any failure, interruption or delay in relation to the performance of the Services or its obligations under the Terms that results from any abnormal or unforeseeable circumstances outside our reasonable control, including without limitation:

36.1.1 any Force Majeure Event; or

36.1.2 any failure by you to comply with your obligations under the Terms or Applicable Laws (**"Relief Event"**).

37. ASSIGNMENT AND SUBCONTRACTING

37.1 You may not assign, novate, or otherwise transfer, any of your rights or obligations under the Terms, or sub-contract the performance of any of your obligations under the Terms, without the prior written consent of FTX Trading. Any attempted assignment, novation, transfer or sub-contracting without our consent shall be void.

37.2 FTX Trading may assign, novate, or otherwise transfer any of its rights or obligations under the Terms to any other person, or sub-contract the performance of any of its obligations under the Terms (including the performance of the Services), at any time and without your consent, and you hereby consent to such assignment, novation, transfer or subcontracting, and agree to take all actions (including by way of executing documents) and other assistance required by FTX Trading to ensure that any such assignment, novation, transfer or subcontracting is effective and enforceable. If you object to such assignment, novation, transfer or sub-contracting you may stop using our Services and terminate the Terms by contacting us and requesting us to close your Account.

38. GENERAL

38.1 Entire agreement

38.1.1 You agree that the Terms constitute the entire agreement between you and FTX Trading with respect to the use of the Services.

38.1.2 You agree that in agreeing to and entering into the Terms you have not been induced to do so by, and have not relied on, any statement, representation, warranty, assurance, covenant, indemnity, undertaking or commitment (**"Representation"**) which is not expressly set out in the Terms.

38.1.3 You agree that your only right of action in relation to any innocent or negligent Representation set out in the Terms or given in connection with the Terms shall be for breach of contract. All other rights and remedies in relation to any such Representation (including those in tort or arising under statute) are excluded.

38.2 Survival

Upon the later of the closure of your Account and the termination of your access to and use of the Services the Terms shall terminate. All rights and obligations of the parties that by their nature are continuing will survive the termination of the Terms.

38.3 Severability

If any provision or part of the Terms is void or unenforceable due to any Applicable Laws, it shall be deemed to be deleted and the remaining provisions of the Terms shall continue in full force and effect. If any invalid, unenforceable or illegal provision of the Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it valid, legal and enforceable.

38.4 Successors and assigns

The Terms shall be binding on, and enure to the benefit of, the parties to the Terms and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted

assigns.

38.5 **Variation and waiver**

38.5.1 Subject to Section 22, no variation of the Terms shall be effective unless it is in writing (which for this purpose, does not include email) and signed by, or on behalf of, each of the parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

38.5.2 No waiver by FTX Trading of any right or remedy provided by the Terms or by law shall be effective unless it is in writing (which for this purpose, does not include email) and signed by, or on behalf of, FTX Trading. The failure by FTX Trading to exercise, or delay in exercising, any right or remedy provided by the Terms or by law does not: (i) constitute a waiver of that right or remedy; (ii) restrict any further exercise of that right or remedy; or (iii) affect any other rights or remedies. A single or partial exercise by FTX Trading of any right or remedy does not prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy.

38.6 **No partnership or agency**

Nothing in the Terms or in any matter or any arrangement contemplated by it is intended to constitute a partnership, association, joint venture, fiduciary relationship or other co-operative entity between the parties for any purpose whatsoever. Except as expressly provided in the Terms, neither party has any power or authority to bind the other party or impose any obligations on it and neither party shall purport to do so or hold itself out as capable of doing so. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

38.7 **Set off**

38.7.1 Notwithstanding that any amount is from time to time payable by FTX Trading to you under or by virtue of the Terms or otherwise, you shall not set off such amount against any amount payable by you to FTX Trading under the Terms.

38.7.2 FTX Trading may set off any amounts which from time to time are payable by FTX Trading to you under or by virtue of the Terms or otherwise against any amounts payable by you to FTX Trading under the Terms.

38.8 **Equitable remedies**

Without prejudice to any other rights or remedies that FTX Trading may have, you acknowledge and agree that damages alone may not be an adequate remedy for your breach of the Terms. The remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of such provisions of the Terms may be more appropriate remedies.

38.9 **Third party rights**

Save as otherwise expressly provided in the Terms (such as in Sections 29, 30 and 38.12.8):

38.9.1 the Terms are not intended and shall not be construed to create any rights or remedies in any parties other than you and FTX Trading and its Affiliates, which each shall be a third party beneficiary of the Terms; and

38.9.2 no other person shall assert any rights as a third party beneficiary hereunder (notwithstanding any legislation to the contrary anywhere in the world).

38.10 **Electronic signature**

The Terms may be entered into by electronic means.

38.11 **Governing law**

The Terms and any Dispute shall be governed by, and construed in accordance with, English law.

38.12 **Arbitration**

38.12.1 Subject to Section 38.13 below, any Dispute shall be referred to and finally determined by arbitration administered by the Singapore International Arbitration Centre (**"SIAC"**) in accordance with the Arbitration Rules of the SIAC (**"SIAC Rules"**) for the time being in force.

38.12.2 This arbitration agreement shall be governed by English law.

38.12.3 The seat of the arbitration shall be Singapore.

38.12.4 The language of the arbitration shall be English.

38.12.5 The number of arbitrators shall be one.

38.12.6 Each party agrees that:

(A) any Dispute shall be referred to arbitration in accordance with this Clause 38.12 on an individual basis only and not as a claimant or class member in a purported class or representative action;

(B) combining or consolidating individual arbitrations into a single arbitration is not permitted without the consent of all parties.

38.12.7 This agreement to arbitrate shall:

(A) be binding upon the parties, their successors and assigns;

(B) survive the termination of these Terms.

38.12.8 Where a User alleges or claims that a Dispute has arisen between it and any of the Indemnified Parties who is not otherwise a party to these Terms, that Indemnified Party may require that the Dispute be finally settled by arbitration in accordance with this Section 38.12 (without prejudice to that Indemnified Party's right to make a jurisdictional challenge), provided that such Indemnified Party exercises its right to arbitration under this Section 38.12 by notice in writing to all parties to the Terms within 7 days of being notified in writing of the Dispute. For the avoidance of doubt, the User provides express consent to the joinder of such Indemnified Party to an arbitration commenced pursuant to this Section 38.12.

38.13 **Exception to arbitration**

If you are a resident of a jurisdiction where the law prohibits arbitration of Disputes, Section 38.12 above will not apply to you. Instead, each party irrevocably agrees that the Courts of England and Wales located in London, England shall have exclusive jurisdiction in relation to any Dispute and each party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **DEFINITIONS**

1.1 As used throughout the Terms unless the context requires otherwise:

"Affiliate" means, in relation to a party, any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such party. A person shall be deemed to control another person if such person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.

"Applicable Laws" means all laws, including rules of common law, principles of equity, statutes, regulations, directives, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions, judgments and any awards of other industrial instruments, which are applicable to the provision, receipt or use of the Services or any products or other deliverables provided, used or received in connection with the Services.

"Assets" means the Digital Assets, fiat currency and E-Money held in your Account.

"BTC" means the cryptocurrency Bitcoin.

"Digital Assets" means BTC, ETH, FTT and any other digital asset, cryptocurrency, virtual currency, token, leveraged token, stablecoin, tokenised stock, volatility token, tokenised futures contract, tokenised option or other tokenised derivatives product that is supported by and made available from time to time to transact in using the Platform.

"Dispute" means any dispute, claim, controversy or difference arising out of or in connection with the Terms, including any question regarding its existence, validity, subject matter, interpretation, negotiation, termination or enforceability, and any dispute, claim, controversy or difference regarding any non-contractual obligations arising out of or in connection with the Services.

"ETH" means the cryptocurrency Ethereum.

"Exchange" means the trading platform operated by FTX Trading or its Affiliates through which the Services may be offered to Users to transact in Digital Assets with other Users.

"fiat currency" means any government issued national currency.

"Force Majeure Event" means any circumstance not within a party's reasonable control including:

(i) acts of God, flood, drought, earthquake or other natural disaster;

(ii) epidemic or pandemic;

(iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(iv) nuclear, chemical or biological contamination or sonic boom;

(v) any law or any action taken by a Regulatory Authority, including the imposition of an export or import restriction, quota or prohibition;

(vi) collapse of buildings, fire, explosion or accident; and

(vii) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party (or its Affiliates) seeking to rely on this clause).

"FTT" is the exchange token of the Exchange ecosystem and is not offered in the United States or to U.S. persons.

"Mobile Application" means any mobile application developed or provided by FTX Trading and/or any of its Affiliates through which Users can access the Platform.

"Order" means each instruction placed by you on the Order Book to purchase or sell a specified quantity of a Digital Asset at a specified price in the Digital Asset in which trading is denominated on the Order Book; the second Digital Asset in a trading pair (e.g. USD in the BTC/USD trading pair).

"Order Book" means the central limit order book operated by FTX Trading on the Platform.

"parties" means the parties to the Terms, being you and FTX Trading (or, where applicable, the Service Provider responsible for providing a Specified Service to you as specified in a Service Schedule, insofar as that Specified Service is concerned), and "**party**" shall mean any one of the foregoing (as the context requires).

"Personnel" means the directors, officers, employees, agents, joint venturers, and contractors or subcontractors of a person.

"Regulatory Authority" means any foreign, domestic, state, federal, cantonal, municipal or local governmental, executive, legislative, judicial, administrative, supervisory or regulatory authority, agency, quasi-governmental authority, court, commission, government organisation, self-regulatory organisation having regulatory authority, tribunal, arbitration tribunal or panel or supra-national organisation, or any division or instrumentality thereof, including any tax authority.

"Service Provider" means the entity specified in a Service Schedule as responsible for providing the Specified Service referred to in that Service Schedule.

"Service Schedule" means the Service Schedules set out in the Schedules (other than this Schedule 1) to the General Terms.

"Specified Service" means any service specified in a Service Schedule.

"transaction" or **"trade"** means each transaction or trade carried out (or to be carried out) via the Platform relating to buying, selling, exchanging, holding, staking, lending, borrowing, sending, receiving or otherwise transacting in a Digital Asset.

"User" means a user of the Services, including you.

2. INTERPRETATION

2.1 References to the Terms and other agreements

In the Terms, except where the context otherwise requires:

2.1.1 a reference to the Terms includes a reference to the Service Schedules and any other Schedules to it, each of which forms part of the Terms;

2.1.2 a reference to a Section or Schedule (other than to a schedule to a statutory provision) is a reference to a Section or Schedule (as the case may be) of, or to, the Terms and reference to a paragraph is to a paragraph of the relevant Schedule;

2.1.3 the headings are for convenience only and shall not affect the interpretation of the Terms;

2.1.4 a reference to the Terms includes the Terms as amended or supplemented in accordance with its terms; and

2.1.5 a reference to any agreement or other instrument (other than an enactment or statutory provision) is to that agreement or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned otherwise than in breach of the Terms.

2.2 Singular, plural and gender

Words in the singular include the plural and vice versa and a reference to one gender includes other genders.

2.3 **References to persons and companies**

In the Terms, except where the context otherwise requires:

2.3.1 a reference to a person includes a reference to any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

2.3.2 a reference to a company includes any company, corporation or other body corporate wherever and however incorporated or established; and

2.3.3 a reference to an individual includes that individual's estate and personal representatives.

2.4 **References to time periods**

In the Terms, except where the context otherwise requires, any reference to a date or time is a reference to that date or time in the principal financial centre of the country in which the registered office of FTX Trading (or the relevant Affiliate of FTX Trading) is located, unless otherwise agreed in writing. A reference to a day means a period of 24 hours ending at midnight. Any period of time shall be calculated exclusive of the day from which the time period is expressed to run or the day upon which the event occurs which causes the period to start running.

2.5 **References to legislation and legal terms**

In the Terms, except where the context otherwise requires, a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision, and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, modified, incorporated or reproduced and to any enactment, statutory provision or subordinate legislation that from time to time (with or without modifications) re-enacts, replaces, consolidates, incorporates or reproduces it.

2.6 **Includes and including**

In the Terms, except where the context otherwise requires:

2.6.1 the words and phrases "includes", "including", "in particular" (or any terms of similar effect) shall not be construed as implying any limitation; and

2.6.2 general words shall not be given a restrictive meaning because they are preceded or followed by particular examples.

2.7 **To the extent that**

In the Terms, except where the context otherwise requires, the phrase "to the extent that" is used to indicate an element of degree and shall mean "to the extent that" and not solely "if", and similar expressions shall be construed in the same way.

2.8 **Writing**

A reference to writing includes any modes of reproducing words in any legible form and, except where expressly stated otherwise, shall include email).

SCHEDULE 2

SERVICE SCHEDULE

Specified Service	**Spot Market**
Specified Service description	The Spot Market is a trading platform through which you can spot trade certain Digital Assets with other Users in exchange for fiat currency (depending on your location) or Digital Assets.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	The Digital Assets that are available for spot trading on the Spot Market are listed on the Site. This list may be amended from time to time by the Service Provider at its sole discretion. The Service Provider reserves the right to final interpretation of this Specified Service.

SCHEDULE 3

SERVICE SCHEDULE

Specified Service	**Spot Margin Trading**
Specified Service description	Spot Margin Trading enables you to spot trade certain Digital Assets that you do not have by posting collateral in the form of fiat currency (depending on your location) or Digital Assets held in your Account and borrowing the required Digital Assets from other Users. You can then spot trade the borrowed Digital Assets through the Spot Market on the Platform. You may also lend your Digital Assets to other Users who need them to spot trade. Digital Asset borrowers pay a lending fee to Digital Asset lenders.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	**IMPORTANT**: Section 16 of the General Terms applies to this service. You may be asked to sign other documents in some cases in relation to Spot Margin Trading, including but not limited to the FTX Institutional Customer Margin and Line of Credit Agreement. The Service Provider and its Affiliates may, in its sole discretion, perform measures to mitigate potential losses to you on your behalf, or to other Users. Such measures include attempts by the Platform's risk engine to liquidate any Users before they could get a negative net Account balance. Using spot margin trading therefore opens you up to liquidation risk. The Service Provider may impose margin position limits or decreasing collateral on large positions of illiquid coins. The Digital Assets that are available for borrowing/lending are listed on the Site. This list may be amended from time to time by the Service Provider at its sole discretion. Digital Assets that are lent to other Users are effectively locked, and cannot be withdrawn/sold/used as collateral/staked/etc. However, they can be used as maintenance margin to prevent liquidations. The Service Provider reserves the right to final interpretation of this Specified Service.

Risk disclosures	Margin trading may not be suitable for all Users and should only be used by those who understand the risks. Also see Section 2.4 of the General Terms. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR USE OF ANY MARGIN TRADING SERVICES OFFERED ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH MARGIN TRADING.

SCHEDULE 4

SERVICE SCHEDULE

Specified Service	**OTC / Off-exchange Portal (OEP Portal)**
Specified Service description	The OEP Portal enables you to connect with other Users to request quotes for spot Digital Assets. In response to a request for a quote, other Users will return prices offered by them in respect of the Digital Assets and you may decide whether or not you wish to trade at the price offered by the other User. Affiliates of FTX Trading may participate on the OEP Portal as Users and execute trades (as principal) with other Users, on terms no more favourable to such Affiliate than terms offered to other similarly situated Users. If you agree, the trade is confirmed, and you will trade directly with the other User. The Service Provider will carry out post-trade clearing and settlement of the trade between you and the other User.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	The Service Provider shall have no liability in relation to your use of the OEP Portal or for any trades that you enter into with other Users that you connect with through the OEP Portal. The Service Provider reserves the right to final interpretation of this Specified Service.

SCHEDULE 5

SERVICE SCHEDULE

Specified Service	**Futures Market**
Specified Service description	The Futures Market is a trading platform on which you can trade Quarterly Futures Contracts and Perpetual Futures Contracts (collectively, **Futures Contracts**) on certain Digital Assets and Digital Asset indexes with other Users, with or without leverage.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	Quarterly Futures Contracts represent obligations to buy or sell a Digital Asset at a specific price, on a specified future date. Quarterly Futures Contracts expire to a time-weighted average price (**"TWAP"**) of their associated index on the last Friday of every quarter between 2am and 3am UTC. If you hold an expiring position, you will be credited with USD profit and loss equal to the expiration price shortly after. Perpetual Futures Contracts represent obligations to buy or sell a Digital Asset at a specific price, at any time while the contract remains open. Perpetual Futures Contracts do not have an expiry date but instead, continuously roll over, i.e. every hour, each perpetual futures contract has a funding payment where longs pay shorts equal to 1 hour TWAP of Premium / 24. You can trade Futures Contracts on the Futures Market by posting collateral in the form of fiat currency (depending on your jurisdiction) and Digital Assets to cover initial and maintenance margin. Instead of delivery of the underlying Digital Asset, your profit or loss is settled in stablecoins. **IMPORTANT:** Section 16 of the General Terms applies to this service. Futures Contracts are Complex Products and the trading of Futures Contracts is high risk. The market price of any Futures Contract may not reflect the price of spot markets in the applicable underlying Digital Assets and may fluctuate significantly in response to the value of the underlying Digital Asset's(s') price, supply and demand, and other market factors. In order to trade Futures Contracts on the Futures Market, you must post collateral. Depending on market movements, your positions may be liquidated, and you may sustain a total loss of the Assets in your Account. This is because Futures Contract trading can be highly leveraged, with a relatively small amount of funds used to establish a position in a Digital Asset or index having a much greater value. For instance, a small price decrease on a 20x leveraged Futures Contact's underlying Digital Asset could result in 20x loss in your leveraged position in the Futures Contract. Further, short positions will lose money when the price of the underlying

	Digital Asset rises, a result that is opposite from holding the underlying Digital Asset. YOU AGREE AND HEREBY AUTHORISE THE SERVICE PROVIDER AND ITS AFFILIATES TO TAKE ANY MEASURES IN THEIR SOLE DISCRETION, INCLUDING BUT NOT LIMITED TO, FORCED POSITION REDUCTION AND LIQUIDATION UNDER MARKET VOLATILITY, ILLIQUIDITY AND OTHER CIRCUMSTANCES, FOR THE PURPOSES OF MITIGATING POTENTIAL LOSSES TO YOU, OTHER USERS, AND THE SERVICE PROVIDER AND ITS AFFILIATES. By trading in Futures Contracts on the Futures Market on the Platform, you acknowledge and agree that you have sufficient investment knowledge, financial expertise, and experience and the capacity to take on the increased risks arising from Futures Contract trading. You further agree to independently assume all the risks arising from conducting Futures Contract trading on your own account. If you are uncomfortable with this level of risk, you should not trade Futures Contracts. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING FUTURES CONTRACTS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH FUTURES CONTRACT TRADING. The Service Provider reserves the right to final interpretation of this Specified Service.
Risk disclosures	See Section 2 of the General Terms.

SCHEDULE 6

SERVICE SCHEDULE

Specified Service	**Volatility Market (Options Contacts)**
Specified Service description	The Volatility Market is a trading platform on which you can trade Call Options or Put Options (collectively, **Options Contracts**) on certain Digital Assets with other Users, with or without leverage.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	Options Contracts give you the option (i.e. the right, but not the obligation), to either buy (Call Option) or sell (Put Option) Digital Assets for a specific price (the strike or exercise price) on a specified expiry date. If, at the expiration of a Call Option, the market price of the underlying Digital Asset is higher than the strike price, the Service Provider will automatically exercise the option and credit your Account with the difference between the market price and the strike price. If the market price is lower, the option expires to USD 0.00. In the case of Put Options, the reverse applies. You can trade Options Contracts on the Volatility Market by posting collateral in fiat currency (depending on your location) and Digital Assets, to cover initial and maintenance margin. Instead of delivery of the underlying Digital Asset on the specified expiry date, your profit or loss is settled in stablecoins. **IMPORTANT**: Section 16 of the General Terms applies to this service. The Options Contracts on the Volatility Market are European style. This means that you will not be able to exercise the option before the specified expiry date. The Options Contracts auto-expire, which means that the Service Provider will automatically exercise all options "in the money" and no options "out of the money". The Options Contracts expire on their specified expiry date at 3:00:00AM UTC. The expiration price of the underlying Digital Asset is based on a 1-hour TWAP of the underlying index the hour before expiration. Options Contracts are Complex Products and the trading of Options Contracts is high risk. In order to trade Options Contracts on the Volatility Market, you must post collateral. Depending on market movements, your positions may be liquidated, and you may sustain a total loss of the Assets in your Account. This is because Options Contract trading is highly leveraged, with a relatively small amount of funds used to establish a position in a Digital Asset having a much greater value. If you are uncomfortable with this level of risk, you should not trade Options Contracts.

	THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING OPTIONS CONTRACTS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH OPTIONS CONTRACTS TRADING. The Service Provider reserves the right to final interpretation of this Specified Service.
Risk disclosures	See Section 2 of the General Terms.

SCHEDULE 7

SERVICE SCHEDULE

Specified Service	**Volatility Market (MOVE Volatility Contracts)**
Specified Service description	The Volatility Market is a trading platform on which you can trade Daily MOVE Volatility Contracts, Weekly MOVE Volatility Contracts and Quarterly MOVE Volatility Contracts (collectively, **MOVE Volatility Contracts**) with other Users, with or without leverage.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Digital Markets Ltd**, an International Business Company incorporated in The Bahamas (company registration number 207269 B), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	MOVE Volatility Contracts represent the absolute value of the amount a Digital Asset moves in a period of time, i.e. a day, week or quarter. MOVE Volatility Contracts expire to the absolute value of the difference between the TWAP price of the underlying Digital Asset over the first hour and the TWAP price of the underlying Digital Asset over the last hour of their expiration time, measured in UTC. 1. Daily MOVE Volatility Contracts expire to the movement of BTC over a single day's period. Their ticker is [underlying]-MOVE-[expiration date]; e.g. BTC-MOVE-1116 is the BTC-MOVE Volatility Contract expiring at the end of 16 November UTC. 2. Weekly MOVE Volatility Contracts expire to the movement of BTC over a 7 day period. Their ticker is [underlying]-MOVE-WK-[expiration date]; e.g. BTC-MOVE-WK-1122 expires to the amount that BTC moves between the start of 16 November and the end of 22 November. 3. Quarterly MOVE Volatility Contracts expire to the move of BTC over a roughly 3 month period. Their ticker is [underlying]-MOVE-[expiration year]Q[quarter number]; e.g. BTC-MOVE-2020Q2 expires to the amount that BTC moves during Q2 2020, from 27 March 2020 to 25 June 2020. You can trade Move Volatility Contracts on the Volatility Market by posting collateral in the form of fiat currency (depending on your location) and Digital Assets to cover initial and maintenance margin. **IMPORTANT**: Section 16 of the General Terms applies to this service. MOVE Volatility Contracts are Complex Products and the trading of MOVE Volatility Contracts is high risk. In order to trade MOVE Volatility Contracts on the Volatility Market, you must post collateral. Depending on market movements, your positions may be liquidated, and you may sustain a total loss of the Assets in your Account. This is because MOVE Volatility Contract trading is highly leveraged, with a relatively small amount of funds used to establish a position in a Digital Asset having a much greater value.

	If you are uncomfortable with this level of risk, you should not trade MOVE Volatility Contracts. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING MOVE VOLATILITY CONTRACTS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH MOVE VOLATILITY CONTRACTS TRADING. The Service Provider reserves the right to final interpretation of this Specific Service.
Risk disclosures	See Section 2 of the General Terms.

SCHEDULE 8

SERVICE SCHEDULE

Specified Service	**Leveraged Tokens Spot Market**
Specified Service description	The Leveraged Tokens Market is a trading platform on which you can spot trade Leveraged Tokens on certain Digital Assets with other Users.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Trading Ltd**, a company incorporated and registered in Antigua and Barbuda (company number 17180), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	Leveraged Tokens are "ERC-20" digital tokens issued by LT Baskets Ltd, an Affiliate of FTX Trading. Each Leveraged Token has an associated account on the Platform that takes leveraged positions on Perpetual Futures Contracts on an underlying Digital Asset or Digital Asset index (collectively **"Underlying"**) and can be created or redeemed for its share of the Digital Assets of that account. Leveraged Tokens seek (but under no circumstances guarantee) daily results, before fees and expenses, that correspond to 300% or 3x ("BULL"), -100% or -1x ("HEDGE"), or -300% or -3x ("BEAR") of the daily return of the Underlying (in U.S. Dollars) for a single day, not for any other period. A Leveraged Token's returns for a period longer than a single day will be the result of its return for each day, compounded over that period, and could differ in amount and direction from the return of the Underlying over the same period. A Leveraged Token's returns may also deviate from expected returns in a period shorter than a single day for reasons including, but not limited to, scheduled or unscheduled rebalancing. Scheduled rebalancing occurs once daily in order to maintain the Leveraged Token's intended exposure to the market price of the Underlying. Unscheduled rebalancing may occur, for example, if the market price of the Underlying moves more than 10% in either direction within a single day in order to maintain the Leveraged Token's intended returns. Leverage Tokens are Complex Products, and the trading of Leveraged Tokens is high risk. The market price of any Leveraged Token may not reflect the price of spot markets in the applicable Underlying and may fluctuate significantly in response to the value of the Underlying's price, supply and demand, and other market factors. Leveraged Tokens reduce the risk of liquidation (as compared to Futures Contracts for example) but it is still possible that liquidation may occur; if markets instantaneously gap down 50%, there is nothing that can stop a +3x leveraged position from getting liquidated. YOU AGREE AND HEREBY AUTHORISE THE SERVICE PROVIDER AND ITS AFFILIATES TO TAKE ANY MEASURES IN THEIR SOLE DISCRETION, INCLUDING BUT NOT LIMITED TO, FORCED POSITION REDUCTION AND LIQUIDATION UNDER MARKET VOLATILITY,

	ILLIQUIDITY AND OTHER CIRCUMSTANCES, FOR THE PURPOSES OF MITIGATING POTENTIAL LOSSES TO YOU, OTHER USERS, AND THE PLATFORM. By trading in Leveraged Tokens on the Platform, you acknowledge and agree that you have sufficient investment knowledge, financial expertise, and experience and the capacity to take on the increased risks arising from Leveraged Tokens trading. You further agree to independently assume all the risks arising from conducting Leveraged Tokens trading on your own account. If you are uncomfortable with this level of risk, you should not trade Leveraged Tokens. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING LEVERAGED TOKENS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH LEVERAGED TOKEN TRADING. The Service Provider reserves the right to final interpretation of this Specific Service.
Risk disclosures	Leveraged Tokens do not require Users to trade on margin. However, they remain subject to certain risks that you should understand before trading Leveraged Tokens, including but not limited to: • **Market price variance risk:** Holders buy and sell Leveraged Tokens in the secondary market at market prices, which may be different from the value of the Underlying. The market price for a Leveraged Token will fluctuate in response to changes in the value of the Leveraged Token's holdings, supply and demand for the Leveraged Token and other market factors. • **Inverse correlation risk:** Holders of Leveraged Tokens that target an inverse return will lose money when the price of the Underlying rises, a result that is opposite from holding the Underlying. • **Portfolio turnover risk:** Leveraged Tokens may incur high portfolio turnover to manage the exposure to the Underlying. Additionally, active market trading of a Leveraged Token's holding may cause more frequent creation or redemption activities that could, in certain circumstances, increase the number of portfolio transactions. High levels of transactions increase transaction costs. Each of these factors could have a negative impact on the performance of a Leveraged Token. • **Interest rates:** Leveraged Tokens take positions in Perpetual Futures Contracts to achieve their desired leverage. These Perpetual Futures Contracts might trade at a premium or discount to spot markets in the applicable Underlying as a reflection of prevailing interest rates in cryptocurrency markets. Thus, a Leveraged Token could outperform or underperform the Underlying's spot market returns due to a divergence between the two markets.

SCHEDULE 9

SERVICE SCHEDULE

Specified Service	**Volatility Market (BVOL/iBVOL Tokens)**
Specified Service description	The Volatility Market is a trading platform on which you can trade BVOL Tokens and iBVOL Tokens (collectively, **BVOL/iBVOL Tokens**) with other Users, with or without leverage.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Trading Ltd**, a company incorporated and registered in Antigua and Barbuda (company number 17180), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms)	BVOL/iBVOL Tokens are "ERC-20" digital tokens issued by LT Baskets Ltd, an Affiliate of FTX Trading. Each BVOL/iBVOL Token has an associated account on the Platform that holds MOVE Volatility Contracts and Perpetual Futures Contracts on BTC (collectively, **"Underlying"**), in an attempt to track the implied percent-based volatility of BTC. In particular, BVOL Tokens attempt to track the daily returns of being 1x long the implied volatility of BTC and iBVOL Tokens attempt to track the daily returns of being 1x short the implied volatility of BTC. In order to get their volatility exposure, BVOL Tokens trade MOVE Volatility Contracts and Perpetual Futures on BTC. In particular, they aim to hold 1/6th each of each MOVE Volatility Contract that has not yet had its strike price determined as of each rebalance. That means 1/6th each of: • Tomorrow's MOVE Volatility contract • Next weeks' MOVE contract, and the two weeks after that • Next Quarter's MOVE contract, and the quarter after that and • -1x BTC-PERP (Short) IBVOL, conversely, aims to hold -1/6th each of those MOVE Volatility contracts and 1x Perpetual Futures Contract on BTC (Long). BVOL targets +1x leverage, and IBVOL targets -1x leverage. As such, BVOL should not need to significantly alter its leverage at rebalance time (00:02:00 UTC every day): there may be small amounts of slippage but by and large its leverage should always be 1. IBVOL, however, will need to. If volatility is down, iBVOL will have gains and will reinvest them by selling more MOVE contracts; if volatility is up, iBVOL will have losses and will buy back MOVE contracts to reduce risk and attempt to avoid liquidation. Because of this BVOL almost completely avoids liquidation risk, but IBVOL is at risk if volatility doubles in a day. To mitigate this, iBVOL also has daily rebalances. If market moves cause iBVOL's leverage to reach -4/3, it will do an intraday rebalance to reduce risk. YOU AGREE AND HEREBY AUTHORISE THE SERVICE PROVIDER AND ITS AFFILIATES TO TAKE ANY MEASURES IN THEIR SOLE DISCRETION, INCLUDING BUT NOT LIMITED TO, FORCED POSITION

	REDUCTION AND LIQUIDATION UNDER MARKET VOLATILITY, ILLIQUIDITY AND OTHER CIRCUMSTANCES, FOR THE PURPOSES OF MITIGATING POTENTIAL LOSSES TO YOU, OTHER USERS, AND THE PLATFORM. BVOL/iBVOL Tokens are Complex Products and the trading of BVOL/iBVOL Tokens is high risk. The market price of any BVOL/iBVOL Token may not reflect the price of spot markets in BTC and may fluctuate significantly in response to the value of BTC's price, supply and demand, and other market factors. By trading in BVOL/iBVOL Tokens on the Platform, you acknowledge and agree that you have sufficient investment knowledge, financial expertise, and experience and the capacity to take on the increased risks arising from BVOL/iBVOL Tokens trading. You further agree to independently assume all the risks arising from conducting BVOL/iBVOL Tokens trading on your own account. If you are uncomfortable with this level of risk, you should not trade BVOL/iBVOL Tokens. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING BVOL/iBVOL TOKENS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH BVOL/iBVOL TOKEN TRADING. The Service Provider reserves the right to final interpretation of this Specified Service.
Risk disclosures	BVOL/iBVOL Tokens do not require Users to trade on margin. However, they remain subject to certain risks that you should understand before trading BVOL/iBVOL Tokens, including but not limited to: • **Market price variance risk:** Holders buy and sell BVOL/iBVOL Tokens in the secondary market at market prices, which may be different from the value of BTC. The market price for a BVOL/iBVOL Tokens will fluctuate in response to changes in the value of the BVOL/iBVOL Tokens holdings, supply and demand for the BVOL/iBVOL Tokens and other market factors. • **Portfolio turnover risk:** BVOL/iBVOL Tokens may incur high portfolio turnover to manage the exposure to the Underlying. Additionally, active market trading of a BVOL/iBVOL Token's holding may cause more frequent creation or redemption activities that could, in certain circumstances, increase the number of portfolio transactions. High levels of transactions increase transaction costs. Each of these factors could have a negative impact on the performance of a BVOL/iBVOL Tokens. • **Interest rates:** BVOL/iBVOL Tokens take positions in MOVE Volatility Contracts and Perpetual Futures Contracts to achieve their desired implied volatility of BTC. These MOVE Volatility Contracts and Perpetual Futures Contracts might trade at a premium or discount to spot markets in BTC as a reflection of prevailing interest rates in cryptocurrency markets. Thus, a BVOL/iBVOL Token could

	outperform or underperform BTC's spot market returns due to a divergence between the two markets.

SCHEDULE 10

SERVICE SCHEDULE

Specified Service	**Issuing and redeeming Leveraged Tokens and BVOL/iBVOL Tokens**
Specified Service description	The issuance and redemption of Leveraged Tokens and BVOL/iBVOL Tokens.
Service Provider	This Specified Service forms part of the Services and is provided by **LT Baskets Ltd**, a company incorporated in Antigua and Barbuda (company number 17336), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms) and risk disclosures	Leveraged Tokens and BVOL/iBVOL Tokens are "ERC-20" digital tokens issued by the Service Provider. Each Leveraged Token has an associated account on the Platform that takes leveraged positions on Perpetual Futures Contracts on an underlying Digital Asset or Digital Asset index. Each BVOL/iBVOL Token has an associated account on the Platform that holds MOVE Volatility Contracts and Perpetual Futures Contracts on BTC, in an attempt to track the implied percent-based volatility of BTC. In particular, BVOL Tokens attempt to track the daily returns of being 1x long the implied volatility of BTC and iBVOL Tokens attempt to track the daily returns of being 1x short the implied volatility of BTC. You may place orders with the Service Provider to issue new Leveraged Tokens or BVOL/iBVOL Tokens by depositing stablecoins. You can redeem an existing Leveraged Token for its share of the Digital Assets of the Leveraged Token's associated account on the Platform. You can redeem existing BVOL/iBVOL Contracts for an equivalent amount of stablecoins. Creating or redeeming Leveraged Tokens and BVOL/iBVOL Tokens will have market impact and you won't know what price you ultimately get until after you have created or redeemed the Leveraged Token or BVOL/iBVOL Token (as applicable). THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR ORDERING OR REDEEMING LEVERAGED TOKENS OR BVOL/iBVOL TOKENS ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH LEVERAGED TOKENS AND BVOL/iBVOL TOKENS. The Service Provider reserves the right to final interpretation of this Specified Service.

SCHEDULE 11

SERVICE SCHEDULE

Specified Service	**NFT Market**
Specified Service description	The NFT Market is a trading platform on which you can trade non-fungible tokens (**"NFT"**) with other Users for fiat currency or Digital Assets and offer to sell them by auction.
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Trading Ltd**, a company incorporated and registered in Antigua and Barbuda (company number 17180), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms) and risk disclosures	NFTs are controllable electronic records recorded on the Ethereum and/or Solana blockchains, or any other blockchain(s) as determined by us in our sole discretion. Unlike most cryptocurrencies, there may be very few or only one of an NFT, and they might be indivisible, meaning it may not be fungible with any other tokens. NFTs can take a number of forms. Sometimes, they can be redeemed for a physical object. Sometimes the owner is entitled to an experience, like a movie or a phone call. Sometimes they are associated with a digital image. Sometimes they are associated with nothing at all. NFTs do not necessarily have any intrinsic value. They might also be illiquid. If you buy an NFT, you are not necessarily going to be able to sell it for much later or gain any specific utility from it. While the Service Provider may facilitate the ability to sell, re-sale, buy, transfer, withdraw, or otherwise engage in transactions involving the purchase, sale, or other transfer of a NFT through the NFT Market, this functionality is provided without any guarantees of uptime, functionality, or serviceability. The Service Provider reserves the right to remove or otherwise limit any and all functionality, or to require additional conditions of access, for all Users or any User or group of Users of the NFT Market, as determined by the Service Provider in its sole discretion. You are welcome to buy NFTs if it would make you happy to own them. But there is no implied economic return associated with doing so. There are no refunds for NFTs, and the Service Provider and its Affiliates will not field customer complaints. You should only buy NFTs if you understand that doing so does not necessarily give any direct economic value. NFTS ARE INTANGIBLE DIGITAL ASSETS. THEY EXIST ONLY BY VIRTUE OF THE OWNERSHIP RECORD MAINTAINED IN THE APPLICABLE BLOCKCHAIN NETWORK. ANY TRANSFER OF TITLE THAT MIGHT OCCUR IN ANY UNIQUE DIGITAL ASSET OCCURS ON THE DECENTRALISED LEDGER WITHIN SUCH BLOCKCHAIN NETWORK, WHICH WE DO NOT CONTROL. THE SERVICE

	PROVIDER DOES NOT GUARANTEE THAT IT CAN EFFECT THE TRANSFER OF TITLE OR RIGHT IN ANY NFT. THE SERVICE PROVIDER AND ITS AFFILIATES DO NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR ANY LOSSES OR DAMAGE INCURRED AS A RESULT OF YOUR TRADING NFT ON THE PLATFORM OR YOUR FAILURE TO UNDERSTAND THE RISKS ASSOCIATED WITH NFT TRADING.

SCHEDULE 12

SERVICE SCHEDULE

Specified Service	**NFT Listing**
Specified Service description	Creating an NFT on the portal located at https://ftx.com/nfts/list (the **"NFT Site"**) that, as of its genesis issuance, is linked to the artwork, digital content or other collectible that is provided by you to the Service Provider (**"Artwork"**).
Service Provider	This Specified Service forms part of the Services and is provided by **FTX Trading Ltd**, a company incorporated and registered in Antigua and Barbuda (company number 17180), to all eligible Users other than persons who have their registered office or place of residence in the United States of America or any Restricted Territory.
Specified Service specific terms (in addition to the General Terms) and risk disclosures	By submitting a request and creating an NFT on the NFT Site, you acknowledge that you have carefully read and agree to the Terms. If there is a conflict between the General Terms and this Service Schedule with respect to your use of the NFT Site or your NFTs, this Service Schedule shall prevail. Your access to and use of the NFT Site is also governed by the terms in the General Terms that apply to the Site and references in the General Terms to "Site" should be read as including the NFT Site, unless the context provides otherwise. **Intellectual property** You represent and warrant that you own and control all rights in and to your Artwork and have the right to grant licenses to the Service Provider and its Affiliates and respective licensees and successors. In submitting any Artwork, you must not include any third party intellectual property (such as copyrighted materials) unless you have explicit permission from that party or are otherwise legally entitled to do so. You are legally responsible for all Artwork submitted by you. The Service Provider reserves the right to review and analyse your Artwork to help detect infringement and abuse, such as spam, malware and illegal content. By submitting any Artwork, you grant the Service Provider a worldwide, non-exclusive, royalty-free, perpetual, sublicensable and transferable license to use the Artwork for any purpose, including for the minting of the NFT linked to your Artwork and hosting such Artwork for you and future transferees of the NFT, as well as for the promotion of the Services provided by the Service Provider and its Affiliates. You also grant all other Users and future holders of your NFT a worldwide, non-exclusive, perpetual, and royalty-free license to view and access your Artwork. **Prohibited activities** You will not:

- submit any Artwork that (a) violates or encourages any conduct that would violate any Applicable Law or regulation or would give rise to civil or criminal liabilities; (b) is fraudulent, false, misleading or deceptive; (c) is defamatory, obscene, vulgar, pornography or offensive; (d) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (e) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (f) promotes illegal or harmful activities or substantives;
- attack, hack, DDOS, interfere with, or otherwise tamper with the NFT or its underlying smart contract;
- access, tamper with or attempt to access the Service Provider and its Affiliates' computer systems or networks;
- attempt to probe, scan or test the vulnerability of the Service Provider and its Affiliates' system or network or breach any security or authentication measures;
- avoid, bypass, remove, deactivate, impair or otherwise circumvent any technological measures;
- interfere with, or attempt to interfere with, any other User or network, including without limitation sending a virus, overloading, flooding, spamming or mail-bombing;
- impersonate or misrepresent your identity or affiliation;
- use the NFT, the NFT Site or the Services, to conceal or transfer any proceeds relating to illegal or criminal activity;
- violate the Terms or any Applicable Law or regulation; or
- encourage or enable any third party to do any of the foregoing.

No obligations

The Service Provider and its Affiliates are not responsible for repairing, supporting, replacing or maintaining any website or network hosting your Artwork, nor do they have the obligation to maintain any connection or link between your NFT and the underlying Artwork. The Service Provider reserves the right to terminate, delete, take down or otherwise remove the Artwork and disconnect the link between the applicable NFT and the underlying Artwork at any time for any reason, including but not limited to if (a) you or any other NFT holder engage in any illegal or unlawful activity, (b) you or any other NFT holder are deemed to be in violation of the intellectual property rights of third parties, in each case as determined by the Service Provider in its sole discretion.

While the Service Provider may facilitate the ability to sell, re-sale, buy, transfer, withdraw, or otherwise engage in transactions involving the purchase, sale, or other transfer of a NFT, this functionality is provided without any guarantees of uptime, functionality, or serviceability. The Service Provider reserves the right to remove or otherwise limit any and all functionality, or to require additional conditions of access, for all Users or any User or group of Users, as determined by the Service Provider in its sole discretion.

Disclaimers and risk disclosures

NFTS ARE INTANGIBLE DIGITAL ASSETS. THEY EXIST ONLY BY VIRTUE OF THE OWNERSHIP RECORD MAINTAINED IN THE

	APPLICABLE BLOCKCHAIN NETWORK. ANY TRANSFER OF TITLE THAT MIGHT OCCUR IN ANY UNIQUE DIGITAL ASSET OCCURS ON THE DECENTRALISED LEDGER WITHIN SUCH BLOCKCHAIN NETWORK, WHICH WE DO NOT CONTROL. THE SERVICE PROVIDER DOES NOT GUARANTEE THAT IT CAN EFFECT THE TRANSFER OF TITLE OR RIGHT IN ANY NFT. ANY NFTS MINTED FOR YOU ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, THE SERVICE PROVIDER EXPLICITLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. THE SERVICE PROVIDER MAKES NO WARRANTY THAT THE NFTS WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. THE SERVICE PROVIDER MAKES NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OR CONTENT ON THE NFT OR ITS UNDERLYING SMART CONTRACT OR BLOCKCHAIN NETWORK. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES IN CONTRACTS WITH CONSUMERS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THE SERVICE PROVIDER AND ITS AFFILIATES WILL NOT BE RESPONSIBLE OR LIABLE TO YOU FOR ANY LOSS AND TAKE NO RESPONSIBILITY FOR, AND WILL NOT BE LIABLE TO YOU FOR, ANY USE OF THE NFTS, INCLUDING BUT NOT LIMITED TO ANY LOSSES, DAMAGES OR CLAIMS ARISING FROM: (I) USER ERROR SUCH AS FORGOTTEN PASSWORDS, INCORRECTLY CONSTRUCTED TRANSACTIONS, OR MISTYPED WALLET ADDRESSES; (II) SERVER FAILURE OR DATA LOSS; (III) CORRUPTED CRYPTOCURRENCY WALLET FILES; (IV) UNAUTHORISED ACCESS; OR (V) ANY UNAUTHORISED THIRD PARTY ACTIVITIES, INCLUDING WITHOUT LIMITATION THE USE OF VIRUSES, PHISHING, BRUTEFORCING OR OTHER MEANS OF ATTACK AGAINST BLOCKCHAIN NETWORK UNDERLYING THE NFTS. THE SERVICE PROVIDER AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR ANY KIND OF FAILURE, ABNORMAL BEHAVIOR OF SOFTWARE (E.G., WALLET, SMART CONTRACT), BLOCKCHAINS OR ANY OTHER FEATURES OF THE NFTS. **Indemnification; release** You shall and agree to defend, indemnify and hold harmless the Service Provider, its Affiliates and service providers and, in each case, their Personnel (collectively, **"NFT Indemnified Parties"** and each an **"NFT Indemnified Party"**) from and against any and all claims and liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (**"NFT Losses"** or **"NFT Loss"**) which any Indemnified Party may suffer or incur, arising directly or indirectly out of or in connection with: (a) your use of the NFT Site, including the minting and creation of your NFT, (b) your violation or anticipatory violation of any Applicable Laws in connection with your use of the NFT Site or the NFTs, (c) any actual or alleged infringement of the intellectual property rights of others

	by you, and (d) any act of gross negligence, willful or intentional conduct by you. You will cooperate as fully required by the NFT Indemnified Parties in the defence of any such claims and NFT Losses. The NFT Indemnified Parties retain the exclusive right to assume the exclusive defence and control of any claims and NFT Losses. You will not settle any claims and NFT Losses without the Service Provider's prior written consent. You hereby agree to release each of the NFT Indemnified Parties from any and all claims and demands (and waive any rights you may have against any of the NFT Indemnified Parties in relation to any NFT Losses you may suffer or incur), arising directly or indirectly out of or in connection with any dispute that you have with any other User or other third party in connection with the NFT Site or the NFTs. **Limitation of liability** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE SERVICE PROVIDER NOR ITS AFFILIATES OR SERVICE PROVIDERS INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE NFTS WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS SERVICE SCHEDULE OR FROM THE USE OF OR INABILITY TO USE OR INTERACT WITH THE NFTS OR ACCESS THE ARTWORK, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE SERVICE PROVIDER, ITS AFFILIATES, OR ITS SERVICE PROVIDERS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE APPLICABLE JURISDICTION, IN NO EVENT WILL THE SERVICE PROVIDER AND ITS AFFILIATES' TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SERVICE SCHEDULE, YOUR USE OF THE NFT SITE, OR YOUR USE OF OR INABILITY TO USE OR INTERACT WITH THE NFTS OR ACCESS THE ARTWORK EXCEED TEN U.S. DOLLARS (USD $10.00). THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE SERVICE PROVIDER AND YOU.

SCHEDULE 13

SERVICE SCHEDULE

TERMS APPLICABLE TO AUSTRALIAN USERS ONLY

(Updated September 18, 2022)

Appendix A will form part of the Terms and apply to you if you are using the Exchange to buy, sell, exchange hold or otherwise transact in Digital Assets that are being provided by FTX Australia.

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1. FIAT CURRENCY TO DIGITAL ASSET (AND VICE VERSA) CONVERSION SERVICES

If you are depositing fiat currency, or instructing the conversion of Digital Assets to fiat currency, the conversion of:

a) your deposit of fiat currency to Digital Assets; and

b) your withdrawal of Digital Assets to fiat currency,

will be processed by a third-party DCE provider. The name of the DCE provider is provided on the FTX Website at the time you enter into any transaction.

You agree that you only place orders to convert fiat currency to Digital Assets (and vice versa) with the DCE provider. You do not place orders with FTX Trading or FTX Australia for the conversion of fiat currency to Digital Assets or vice-versa.

If you send fiat currency to the DCE provider, the DCE provider shall convert your fiat currency to stablecoins automatically by default. FTX Trading does not hold client money or E-Money for clients of FTX Australia. Any account balances shown in fiat currency are provided for convenience only. All such balances are held by FTX Trading in stablecoins.

You also agree to accept any additional terms and conditions of the DCE provider relevant to the conversion services it is providing and disclosed to you at the time any

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2. FINANCIAL SERVICES OR FINANCIAL PRODUCTS PROVIDED BY FTX AUSTRALIA

Only FTX Australia will, or may, provide you with financial services or financial products under its Australian Financial Services Licence.

Neither FTX Trading or the DCE provider will, or may, provide you with financial services or financial products.

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3. STANDING AUTHORISATION PROVIDED TO FTX AUSTRALIA

As a pre-condition to you acquiring any service or product from FTX Australia, you acknowledge that you will provide FTX Australia with a 'Standing Authorisation' as set out in the FTX Australia Terms and Conditions ("**FTX Australia Terms**") to issue sell order(s) on your behalf to the DCE, which orders will impact the Digital Assets held in your FTX Digital Wallet.

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4. YOUR DIGITAL ASSETS ARE ONLY HELD BY FTX TRADING

Please note that you never provide Digital Assets to FTX Australia, and **FTX Australia does not hold any client property as defined in Part 7.8, Division 3 of the *Corporations Act 2001* (Cth).**

For the avoidance of doubt, you only provide Digital Assets to FTX Trading and it is only FTX Trading that will ever hold your Digital Assets.

FTX Australia only maintains a Standing Authorisation in relation your Digital Assets (as set out in the FTX Australia Terms).

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5. DATA SHARING

Both FTX Trading and FTX Australia will share your personal data with each other and with the DCE for the purposes of providing you with 'Services' set out in the FTX Terms, and DCE Terms and the FTX Australia Terms.

For the avoidance of doubt, FTX Trading will only collect, maintain, use and disclose personal information provided to us strictly in accordance with the Australian Privacy Principles in the *Privacy Act 1988* (Cth) and our Privacy Policy. You should carefully read the FTX Australia Privacy Policy, which provides details on how your personal information is collected, stored, protected and used by FTX Australia and any corresponding Privacy Policy provided by the DCE.

SCHEDULE 14

SERVICE SCHEDULE

TERMS APPLICABLE TO SOUTH AFRICAN USERS ONLY

You acknowledge that any marketing, promotional, sales or similar activities contemplated in these Terms (**South African activities**) which take place in the Republic of South Africa are pursuant to FTX Trading being appointed as the juristic representative of Ovex FSP (Pty) Ltd (authorized FSP 50776) (**Ovex**) in terms of section 13(1)(b)(i)(aa) of the Financial Advisory and Intermediary Services Act, 2002 (**FAIS**) and that any such South African activities will not be performed by FTX Trading as principal.

Where you are domiciled in South Africa, you confirm that you have voluntarily elected, pursuant to any South African activities performed by FTX Trading as the juristic representative of and in the name of Ovex, to open an Account with, use the Services and trade on the Exchange of FTX Trading pursuant to these Terms. You acknowledge that any client support in relation to your Account, the Services and the Exchange which occur within South Africa will be effected by FTX Trading as the juristic representative of and in the name of Ovex.

You undertake to comply with any applicable exchange control regulations or any other applicable laws or regulations which may, from time to time, become applicable pursuant to you opening an Account, using the Services and the Exchange.

SCHEDULE 15

SERVICE SCHEDULE

TERMS APPLICABLE TO JAPAN USERS ONLY

(Updated September 19, 2022)

The following terms will form part of the Terms and will apply to you if you are a resident of Japan who is using FTX Earn or has enabled Peer-to-Peer Crypto Borrowing and Lending ("**P2P Crypto Loans**") provided by FTX Trading.

FTX Trading provides and operates a peer-to-peer crypto asset borrowing and lending platform for matching Borrowers and Lenders of P2P Crypto Loans to users of FTX Japan Corporation (Cryptocurrency Exchange Business Kanto Finance Bureau Director No. 00002 and Type 1 Financial Instruments Business registrant) ("**FTX Japan**"). P2P Crypto Loans are available both via the Site as well as via the FTX Earn program on the Mobile Application.

By enabling and agreeing to borrow or lend P2P Crypto Loans (either via the Site or the FTX Earn program), you hereby acknowledge and agree that:

- you are an authorized and verified user of FTX Japan;
- P2P Crypto Loans are not provided by FTX Japan and all P2P Crypto Loan services are provided solely by FTX Trading;
- you have read and understood, and agree to the Terms of Service and FTX's Privacy Policy, each as amended from time to time;
- you authorize FTX Japan to share any information collected from you with FTX Trading as may be required under anti-money laundering laws or otherwise in compliance with applicable financial regulatory and other laws;
- if you're participating in the FTX Earn program, you are lending your crypto assets to third party borrowers in return for rewards which are variable for each crypto asset and changes hourly;
- you hereby authorize FTX Trading to instruct FTX Japan to borrow from and lend assets to Lenders and Borrowers, respectively, and to take all such actions as may be required to complete such P2P Crypto Loans on your behalf;
- you will only participate in P2P Crypto Loans for your own account and not for the account of others;
- you will not use P2P Crypto Loans for any illegal activities, unlawful conduct or other restricted purposes as set forth in the Terms;
- FTX Trading does not act as borrower or lender of any P2P Crypto Loans; and

Only FTX Japan users are eligible to participate in P2P Crypto Loans, either as a borrower or as a lender.

Lending

To become a P2P Crypto Loan lender ("**Lender**"), you must have first deposited assets with FTX Japan into your FTX Japan account ("**Account**"). As a Lender, you can select "LEND" on the P2P Crypto Loans website or participate in the FTX Earn program on the Mobile Application, and specify the amount, minimum rate and type of crypto asset that you wish to lend out in order to become eligible to lend out your crypto assets. Your lending offer will then be submitted to FTX Trading's P2P Crypto Loan order book and automatically matched with borrowers, if any.

The amount of funds borrowed, funding rates and estimated funding rates are based solely on historical data, are not guaranteed and are subject to frequent change on an hourly basis. There is no assurance that you will be able to lend out your crypto assets, that there will be any borrowers available to you, that there will be any demand for crypto borrowing, or that any of the displayed lending rates are accurate. FTX Trading reserves the right, in its sole discretion, to determine the ordering and matching of Lenders and Borrowers. You further agree to pay any platform charges or fees that FTX Trading may provide from time to time.

You are not required to lend out any assets at any time. To stop lending out your assets, (a) go to the P2P Crypto Loans website and click on "STOP LENDING" at any time, or (b) if you are participating in the FTX Earn program on the Mobile Application, click on "Disable" in "Profile" → "Earn rewards on assets".

All loans of crypto assets via the P2P Crypto Loans website are non-recourse loans. You agree that your sole recourse in the event of default of a Borrower's P2P Crypto Loan is the seizure and/or liquidation of assets held in the Borrower's Account. You agree, and shall cause all of your agents, representatives and affiliates to agree, not to seek recourse or recompense against any funds, assets or properties owned by a Borrower outside of the Borrower's Account at any time.

LENDING CRYPTO ASSETS VIA P2P CRYPTO LOANS IS VERY HIGH RISK AND ARE NOT INSURED IN ANY WAY BY FTX TRADING, ANY GOVERNMENTAL AGENCY, OR ANY THIRD PARTY. AS A LENDER, YOU MAY SUSTAIN A TOTAL LOSS OF YOUR LENT CRYPTO ASSETS IF THE BORROWER DEFAULTS ON A P2P CRYPTO LOAN AND SEIZURE AND/OR LIQUIDATION OF THE BORROWER'S ACCOUNT FAIL TO REPAY SUFFICIENT CRYPTO ASSETS TO COVER THE BORROWER'S DEBT TO YOU OR OTHER LENDERS.

Borrowing

To become a P2P Crypto Loan borrower ("**Borrower**"), you must have first deposited crypto assets with FTX Japan into your Account as collateral. As a borrower, you can select "Enable Peer to Peer borrowing" on the P2P Crypto Loans website to enable borrowing of crypto assets from other FTX Japan users. The amount of crypto assets that you are entitled to borrow from time to time is determined based on a number of factors, including the amount of crypto assets made available by lenders for borrowing, the amount of crypto assets available in your Account as collateral, crypto asset market liquidity and volatility conditions, national, regional and global economic conditions, legal and regulatory requirements, as well as other factors that FTX Trading may consider from time to time.

All borrowed crypto assets using the P2P Crypto Loans website are ***non-recourse*** with respect to any assets held by the Borrower in the Borrower's Account. In other words, in the event of default, neither FTX Trading, any Lenders, nor any of their affiliates, agents or representatives may seek recourse or recompense against any funds, assets or properties owned by a Borrower outside of the Borrower's Account. In the event of default of a Borrower's P2P Crypto Loan, the sole recourse of any Lender is the seizure and/or liquidation of assets held in the Borrower's Account.

You agree to pay (a) any interest charges that may accrue on your P2P Crypto Loan, which you may view on the P2P Crypto Loans website, and (b) any platform charges or fees that FTX Trading may provide from time to time, which will be viewable on the P2P Crypto Loans website as well.

You are not required to borrow any crypto assets at any time. By enabling P2P Crypto Loan borrowing, you agree to do so at your own risk. You acknowledge and agree that any crypto assets borrowed from a Lender via a P2P Crypto Loan may be used for any purposes on the FTX Japan trading platform, including for trading, collateral and withdrawals, provided however, that you agree that FTX Trading may instruct FTX Japan to limit withdrawals of crypto assets borrowed under P2P Crypto Loans in the event that there is insufficient assets in your Account.

BORROWING P2P CRYPTO LOANS ON FTX TRADING IS VERY HIGH RISK. AS A BORROWER, YOU MAY SUSTAIN A TOTAL LOSS OF CRYPTO ASSETS IN YOUR ACCOUNT. THE HIGH VOLATILITY AND SUBSTANTIAL RISK OF ILLIQUIDITY IN THE MARKETS MEANS THAT YOU MAY NOT BE ABLE TO LIQUIDATE YOUR ACCOUNT ASSETS IN TIME, OR AT ALL. IF THE VALUE OF THE ASSETS HELD IN YOUR ACCOUNT FALLS BELOW THE MINIMUM BALANCE REQUIREMENT OR FTX TRADING DETERMINES IN ITS SOLE DISCRETION THAT YOUR ACCOUNT APPEARS TO BE IN DANGER OF DEFAULTING ON A P2P CRYPTO LOAN, FTX TRADING OR THE APPLICABLE LENDER(S) MAY, DIRECTLY OR INDIRECTLY, SEIZE AND LIQUIDATE ANY OR ALL OF YOUR POSITIONS AND ASSETS IN YOUR ACCOUNT TO REPAY YOUR BORROWED CRYPTO ASSETS.

別紙 15

サービスに関する別紙

日本のユーザーにのみ適用される規約

以下の規約は、本約款等の一部を構成し、FTX Earn を利用しているか又は FTX トレーディングが提供する P2P 貸借暗号資産取引（以下「**P2P 貸借暗号資産取引**」といいます。）をご利用可能な日本国に居住するお客様に適用されます。

FTX トレーディングは、P2P 貸借暗号資産の貸出人及び借受人のマッチングのための P2P 貸借暗号資産取引プラットフォームを FTX Japan 株式会社（暗号資産交換事業者（登録番号関東財務局長第 00002 号）、第一種金融商品取引業登録業者）（以下「**当社**」といいます。）のユーザー向けに提供し、運営します。P2P 貸借暗号資産取引は当社ウェブサイトを通じて、また、モバイルアプリの FTX Earn プログラムを通じて利用可能です。

（当社ウェブサイト又は FTX Earn プログラムのいずれかを通じて）P2P 貸借暗号資産取引における借受け又は貸出しを可能とし及び合意することで、お客様は以下の事項を了承し、同意します。

- お客様は当社により認定・認証されたユーザーです。
- P2P 貸借暗号資産取引は当社が提供するのではなく、P2P 貸借暗号資産取引に係るサービスは全て FTX トレーディングが単独で提供しています。
- お客様は、ご利用規約及び FTX のプライバシーポリシー（それぞれ随時なされる修正を含みます。）を精読及び理解し、並びにこれらに同意しました。
- お客様は、当社がアンチマネーロンダリング法上必要な場合に又は適用ある金融規制その他の法律に従ってお客様から収集する情報を FTX トレーディングに共有することを認めます。
- FTX Earn プログラムに参加されているお客様の場合、お客様の暗号資産は、各暗号資産に応じて変更する可能性があり、1 時間単位で変動する報酬と引き換えに第三者借受人に貸し出されます。
- お客様は、FTX トレーディングが当社に対して本貸出人及び本借受人それぞれとの間で資産の借受け及び貸出しを行い、お客様に代わり P2P 貸借暗号資産取引を完了するために必要な全ての措置を講じるよう指図することを認めます。
- お客様は、ご本人の勘定でのみ P2P 貸借暗号資産取引に参加し、他人の勘定で参加しません。
- お客様は、P2P 貸借暗号資産を違法行為、不法行為、その他本約款等に定める制限された目的のために利用しません。
- FTX トレーディングが P2P 貸借暗号資産の借受人又は貸出人となることはありません。

当社のユーザーのみが、借受人又は貸出人のいずれかとして P2P 貸借暗号資産取引に参加する資格を有します。

貸出し

お客様が P2P 貸借暗号資産取引の貸出人（以下「**本貸出人**」といいます。）となるには、まず資産をお客様が当社に開設した口座（以下「**お客様口座**」といいます。）に預託する必要があります。お客様は本貸出人として、P2P 貸借暗号資産取引ウェブサイトで「貸出し」を選択するか又はモバイルアプリの FTX Earn プログラムに参加し、貸出しを希望する暗号資産の数量、最低貸借料率及び暗号資産の種類を指定することで、お客様の暗号資産を貸し出す資格を得ます。お客様の貸出しオファーは FTX トレーディングの P2P 貸借暗号資産取引注文板に提出され、自動的に借受人（もしいれば）とのマッチングが行われます。

借受け額、資金調達率及び予想資金調達率は実績データのみに基づいており、保証されておらず、1 時間ごとに頻繁に変更されます。お客様の暗号資産を貸し出すことができるか、お客様が貸し出すことのできる借受人がいるか、暗号資産の借受けの需要があるか、又は表示された貸借料率が正確であるかは、保証されません。FTX トレーディングは、単独の裁量において本貸出人及び本借受人の注文及びマッチングを決定する権利を留保します。お客様はさらに FTX トレーディングが随時定めるプラットフォーム手数料を支払うことに同意します。

お客様はいかなる時も資産を貸し出す必要はありません。お客様の資産の貸出しをストップするには、(a) 何時でも P2P 貸借暗号資産取引ウェブサイトにアクセスして「STOP LENDING」をクリックするか、又は(b) モバイルアプリ上で FTX Earn プログラムに参加しているお客様の場合、「プロフィール」の「無効にする」をクリックし、「資産で利益を得られます」をクリックします。

P2P 貸借暗号資産取引ウェブサイトを利用した貸し付けた暗号資産は全て***責任財産限定型***消費貸借です。お客様は、本借受人の P2P 貸借暗号資産取引で債務不履行となった場合にお客様が遡及できるのは本借受人の口座において保有されている資産の差押え及び／又は決済のみであることに同意します。お客様は何時でも本借受人の口座外に本借受人が所有する資金、資産若しくは財産からの償還又はこれらによる補償を求めないことに同意し、お客様の全ての代理人、代表者及び関連会社に同意させます。

P2P 貸借暗号資産取引を通じた暗号資産の貸出しは、極めて高いリスクを伴い、FTX トレーディング、政府機関又は第三者によって何ら保証されていません。本借受人が P2P 貸借暗号資産取引で債務不履行となり、かつ本借受人の口座の差押え及び／又は決済ではお客様又は他の本貸出人に対する本借受人の負債の補填に十分な暗号資産の返済ができない場合、お客様は本貸出人として貸し出した暗号資産を全て失う可能性があります。

借受け

P2P 貸借暗号資産の借受人（以下「**本借受人**」といいます。）になるには、まず暗号資産を担保としてお客様口座において当社に預託する必要があります。お客様は借受人として P2P 貸借暗号資産取引ウェブサイトで「P2P 借受けを有効とする」を選択することで当社の他のユーザーから暗号資産を借り受けることができます。お客様が借り受けることのできる暗号資産の数量は、貸出人が借受けに提供する暗号資産の数量、お客様口座で担保として利用可能な暗号資産の数量、暗号資産市場の流動性及びボラティリティの状況、国、地域及び世界の経済状況、法律上及び規制上の要件並びに FTX トレーディングが随時検討するその他の要因を含む多くの要因に基づいて決定されます。

P2P 貸借暗号資産取引ウェブサイトを利用して借り受けられた暗号資産全てについて、***責任財産は***本借受人の口座において本借受人が保有する資産***に限定されます***。言い換えると、債務不履行の場合、FTX トレーディング、本貸出人又はその関連会社、代理人若しくは代表者のいずれも本借受人の口座外に本借受人が所有する資金、資産若しくは財産からの償還又はこれらによる補償を求めることはできません。本借受人が P2P 貸借暗号資産取引で債務不履行となった場合、本貸出人が遡及できるのは本借受人の口座において保有される資産の差押及び／又は決済のみです。

お客様は、(a) P2P 貸借暗号資産に付される利息（P2P 貸借暗号資産取引ウェブサイトで閲覧できます。）、及び (b) FTX トレーディングが随時定めるプラットフォーム手数料（これも P2P 貸借暗号資産取引ウェブサイトで閲覧可能です。）を支払うことに同意します。

お客様はいかなる時も暗号資産を借り受ける必要はありません。P2P 貸借暗号資産の借受けを可能とすることで、お客様はご自身がリスクを負担して借受けを行うことに同意します。お客様は、P2P 貸借暗号資産取引を通じて本貸出人から借り受けた暗号資産が当社の取引プラットフォーム上で取引、担保及び引出を含むあらゆる目的で利用される可能性があることを了承し、同意します。但し、お客様は、お客様口座に十分な資産がない場合は FTX トレーディングが P2P 貸借暗号資産取引に基づき借り受けられた暗号資産の引出を制限するよう当社に指図する可能性があることに同意します。

FTX トレーディングでの P2P 貸借暗号資産の借受けは極めて高いリスクを伴います。お客様は借受人として、お客様口座内の全ての暗号資産を失う可能性があります。マーケットにおける高いボラティリティ及び重大な非流動性リスクの存在は、お客様がお客様口座内の資産を期限内に決済できないか又は決済が全くできなくなる可能性があることを意味します。お客様口座において保有される資産の価額が最低必要残高を下回るか又は FTX トレーディングが単独の裁量でお客様口座の P2P 貸借暗号資産について債務不履行となるおそれがあると判断する場合、FTX トレーディング又は関連する本貸出人は、お客様が借り受けた暗号資産の返済のためにお客様口座内のポジション及び資産の全部又は一部を直接又は間接的に差し押え、決済する可能性があります。

SCHEDULE 16

SERVICE SCHEDULE

TERMS APPLICABLE TO UK USERS ONLY

(Updated September 29, 2022)

Products and services related to a specified investment for the purposes of the UK Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 may not be promoted or offered to residents of the United Kingdom, unless they fall within the certain exemptions from the UK financial promotions regime under article 12 (Overseas Recipients), article 19 (Investment Professionals), article 48 (High Net Worth Individuals), article 49 (High Net Worth Companies, Unincorporated Associations), article 50 (Sophisticated Investors) and article 50A (Self-certified Sophisticated Investors) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, or they have otherwise be lawfully communicated in accordance with the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

EXHIBIT E

Joint Provisional Liquidators' March 9th Letter to the U.S. Debtors' Counsel

WHITE & CASE

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020-1095
T +1 212 819 8200

whitecase.com

March 9, 2023

VIA E-MAIL

Sullivan & Cromwell LLP
James Bromley
Andrew Deitderich
Brian Gluckstein

125 Broad Street
New York, NY 10004

Re: Joint Provisional Liquidators (the "JPLs") of FTX Digital Markets, Ltd. ("FTX Digital") Draft Application

Counsel:

We write to inform you that the JPLs of FTX Digital intend to file an application for directions (the "**Application**") in the Supreme Court of The Bahamas in connection with the provisional liquidation of the FTX Digital estate. The Application addresses several legal issues that are essential to identifying the creditors, assets and beneficiaries of FTX Digital. These are exactly the types of matters that the JPLs and the Chapter 11 Debtors agreed could be litigated in The Bahamas. The Cooperation Agreement expressly states that it does not "address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform". Cooperation Agreement ¶ 10.

Enclosed with this letter is a draft of the Application that the JPLs intend to issue in the Supreme Court. The requirement for the JPLs to seek directions in the Application has become urgent. Until the JPLs have some certainty as to who their customers are, the governing law of various agreements and the effect of such agreements, its provisional liquidation cannot progress. This is crucially important because there are various parties who withdrew sums from FTX Digital in the days immediately before the commencement of the provisional liquidation. The JPLs need confirmation that FTX Digital has standing to claw back those payments and needs to take action quickly. Moreover, a determination of the aggregate amount and nature of creditor claims that may be properly asserted against FTX Digital is critical to the progression of the liquidation process in The Bahamas, and to the JPLs' ability to make reasoned and well-informed business decisions related thereto.

The JPLs are eager to get these issues resolved as soon as possible and therefore intend to file the Application by March 14, 2023.

Sincerely,

Brian Pfeiffer

E bpfeiffer@whitecase.com

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

Draft/ SUMMONS

LET ALL PARTIES concerned attend before _____ a Judge of the Supreme Court of the Commonwealth of The Bahamas, in Chambers at the Supreme Court of The Bahamas, Annex 1, Nassau, The Bahamas on _____ the _____ day of _____ A.D., **2023** at _____ o'clock in the _____-noon or as soon thereafter as Counsel can be heard on an application on behalf of the Joint Provisional Liquidators (the "**JPLs**") of FTX Digital Markets Ltd ("**FTX DM**") pursuant to *the* ***Companies (Winding Up Amendment) Act 2011, section 199(4)*** and ***the Companies Liquidation Rules 2012, O.4, r.5(2)****, and* ***Supreme Court Act, section 15*** and/or under the inherent jurisdiction of the Court for binding directions and declarations as to the following matters:

1. How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated 13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

2. What is the applicable governing law by which the questions set out at paragraph 1 fall to be determined?

3. Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:
    a. Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);
    b. those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "**Schedules**") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;
    c. the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);
    d. digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and
    e. digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

4. In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:
    a. what is applicable governing law ;
    b. does FTX DM hold such assets for its own account or on trust;
    c. if FTX DM holds any such assets on trust:
        i. what assets are subject to the trust;
        ii. how much flexibility does FTX DM as trustee have, for example:
            1. is there a requirement to segregate that asset;
            2. is there a right to use that asset for any purpose;
        iii. is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

        iv. does each User have the right to trace their property into specific assets held on trust; and

v. what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

d. can cryptocurrency and/or fiat be held by FTX DM as bailee?

5. Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

6. For the purposes of determining the questions set out at paragraphs 1 to 5, a direction pursuant to **CPR Part 21.4**, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

7. An order that the costs of and occasioned by this Summons be provided for.

DATED this **[X]** day of **March** A.D., **2023**

REGISTRAR

This Summons was taken out by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Petitioner

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

EX-PARTE SUMMONS

2022
COM/com

LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence

The Bahamas
Attorneys for the Petitioner

EXHIBIT F

U.S. Debtors' March 11th Letter

SULLIVAN & CROMWELL LLP

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MELBOURNE • SYDNEY

March 11, 2023

Via E-mail

Brian Pfeiffer,
White & Case LLP,
1221 Avenue of the Americas,
New York, NY 10020.

Re: Joint Provisional Liquidators (the "JPLs") of FTX Digital Markets Ltd. ("FTX DM")

Dear Brian:

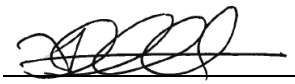
I have your letter of March 9 on behalf of the JPLs for FTX DM about commencing litigation in The Bahamas for "binding directions and declarations" on a list of very central topics to the proceedings in front of Judge Dorsey. At a minimum, this is exactly the sort of action that the Cooperation Agreement contemplated would first be handled by meet and confer, which I think the Cooperation Agreement and respect for the Delaware proceedings both require. As we have told you in the past, Mr. Ray and the FTX Debtors believe that all of the matters mentioned in the two-page "Application" attached to your letter—as well as a list of related other questions not raised—must be addressed in front of Judge Dorsey in Delaware to have any practical effect. These matters concern what is and is not property of the chapter 11 estates of the FTX Debtors in the United States bankruptcy proceeding, and also relate to assets that are subject to forfeiture to the United States in connection with the prosecution of the founders in United States criminal proceedings. They require a full adversary proceeding in Delaware and the involvement of all applicable parties in interest, including the Official Committee of Creditors, the various ad hoc committees of customers, the Australian JPLs and yourselves. We were clear in the Cooperation Agreement, that there could be no deference to Bahamian proceedings on FTX matters in which non-Bahamian stakeholders have an interest, especially in light of the history of why the founders went to The Bahamas in the first place and the harm they caused to non-Bahamians while there.

The FTX Debtors and many of the stakeholders with whom we consult also are concerned with statements by the JPLs publicly and to third parties and government officials outside of The Bahamas that are uncoordinated and inconsistent with the positions of the FTX Debtors, and in many cases appear to be intentionally

misleading. The Cooperation Agreement was not intended to condone interference by the JPLs with the Chapter 11 cases, almost the entirety of which involves non-Bahamian creditors, non-Bahamian assets and non-Bahamian recipients of avoidable transfers.

Rather than file papers to start a local legal process we have not discussed to resolve issues we have not discussed, we would like to offer a meet and confer next week at the convenience of yourself and the clients. When we last spoke we were planning that. The FTX Debtors have their own papers to file in front of Judge Dorsey and can do so if we must, but please let me know if you will agree to wait to file litigation papers until we can have that discussion and see if there is any common ground from at least a process perspective.

Sincerely,



Andy Dietderich

cc: Kris Hansen
Kenneth Pasquale
(Paul Hastings)

Sophia T. Rolle-Kapousouzoglou
(Lennox Paton)

Peter D. Maynard
Jason T. Maynard
(Peter D. Maynard Counsel & Attorneys)

James L. Bromley
Brian D. Glueckstein
Christopher J. Howard
(Sullivan & Cromwell)

EXHIBIT G

Joint Provisional Liquidators' March 13th Letter

WHITE & CASE

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020-1095
T +1 212 819 8200

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March 13, 2023

VIA E-MAIL

Andrew Dietderich
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Re: Joint Provisional Liquidators (the "JPLs") of FTX Digital Markets, Ltd. ("FTX Digital") Draft Application

Dear Andy:

We write in response to your letter of March 11.

As our letter of March 9 made clear, the Application to be filed in the Supreme Court of The Bahamas (the "Bahamas Court") addresses matters of concern to the provisional liquidation of FTX Digital that is taking place in The Bahamas, not the U.S. Without the resolution of those matters by the Bahamas Court, which is the court with control and supervision of the provisional liquidation of FTX Digital and the JPLs, the restructuring and/or winding up of the FTX Digital estate cannot progress.

These matters concern FTX Digital and are not, as you assert, "*in front of*" Judge Dorsey. They fall squarely within the jurisdiction of the Bahamas Court in relation to a Bahamas-incorporated company in provisional liquidation in The Bahamas. The Application raises issues under the laws of the Bahamas, Antigua & Barbuda and England (not U.S.). The Application concerns stakeholders in FTX Digital's insolvency in The Bahamas, not those of the Debtors in their chapter 11 cases. The JPLs are entitled to look to their own Court, with substantial experience of the routine application of the applicable laws, to determine issues that concern the provisional liquidation under the supervision of that Court.

The Application does not, as you suggest, interfere with the Debtors' chapter 11 cases. Just as the Debtors would not ask the Bahamas Court to determine issues of U.S. law relating to their estates in Chapter 11, the JPLs are not required to ask the US court to determine issues integral to the FTX Digital estate.

While there may be similar issues that arise in the chapter 11 case of FTX Trading Ltd. and that Debtor may desire a "*full adversary proceeding in Delaware*", that is a matter for FTX Trading Ltd. whose main proceedings are in Delaware. FTX Digital cannot be forced to have matters that concern its estate to be determined by a foreign U.S. court in a proceeding that concerns the separate estate of FTX Trading Ltd.

It is with some disappointment that, despite having repeatedly explained to you the features of FTX Digital's provisional liquidation in The Bahamas, you continue to either misunderstand or ignore them. A provisional liquidation under the law of The Bahamas encompasses all stakeholders with a claim against FTX Digital wherever situated. The insolvency law of The Bahamas entitles "*non-Bahamian stakeholders*" full equality with Bahamian stakeholders in relation to their rights and interests. Your suggestion, therefore, that non-Bahamian stakeholders of FTX Digital will, in some way, be discriminated against or prejudiced by the Application is entirely wrong.

As to your assertion that the Application in some way violates the Cooperation Agreement, this is also not true. When negotiating the Agreement the parties were abundantly aware that these issues were not intended to be encompassed by it. As set forth in our March 9 letter, the text of the Cooperation Agreement also makes this point clear.

Regrettably, while the JPLs have lived up to their obligations under the Cooperation Agreement, the Debtors have not. Specifically:

- Clause 4(b): despite agreement that FTX Digital is to be responsible for recovering value from the Tether assets in The Bahamas, the Debtors contacted Tether's counsel, Michael Hilliard, and claimed that those assets belong to the Debtors and not FTX Digital. This has had the predictable and obvious consequence that Tether has refused to release the assets into the control of the JPLs as agreed in the Cooperation Agreement.
- Clause 15: the Cooperation Agreement is clear that the value in properties owned by Propco would be realized by a liquidation proceeding opened in The Bahamas. Despite this fact, the Debtors have refused to cooperate with the JPLs' efforts to begin this process. As a result, Propco's assets in the Bahamas are devoid of management, and risk dissipation and depreciation in value.
- Clause 22: having agreed to share information, the Debtors have failed to make available to the JPLs Whatsapp, slack, emails and other messages passing between employees of FTX Digital and others. These communications are critical to fully understanding the parameters of FTX Digital's estate. During our meetings on the Cooperation Agreement the Debtors expressly agreed to provide these communications, but now the Debtors have inexplicitly reversed their position to do so on the basis of privilege. The privilege in communications by employees FTX Digital is clearly the privilege of FTX Digital and not the Debtors. Even if joint privilege exists with respect to certain documents the parties entered into an NDA to cover these exact situations.
- Clause 9: the Cooperation Agreement also makes clear that the parties shall consult reasonably and in good faith about any action relating to proceedings for asset recovery

functions relating to the International Platform. Despite this and knowing the JPLs' position that such recovery actions seek the return of FTX Digital customer funds, the Debtors have not consulted with us on a single action that has been taken in the Chapter 11 Cases for recovery of assets, including:

- Alameda Adversary Proceeding Case No. 23-50084 (Delaware Bankruptcy Court)
- Voyager Stipulation [Dkt. 769]
- Greyscale Lawsuit Case No. 23-0276 (Delaware Chancery Court)

With respect to your vague, unspecified and unsubstantiated claim that the JPLs have made public statements and statements to third parties or public officials outside of The Bahamas that are somehow false or misleading, we refute this baseless allegation. All of the JPLs' statements have been true and correct. While it is certainly true that the JPLs may have views that differ from those of the Debtors that does not make them false. This is not the first time that the Debtors have made unsubstantiated and false statements about the JPLs, the Bahamian Court and The Bahamas.

With respect to your suggestion that we meet with you concerning the Application, we have made repeated requests over the past month to meet with the Debtors. We remain willing to meet in the hope that the Debtors will live up to the Cooperation Agreement and seek to work with the JPLs in moving matters forward. We propose to set up a zoom conference on Wednesday, March 15, 2023 at 3:00 p.m. EST.

While the JPLs are also happy to discuss the Application with you, the JPLs will not change their view that the Application should be issued in and resolved by the Bahamas Court. Given the positions taken in your letter, and in order to avoid doing anything that could even considerably give you any argument that we are violating the automatic stay, the JPLs are immediately asking the Bahamian Court for authority to file a motion asking Judge Dorsey for an order confirming that the automatic stay does not apply to the Application or, in the alternative, modifying the stay to allow for the Application to be litigated in The Bahamas. We will send you a courtesy copy of that application when filed.

Sincerely,

Brian Pfeiffer

E bpfeiffer@whitecase.com

cc: James Bromley
Brian Glueckstein

Christopher Shore
Jason Zakia

EXHIBIT H

Bahamas Lift Stay Order

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER
(Sanction Application)

Before His Lordship, the Honourable Chief Justice, Sir Ian Winder

Dated the **20th** day of **March, A.D., 2023**

UPON THE APPLICATION by way of Ex-Parte Summons filed herein on 15th March 2023 on behalf of the Joint Provisional Liquidations **("the JPLs")** of FTX Digital Markets Ltd. **("the Company")**.

AND UPON READING the Fourth Affidavit of Brian Simms KC **("the Fourth Simms Affidavit")** filed herein on 15th March 2023.

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the JPLs.

AND UPON HEARING Mr. Jason Maynard on behalf of Mr. Kurt Knipp **("the Foreign Representative")**, the Foreign Representative of seven (7) Chapter 11 Debtors, namely: West Realm Shires Inc., West Realm Shires Services Inc., Alameda Research LLC, Alameda Research Ltd., Maclaurin Investments Ltd., Clifton Bay Investments LLC and FTX Trading Ltd.

AND UPON THIS HONOURABLE COURT finding that the determination by this Honourable Court of the issues raised by its officers, the JPLs, in the proposed Directions Application (referred to in paragraph 1 of the Order below) is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd in this Honourable Court.

IT IS HEREBY ORDERED that: -

1. The JPLs are hereby sanctioned to seek confirmation and/or approval from the Delaware Bankruptcy Court in the Chapter 11 Proceedings that the JPLs' proposed directions application **("the Directions Application")** to be issued in this Honourable Court in the form as exhibited to the Fourth Affidavit of Brian Simms KC filed herein on 15th March 2023 will not constitute a breach of the automatic stay in the Chapter 11 Proceedings in favour of the Chapter 11 Debtors.

2. Alternatively, if the Delaware Bankruptcy Court is of the view that the Directions Application, would, if issued, constitute a breach of the automatic stay, sanction of this Honourable Court to make an application to the Delaware Bankruptcy Court for relief from the automatic stay in order to avoid any risk of a finding by the Delaware Bankruptcy Court that the JPLs and/or the Company are in breach of the automatic stay in favour of the Chapter 11 Debtors.

3. An Order that the costs of and occasioned by this application be paid out of the assets of the Company and/or trust assets.

4. Such further or other relief as the Court may deem necessary.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER
(Sanction Application)

2022
COM/com/00060

Lennox Paton
LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Joint Provisional Liquidators

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date:** **April 12, 2023 1:00 p.m.** **Obj. Deadline:** **April 5, 2023 4:00 p.m.**

MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided here. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

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CASES

STATUTES AND RULES

MISCELLANEOUS

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, the Joint Provisional Liquidators and Foreign Representatives (the "**the JPLs**") of FTX Digital Markets Ltd. ("**FTX Digital**") submit this motion (the "**Motion**") seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court. The JPLs request that this Court enter the Order, substantially in the form attached hereto as **Exhibit 1.** In support of the Motion, the JPLs rely upon and incorporate by reference the *Declaration of Metta MacMillan-Hughes KC* ("**MacMillan-Hughes Declaration**") and the *Declaration of Peter Greaves* ("**Greaves Declaration**") filed simultaneously herewith. A copy of the Application is attached as Exhibit A-1 to the Greaves Declaration.

PRELIMINARY STATEMENT

1. On November 10, 2022 (the day before these Chapter 11 Cases were filed), FTX Digital became a debtor in provisional liquidation under the control and supervision of the Bahamas Court (the "**Provisional Liquidation**"). On February 15, 2023, this Court recognized FTX Digital's Provisional Liquidation as the "foreign main proceeding" and the JPLs as the duly appointed "foreign representatives" of the FTX Digital estate in the United States. *See* Case No 22-11217, Order Granting Recognition, Docket No. 129. In connection with that recognition, this Court granted, among other things, "all relief and protection" afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, including but not limited to section 362 of the Code.

2. In their now-recognized Provisional Liquidation, the JPLs are tasked with, among other duties, the duty to maintain the value of the assets of FTX Digital for the benefit of all of

FTX Digital's customers and creditors. Of course, given the admitted "complete absence of trustworthy financial information" for the FTX enterprise, determining which assets and which creditors map to which FTX entity is far from an easy task. *Declaration of John J. Ray III in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] ("**First Day Declaration**") ¶ 5. Thus, from the outset of their appointments, the JPLs have actively sought (i) to identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors, (ii) to determine the legal relationship between FTX Digital and those who are identified as such, and (iii) to recover assets for all FTX Digital's stakeholders to be distributed in accordance with Bahamian law and procedure. Greaves Decl. ¶ 8. These issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors, (the "**Non-U.S. Law Customer Issues**"), are highly complex and turn on key questions of the laws of the Bahamas, Antigua & Barbuda ("**Antigua**") and England. Indeed, the Provisional Liquidation cannot materially progress further unless the Non-U.S. Law Customer Issues are resolved.

3. To that end, the JPLs now seek to file the Application in the Bahamas Court to provide the Bahamas Court with the predicate jurisdiction to answer those Non-U.S. Law Customer Issues necessary to advance FTX Digital's Provisional Liquidation. Because none involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs believe these issues are most efficiently resolved by the Bahamas Court, which routinely considers and applies the Non-U.S. laws at issue. But, the issue of exactly which court is the best court to decide exactly what question is an issue for another day. For now, the JPLs seek only to invoke the jurisdiction of the Bahamas Court to allow for the process of cross-border judicial coordination and resolution to unfold.

4. Importantly, the answers to the Non-U.S. Law Customer Issues are not monolithic. Certain customers and accountholders of the FTX enterprise were indisputably FTX Digital's customers, as the U.S. Debtors admitted in their first day hearing. *See, Hr'g Tr. November 22, 2022*, 26:13-18. ("[A]pproximately 6 percent [of International Customers] were customers of FTX Digital Markets Limited, the Bahamian entity that is under the jurisdiction of the joint provisional liquidators.").[2] Certain other customers of the FTX enterprise might be accountholders or customers of FTX Trading Ltd. ("**FTX Trading**"), which is a U.S. Debtor before this Court. The ultimate legal question is how to sort the entire FTX international account holder and customer constituency – do they map to FTX Digital, to FTX Trading, or to both? But the question at bar is not even who will decide those issues but how we will go about deciding who will decide.

5. In accordance with the court-approved cooperation agreement between the JPLs and the U.S. Debtors (the "**Cooperation Agreement**"),[3] the JPLs sought for months to jointly tee up that issue with the U.S. Debtors. Having had no engagement on the topic, the JPLs sent the U.S. Debtors' counsel a draft of the Application on March 9, 2023 (*see* Greaves Decl. Ex. E.) They then held a telephonic conference with Mr. Ray and his counsel on March 15 in an attempt to discuss a cooperative framework for resolution to all the Non-U.S. Law Customer Issues, in accordance with this Court's Local Rules and the Cooperation Agreement. By these efforts, the JPLs intended to frame a process, described more fully below, in which the two courts with uncontested jurisdiction over the issues – this Court and the Bahamas Court – can resolve which

[2] For the avoidance of doubt, and as discussed further below, the JPLs do not agree that only 6% of the International Customers are customers of FTX Digital.

[3] *See* Settlement And Cooperation Agreement dated January 6, 2023, Case No. 22-11068, Docket No. 402, Exhibit 1.

questions would be addressed in which court, as is common practice in cross-border insolvencies like these.

6. The reaction of the U.S. Debtors to that concept has been, regrettably, frosty. During the meet and confer, they asserted that the mere filing of the Application in the Bahamas would be viewed as a wilful breach of FTX Trading's automatic stay and a material breach of the Cooperation Agreement, both of which would entitle the U.S. Debtors to relief in this Court. At the same time, the U.S. Debtors asserted that (1) none of the Non-U.S. Law Customer Issues could or should ever be litigated, given that in their view the FTX enterprise operated as one economic entity and (2) any litigation over the Non-U.S. Law Customer Issues would be so severely value-destructive that it would "torpedo" the U.S. cases. Days later, the U.S. Debtors immediately made an abrupt unexplained about-face on both of these points and, without ever having had a discussion with the JPLs on the topic, filed an adversary proceeding against FTX Digital, each of the JPLs, and John Does 1-20 (the "**Adversary Proceeding**"). In that Adversary Proceeding, the U.S. Debtors allege (without any specificity) that the creation and entire operation of the FTX Digital estate was an intentionally fraudulent scheme and that therefore, neither the recognized JPLs nor the Bahamas Court in the recognized foreign main proceeding should ever be entitled to any deference, comity, or indeed good standing in this Court. Adv. Pro. No. 23-50145 (JTD). The U.S. Debtors' campaign to disenfranchise the JPLs and the Bahamas Court needs to stop.

7. To be clear, the filing of the Adversary Proceeding was made in direct violation of the Cooperation Agreement and FTX Digital's own automatic stay which came into effect when this Court issued FTX Digital's recognition order. The JPLs will address the consequences of the U.S Debtors' breaches in subsequent pleadings. But for now, and as discussed below, the U.S.

Debtors, in advancing the most un-comitous of agendas in their own cases, seriously misunderstand the extent of section 362 of the Code.

8. ***First***, as set forth in Section I, *infra*, the filing of the Application is merely the expected predicate for any cooperation between this Court and the Bahamas Court regarding the resolution of Non-U.S. Law Customer Issues. Far from portending doom, as the U.S. Debtors have decried, the filing of the Application only begins the legal proceedings in the Bahamas so that this Court and the Bahamas Court may then start to coordinate on deciding legal issues critical to both FTX Digital and FTX Trading's respective proceedings, if agreeable to both Courts. A subsequent comprehensive protocol may then be adopted which will allow for a coordinated claims-distribution process to achieve the goals of both the JPLs and the U.S. Debtors consistent with how the two courts decide. In all cases, both courts will be involved in the restructuring of the FTX enterprise, likely for years to come, so establishing an initial judicial protocol to coordinate between the proceedings (once the Bahamian Application is filed) is necessary if only to manage costs that are already spiralling out of control and to ensure judicial efficiency.

9. ***Second,*** as set forth in Section II, *infra*, the automatic stay in the Chapter 11 Case of FTX Trading does not apply to the filing of the Application. While section 362 is broad, it does not reach so far as to ban the recognized JPLs from asking their own court, which oversees their own recognized foreign main proceeding for guidance on issues central to their insolvency process. This is exactly what the JPLs are seeking to do by the Application – to invoke the jurisdiction of the Bahamas Court, which has the control and supervision of the JPLs and the Provisional Liquidation, to determine the issues of (a) whether the contracts entered into by "FTX customers" using the FTX International Platform prior to the U.S. Debtors' petition date, were novated from FTX Trading to FTX Digital, (b) whether these customers therefore migrated to FTX Digital;

(c) whether digital assets or fiat transferred by customers of the FTX International Platform or presently held in the name of FTX Digital were virtual assets or fiat of FTX Digital in law and, if so, (d) whether such digital assets or fiat are held by FTX Digital in trust for the benefit of its customers, and (e) who is the counterparty in respect of perpetual futures contracts. That's it. None of these issues are deserving of the U.S. Debtors' histrionic allegations that the JPLs' views are "baseless" and only are being interposed to serve "fiduciaries with no constituency but themselves." Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 3.

10. ***Third***, as discussed in Section III, *infra*, even if the U.S. automatic stay were found to apply to bar the JPLs' seeking to determine for whom they serve as fiduciaries, the Court should lift the stay in the Chapter 11 Cases to allow the JPLs to file the Application and invoke the jurisdiction of the Bahamas Court. There is no legitimate reason for the U.S. Debtors to prevent the Bahamas Court from ever obtaining jurisdiction over any of the threshold Non-U.S. Law Customer Issues, particularly while the U.S. Debtors are spending tens of millions of dollars a month on professionals based on the untested legal assumption that the money that they are spending is benefitting their own customers. In short, lifting the stay would allow the Bahamas Court presiding over the Provisional Liquidation, which regularly considers similar issues of English, Antiguan, and Bahamian law, to begin to address fundamental questions in a timely and efficient manner to the benefit of all stakeholders, without impinging on this Court's jurisdiction over the U.S. Debtors' cases.

11. When one moves past the inevitable and unfortunate rhetoric that has emanated (and will presumably continue to emanate) from the U.S. Debtors' counsel in New York, the U.S. Debtors cannot possibly be prejudiced by the Bahamas Court answering any of the Non-U.S. Law Customer Issues. It is the only court which has both the U.S. Debtors and FTX Digital in

proceedings before it and which is familiar with the applicable law. By contrast, the FTX Digital estate and the JPLs would be significantly prejudiced if this Court were to maintain a stay (to the extent it even applies), effectively stopping FTX Digital's Provisional Liquidation until the JPLs learn from this Court the identity of their own creditors or their own estate's assets via application of non-U.S. law in a cumbersome, foreign-law-expert-driven process. Plainly, considerations of comity and judicial economy support lifting the stay by allowing the key issues of English, Antiguan, or Bahamian law to be resolved by the court that regularly applies those substantive laws particularly where its rulings will have far-reaching implications for bankruptcies of cryptocurrency companies across the entire Commonwealth.

12. ***Finally***, and contrary to the U.S. Debtors' threats, the Cooperation Agreement does not prevent the JPLs from advancing the Provisional Liquidation of FTX Digital by submitting the Application to the Bahamas Court. On the contrary, it expressly identifies and prescribes a known, disclosed dispute over customer mapping. Three months ago, at the first day hearing, counsel for the U.S. Debtors represented to the Court that (1) "94% of the customers on the FTX international platform" were customers of FTX Trading Limited; (2) the remaining 6% were customers of FTX Digital, and (3) while FTX Trading "planned" to migrate its customers to the Bahamian debtor FTX Digital, it failed to do so prior to filing. *Hr'g Tr. November 22, 2022*, 26:13-27:1. At that same hearing, FTX Digital's JPLs flagged for this Court that they did not agree with the U.S. Debtors' factual assertions regarding the migration. *Id.* 57:3-8.[4] With those positions staked out,

[4] Noting the problem of non-engagement, the JPLs raised the customer migration issue again on February 15, 2023, at the hearing about the recognition of FTX Digital's Provisional Liquidation as FTX Digital's foreign main proceeding. *Hr'g Tr. February 15, 2023*, 27:25-28:7 (noting that "determining whether customers were customers of U.S. debtors or Digital is going to be critical to any distribution scheme . . . [And that] . . . There are unresolved legal and factual issues as to the nature of the customers' deposits whether they're held in trust, [and] whether they're general unsecured claims . . . ."). Counsel for the U.S. Debtors acknowledged that, "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues . . . ." about which the parties have a live dispute. *See id.* 30:10-24 ("And so, the

the Cooperation Agreement expressly provides that the parties "will work together and in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute are conducted as efficiently as possible." Cooperation Agreement ¶ 11. For months, the JPLs, through counsel, in good faith, sought to engage the U.S. Debtors to address an efficient legal mechanism for resolving the Non-U.S. Law Customer Issues. The U.S. Debtors have never actually engaged, and instead have simply proceeded to administer their cases and expend material resources as if no accountholder or customer ever migrated, ultimately initiating a litigation in breach of FTX Digital's chapter 15 stay and the Cooperation Agreement.

13. In sum, the JPLs submit that the proper procedure here, involving two affiliated debtor estates in separate bankruptcy proceedings in two jurisdictions both of whom need intervention to resolve common legal and factual issues affecting the proceedings, is for the respective debtors to invoke the jurisdiction of each of their courts and have the two courts resolve which court will answer which issues under which procedures. It is not, as the U.S. Debtors posit, to simply have this Court ignore all concepts of comity based on veiled insinuations that the JPLs and their Bahamas Court cannot be trusted with interpreting non-U.S. laws in a proceeding that this Court has already recognized as legitimate.

14. The JPLs therefore ask this Court to declare that the automatic stay does not apply to the Application, or, alternatively, to lift the stay and allow the JPLs to file the Application in The Bahamas without prejudice to entry of a judicial protocol whereby the two involved courts –

statement that Mr. Shore has made in that regard are statements that the U.S. debtors reserve all their rights on and, frankly, disagree with many of them.").

the U.S. and The Bahamas – jointly and collaboratively determine which court will address which of the many Non-U.S. Law Customer Issues that are framed below.

JURISDICTION, VENUE, AND PREDICATES FOR RELIEF

15. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b)(2).

16. Under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the JPLs consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

17. Venue in this district for this proceeding and for this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

18. The statutory predicates for this relief are 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001, and Rule 4001-1 of the Local Rules.

BACKGROUND

19. By the Application, the JPLs seek to invoke the jurisdiction of the Bahamas Court to obtain directions as to the Non-U.S. Law Customer Issues. We set forth below those facts most relevant to the Application in particular to make clear just why the Non-U.S. Law Customer Issues are so important for FTX Digital's Provisional Liquidation and just why the Bahamas Court must be involved.

A. History of the FTX International Platform

20. FTX Trading was incorporated on April 2, 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Greaves Decl. ¶ 9. Immediately

following its formation, FTX Trading was headquartered, along with the rest of the FTX group of companies ("**FTX Group**"), in Hong Kong, China. *Id.* The FTX International Platform never carried on any business in a market served by FTX U.S. Greaves Decl. ¶ 11.

21. Initially, FTX Trading was responsible for running FTX's international digital asset exchange platform — the platform through which FTX did business with somewhere between 2.5 million to upwards of 7.4 million customers, all located outside the United States ("**International Customers**"). Greaves Decl. ¶ 10. U.S. persons were not permitted to trade on FTX.com, and therefore the JPLs believe that none of the customers affected by the Application are U.S. citizens.[5] Greaves Decl. ¶ 11. So, again, the Application does not affect the rights of any customer of FTX who was bound by a customer agreement governed by U.S. law.

22. At first, most of the International Customers entered into contracts with FTX Trading accepting FTX Trading's terms of service (the "**2019 Terms of Service**"). Greaves Decl. Exhibit C. Antiguan law governs the 2019 Terms of Service.[6] 2019 Terms of Service ¶ 27.

23. The migration of International Customers from FTX Trading was a direct product of the shifting regulatory environment facing FTX. As the U.S. Debtors' counsel stated at the first day hearings, "[i]n November of 2020, the Bahamas passes the DARE Act, a digital assets act, which is intended to encourage the relocation of crypto businesses to the Bahamas. In July of 2021, FTX Digital Markets, the Bahamian single debtor, is formed. And in September of 2021,

[5] *See* Wall Street Journal, 'This Company Was Uniquely Positioned to Fail:' FTX Group CEO John Ray Testimony, YOUTUBE, at 21:25-22:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s. ("**Ray Testimony**"); *see also* First Day Declaration ¶ 33 ("The FTX.com platform is not available to U.S. Users").

[6] As discussed further below, Antigua, like the Bahamas, is a legal system based on the English system, with the ultimate appeal court being the Judicial Committee of the Privy Council consisting of a five-judge panel of justices of the Supreme Court of the United Kingdom.

Mr. Bankman-Fried announces that FTX Digital Markets is going to be registered with the Securities Commission of the Bahamas."). *Hr'g Tr. November 22, 2022*, 23:10-17. To explain further, at FTX's inception, no jurisdiction had a sufficiently regulated exchange system for the sought-after institutional funds that FTX's founders wished to attract. Greaves Decl. ¶ 10. Then, on December 14, 2020, the Commonwealth of The Bahamas enacted a licensing and regulatory regime for the digital asset industry pursuant to the Digital Assets and Registered Exchanges Act of 2020 ("**DARE Act**"). Greaves Decl. ¶ 12.

24. Following the enactment of the DARE Act, the FTX Group openly moved the headquarters of its business operations from Hong Kong to The Bahamas. Greaves Decl. ¶¶ 12-14. Up until the filing of the Adversary Proceeding, there was never any insinuation that the movement of the FTX enterprise to The Bahamas was anything other than a legitimate attempt to take advantage of a new regulatory scheme. Indeed, that movement was from a market that was largely unregulated as to virtual assets (Hong Kong) to one with a detailed regulatory regime (The Bahamas).

25. By July 22, 2021, FTX Digital had been incorporated in the Bahamas. Greaves Decl. ¶ 12. That same month, at least 38 individuals, including the co-founders, senior management, and key employees from entities that employed FTX International Platform employees started the transition to move from Hong Kong to The Bahamas and their employment contracts were transferred to FTX Digital. Greaves Decl. ¶ 14. Before the appointment of the JPLs, FTX Digital employed 83 individuals, most of whom resided in The Bahamas. *Id.* It was suggested that 700 FTX employees would eventually work and live in The Bahamas.[7]

[7] *See* Neil Hartnell, *FTX to hire more than 100 Bahamians for Crypto Work*, The Tribune (October 19, 2022) ("**Bahamas Tribune Article**").

26. In August 2021, more than a year prior to the FTX bankruptcies, FTX Digital prepared a document called "FTX Digital Markets Limited Customer Migration Plan" ("**Migration Plan**") approved by FTX Digital's then-CEO, Ryan Salame, stating an objective "*to migrate customers to its [i.e. FTX Digital's] business from FTX* [Trading]." Greaves Decl. Ex. B.

27. The Migration Plan envisioned that users of the FTX international exchange platform (the "**FTX International Platform**") would accept new terms of service, and that the migration would be complete by 2023, with all "institutional" users being migrated by Q2 2022. Migration Plan at p 5. The Migration Plan's staged transfer of International Customers started with high volume users and ended with lower volume users. *Id*. High volume institutional users were to be migrated under the Migration Plan by Q1 2022, other institutional users by Q2 2022, "low risk" (i.e., users with low know your customer ("KYC") risk profiles) individual users by Q3 2022, and "medium risk" and "high risk" individual users by Q4 2022 and Q1 2023, respectively. *Id*. Explicit in the Migration Plan is that users' entire experience would be controlled and overseen by FTX Digital. *Id.* ("The ultimate objective is a ***smooth transition from a user experience perspective***. Front end and back end systems ***should also reflect a shift of activity to FDM as smoothly as possible***, subject to regulatory considerations.") (emphasis added).[8]

[8] *See id.* at p 4 ("The CEO and CO will engage with FTX customer support and marketing in order to ensure both FTX and FDM are aligned on the transition, from messaging to the operational execution."); *id.* at p 4-5 ("Customers who will be migrated from FTX to FDM will be required to accept new terms of service and the sharing of information from FTX to FDM prior to onboarding. As the migration commences, customers will be notified of the change and will be given a period of 90 days to raise any queries, comments, or concerns to the centralised customer support team, before accepting the new terms of service and sharing of information or withdrawing their funds. If customers do not actively accept the new terms of service or the sharing of information within 90 days and do not remove all of their funds, they will be assumed to have accepted the new terms of service and be migrated."); *id.* at p 4("This policy outlines FDM's approach to the migration of customers from FTX Trading Limited (FTX). In developing this policy, FDM has considered the operational, technical and regulatory aspects of its approach to the migration.").

28. On September 10, 2021, in advance of the Migration Plan, FTX Digital was registered as a digital asset business under the DARE Act, becoming the only FTX Group entity regulated to run the FTX International Platform for most of the products on the platform. Greaves Decl.¶ 15. FTX Digital remains the only FTX entity that was ever licensed as such. *Id.* ¶ 12. By September 24, 2021, FTX Trading officially confirmed that it had moved its headquarters from Hong Kong to the Bahamas.[9]

29. A month later, The Bahamas Tribune reported on the FTX Group's expansive, long term plans to center its enterprise in The Bahamas. Bahamas Tribune Article, *supra note* 7. The Tribune reported that FTX's headquarters would be located on a "4.95 acre site…will feature two boutique hotel buildings" and that "[o]ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'." *Id.* It further announced that, "Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025." *Id.*

30. Between November 2021 and June 2022, FTX Digital opened bank accounts in its name ("**FTX Digital Accounts**") that were used to receive and send fiat currency from and to International Customers. Greaves Decl. ¶ 17. Starting in January 2022, it was clear that International Customers were using the FTX Digital Accounts to deposit and withdraw fiat to and from their accounts on the International Platform. *Id.* From January 20, 2022 through November 12, 2022, the FTX Digital Accounts maintained in FTX Digital's name had receipts of $13.4 billion

[9] Nelson Wang, *FTX Moves Headquarters From Hong Kong to Bahamas*, Coindesk (Sept. 27, 2021), https://www.coindesk.com/business/2021/09/24/ftx-moves-headquarters-from-hong-kong-to-bahamas-report/.

and outflows of the same amount. *Id*. From January 20, 2022 through October 31, 2022, the institutional International Customer account in FTX Digital's name had receipts of $9.2 billion and withdrawals of $8.9 billion. *Id*.

31. On May 13, 2022, six months before any FTX bankruptcy, new International Customer terms of service ("**2022 Terms of Service**") were uploaded to the FTX.com site. Greaves Decl. Ex. D. The governing law of the 2022 Terms of Service is English law. 2022 Terms of Service ¶ 38.11. Customers' acceptance of those terms – like many terms of service in a digital age – were automatic upon use. By logging into his, her or its account and using any of the services on the FTX International Platform, an International Customer would be deemed to accept the 2022 Terms of Service. *Id.* ¶ 22.1. These Terms of Service explicitly specified that FTX Digital was the "Service Provider" for nearly all digital asset product lines offered on the FTX International Platform, and permitted FTX Trading to novate its position under the Terms of Service to another party, including FTX Digital.[10] *Id.* ¶ 37.2; Schedules 2-7.[11] Although the U.S. Debtors try to diminish the role of the Service Provider (Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 38 ("FTX DM had a limited mandate and a limited balance sheet, merely providing certain 'Specified Services' as a 'Service Provider' under the New Terms of Service."), it was actually the Service Provider with control over the accounts according to the "Specified Service description" and

[10] A "Service Provider" is defined as "the entity specified in a Service Schedule as responsible for providing the Specified Service referred to in that Service Schedule." 2022 Terms of Service § 1.1.

[11] Per the 2022 Terms of Service, FTX Trading remained the service provider for the NFT Market (Schedule 11) and the NFT Portal (Schedule 12) (together, the "**Unregulated Services**") because the DARE Act did not permit the Unregulated Products to be migrated to FTX Digital. Greaves Decl. ¶ 16. FTX Trading also remained the service provider for the leveraged tokens spot market (Schedule 8), the BVOL/iBVOL volatility market (Schedule 9) (the "**Other Services**" and together with the Unregulated Services, the "**Remaining FTX Trading Services**"). Based on the information available to the JPLs to date, the Remaining FTX Trading Services that stayed with FTX Trading represented no more than 10% of the business on the FTX International Platform.

"Service Provider" descriptions in each of the Schedules. 2022 Terms of Service, Schedules 2-7; *see e.g.* Schedule 6 ("The Volatility Market is a trading platform on which you can trade Daily MOVE Volatility Contracts, Weekly MOVE Volatility Contracts and Quarterly MOVE Volatility Contracts (collectively, MOVE Volatility Contracts) with other Users, with or without leverage…This Specified Service forms part of the Services and is provided by FTX Digital Markets Ltd."). In other words, if an International Customer accessed his account on or after May 13, 202, FTX Digital became the Service Provider for a customer on the FTX International Platform and was the entity with control over that customer's account and its deposits.

32. Further, any new International Customers who registered with the FTX International Platform after May 13, 2022 became customers of FTX Digital with respect to most of the services offered on the FTX International Platform. *Id.*¶ 1.3.

B. The SCB Revokes FTX Digital's License and Commences FTX Digital's Provisional Liquidation

33. On November 10, 2022, the Securities Commission of The Bahamas ("**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act. Greaves Decl. ¶ 6. The SCB was, in fact, the only regulatory body worldwide that took any enforcement action against any FTX entity prior to the U.S. Debtors' petition date. On November 10, the SCB petitioned the Bahamas Court for the Provisional Liquidation of FTX Digital, which the Bahamas Court granted. *Id.* The Bahamas Court appointed Brian Simms KC as provisional liquidator. *Id*. On November 14, 2022, the Bahamas Court also appointed Kevin G. Cambridge and Peter Greaves as joint provisional liquidators. *Id*. Pursuant to the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors. *Id.*

34. The next day, FTX Trading, along with the other U.S. Debtors, commenced these chapter 11 cases. To date, FTX Trading has listed over 9 million International Customers on its

creditor matrix, more than 7 million of which they allege used the FTX International Platform.[12] As noted above, the issue of which customers would be mapped to which debtor has been a topic of discussion since the first day hearings, with all parties having reserved all rights to claim a customer as either a FTX Trading or FTX Digital customer. *See supra* ¶ 12.

C. Non-U.S. Law Customer Issues

35. As also noted above, the sorting of account holders or customers will involve a series of legal determinations involving the various terms of service under non-U.S. laws, and then when it comes to customer recoveries, U.S. and Bahamian insolvency laws. All of the legal issues raised by the Application turn on questions of non-U.S. law. MacMillan-Hughes Decl. ¶ 5; Greaves Decl. Ex. A. In general, the Application concerns two overarching questions: 1) whether and to what extent the International Customer contracts were novated/migrated to FTX Digital prior to November 2022; and 2) whether and to what extent assets are held in trust by FTX Digital for the benefit of certain or all of its International Customers. Both issues are critical to the proper administration of FTX Digital's estate, and each raises a host of non-U.S. legal issues; including:

Illustrative Foreign Law Customer Issues	Governing Law
1. Interpretation of the customer Terms of Service governing the FTX International Platform, both prior to and subsequent to May 13, 2022.[13]	Antiguan/English[14]

[12] *See* Verification of Creditor Matrix, Case No. 22-11068-JD, Docket No. 574, Jan. 25, 2023; Ray Testimony at 1:17:30-1:19:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s.

[13] Application ¶¶ 1-3.

[14] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
2. Applicable law regarding the novation/migration of customers from FTX Trading to FTX Digital.[15]	Antiguan/English[16]
3. Whether the plan for novation/migration of the exchange business from FTX Trading to FTX Digital was implemented or legally effective.[17]	Bahamian, English or Antiguan[18]
4. The legal terms of commercial arrangements and documents used in connection with the novation/migration and the enforceability thereof.[19]	Antiguan/English[20]
5. The enforceability of the International Customers' advance consent in the applicable Terms of Service to the novation/migration and transfer of customers.[21]	Antiguan/English[22]
6. The enforceability and effectiveness of amendments to the Terms of Service purportedly effective upon next login and use of the services.[23]	Antiguan/English[24]

[15] Application ¶ 2.

[16] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[17] Application ¶¶ 3(a)-(b).

[18] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[19] Application ¶¶ 1-3(a)-(c).

[20] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[21] Application ¶¶ 2-3(a)-(c).

[22] 2019 Terms of Service ¶¶ 27, 29; 2022 Terms of Service ¶¶ 37, 38.11.

[23] Application ¶¶ 1-3(a)-(c).

[24] 2019 Terms of Service ¶¶ 27-28; 2022 Terms of Service ¶¶ 22, 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
7. Whether a partial novation of certain Specified Services to FTX Digital (e.g. in respect of the provision of "futures market") while leaving other Specified Services behind (e.g. "leveraged tokens") was permissible under the applicable Terms of Service. [25]	Antiguan/English[26]
8. In what capacity does FTX Digital hold any digital assets or fiat (including what is the applicable law and whether FTX Digital holds these assets/currency as the legal owner for its own account or on trust).[27]	Bahamian/English[28]
9. If FTX Digital holds any digital assets or fiat currency on trust, what assets are subject to the trust; whether FTX Digital, as trustee, had obligations with respect to the segregation or use of the assets); whether the trust is over a fluctuating pool of assets for the benefit of all International Customers of FTX Digital as co-owners; whether International Customers have any rights to trace their property into specific assets held on trust; what if any rights do International Customers have against FTX Digital in respect of shortfalls in the assets held on trust. [29]	Bahamian/English[30]
10. Whether cryptocurrency or fiat can be held by FTX Digital as bailee[31]	English/Antiguan law/Bahamas[32]

[25] Application ¶¶ 3(a)-(c)

[26] 2019 Terms of Service ¶¶ 27-29, 2022 Terms of Service ¶¶ 1.3, 38.11, Schedules 2-7.

[27] Application ¶¶ 4(a)-(b).

[28] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶¶ 22, 27; 2022 Terms of Service ¶¶ 8.2.6., 38.11.

[29] Application ¶ 4(c).

[30] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[31] Application ¶ 4(d).

[32] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
11. Who is the counterparty to the perpetual futures contracts[33]	English law[34]

D. The English, Bahamas, And Antiguan Laws Applicable To The Non-U.S. Law Customer Issues

36. As depicted in the foregoing chart, one or more of English, Antiguan, or Bahamian law govern all of the issues framed by the Application. The governing law of the 2022 Terms of Service is English Law;[35] the governing law of the terms of the 2019 Terms of Service is Antiguan law.[36] In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("IBC") in liquidation. MacMillan-Hughes Decl. ¶ 5. Trust issues are also likely to be governed by Bahamas, English or Antiguan law, which is also a question that the Bahamas Court will need to adjudicate. *Id.*

37. What is most relevant (and perhaps most obvious) is that none of the issues framed in the Application are governed by U.S. law. The FTX International Platform was not even available to U.S. users. *See* First Day Declaration, ¶ 33 ("The FTX.com platform is not available to U.S. Users."). Rather, the 2022 Terms of Service explicitly state, "Our services are not offered to Restricted Persons or persons who have their registered office or place of residence in the United States of America or any Restricted Territory." 2022 Terms of Service at 1. *See id.* at 6-7 ("In order to be eligible to open an Account or use the Services you must meet the following eligibility

[33] Application ¶ 5.

[34] 2022 Terms of Service ¶ 38.11

[35] 2022 Terms of Service ¶ 38.11.

[36] 2019 Terms of Service ¶ 27.

criteria . . . 4.1.4 You do not have your registered office or place of residence in the United States of America or any Restricted Territory.").

38. As to the non-U.S. laws that are, in fact, applicable here, The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. MacMillan-Hughes Decl. ¶ 6. The legal systems of both The Bahamas and Antigua are based on English common law. *Id.* Because certain of the legal issues set out in the Application are novel issues (due to the technology surrounding digital assets) of English, Antiguan or Bahamian law, they are likely to generate appeals. *Id.* ¶ 9. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. *Id.* ¶ 7. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and, are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom. *Id.*

E. The Next Procedural Steps In The Bahamian Liquidation After the Joint Provisional Liquidators File the Application

39. When the JPLs file the Application, the Bahamas Court is expected to schedule a prompt, initial hearing to enter a case management order. MacMillan-Hughes Decl. ¶ 10. Among other things, the case management order will address issues such as case scheduling, the filing of any affidavit evidence (and reply evidence), written submissions, and determining who should be notified of the Application (including customers who have already submitted claims in FTX Digital's Claims Portal). *Id.* All parties who have an interest in the Application will have the right

to appear and be heard individually or in a representative capacity. *Id.* Importantly, if they so choose, the U.S. Debtors may appear and request that the Bahamas Court defer to the U.S. Court for resolution on any issues framed by the Application. *Id.*

40. Absent any abstention, the JPLs expect that the Bahamas Court will address each of the non-U.S. law questions in an efficient manner. *Id*. ¶ 11. And, while it is difficult to say with certainty how long it will take that Court to rule, the return date for FTX Digital's winding up Petition is August 10, 2023, and the JPLs expect the Court to rule on the Application before this date. *Id.*

41. The laws of The Bahamas also provide for a robust appeal process following any ruling. *Id*. ¶ 12. All parties in interest, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) the decision to the Court of Appeal of the Commonwealth of The Bahamas, and ultimately to the Privy Council. *Id.*

F. The Cooperation Agreement

42. On January 6, 2023, the JPLs and the U.S. Debtors entered into the Cooperation Agreement. The Cooperation Agreement, among other things, (i) provides that the U.S. Debtors and the JPLs will support the Provisional Liquidation of FTX Digital and the Chapter 11 Cases, respectively (¶¶ 12-13); (ii) renders the JPLs responsible for recovering all assets and value of FTX Digital (¶ 4); and (iii) authorizes the JPLs to manage the disposition of property held by Bahamas-based FTX Property Holdings, Ltd. (¶ 15). Both this Court and the Bahamas Court have approved the Cooperation Agreement. Case No. 22-11068, Docket No. 683. Order (Settlement and Co-Operation Agreement), 10, February, 2023, attached hereto as **Exhibit 2**.

43. By design, the Cooperation Agreement does not compromise any rights or obligations arising from the novation/migration of International Customers to FTX Digital. *See*

Cooperation Agreement ¶ 10. All rights of the Parties with respect to those issues are expressly preserved.[37] The Cooperation Agreement also states that "recognition in The Bahamas will not require the Bahamas Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the JPLs in The Bahamas Proceedings with respect to property of the estate of FTX Digital (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 13. A corresponding provision addresses the role of this Court: "recognition under Chapter 15 would not require the U.S. Bankruptcy Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the Chapter 11 Debtors in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 12. In other words, the Cooperation Agreement itself contemplates a process by which the two affected courts will themselves have to coordinate on key issues affecting the FTX estates.

G. The U.S. Debtors' Lawsuit Against FTX Digital and the JPLs

44. As discussed above, the JPLs gave the U.S. Debtors advance notice of their intent to file the Application by way of letter dated March 9, 2023. *See* Greaves Decl. Ex. E. The JPLs did this in an effort to cooperate and coordinate with the U.S. Debtors, with the goal of ensuring an efficient resolution of these important legal issues. The JPLs also gave advance notice to the

[37] The Cooperation Agreement states: "This Agreement does not address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform or any other matter not specifically addressed in this Agreement." Cooperation Agreement ¶ 10.

U.S. Debtors that they would be seeking leave from the Bahamas Court to file this Motion, and counsel for FTX Trading appeared and were heard by the Bahamas Court on this issue at a hearing on March 20, 2023. At that hearing, counsel for the U.S. Debtors did not object to the JPLs' request to file this Motion. The Bahamas Court granted leave on March 21, 2023 (the "**Bahamas Lift Stay Order**"), paving the way for this Motion. Greaves Decl. Ex. H. As set forth in the Bahamas Lift Stay Order, the Bahamas Court expressly recognized that "*the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd. in this Honorable Court.*" *Id*. at 2. (emphasis added)

45. Given the importance of prompt resolution of the Application the JPLs actively sought to engage the U.S. Debtors in discussions around coordinated, efficient, proceedings to resolve the Non-U.S. Law Customer Issues. After a letter campaign on the issue (*see* Greaves Decl. Exs. E-G), on March 15, 2023, the JPLs, their counsel, Mr. Ray and counsel to the U.S. Debtors held a virtual telephonic conference. The call began constructively, and the JPLs explained what it was that they were seeking to do and why it was important to proceed with filing the Application – to fulfill their duty to make a recommendation to the Bahamas Court on whether liquidation or reorganization of FTX Digital will serve the best outcome for FTX Digital's estate, its customers and its creditors. The JPLs explained that they could not progress towards this goal without an understanding of (i) who FTX Digital's customers and creditors are, and (ii) the scope of FTX Digital's rights to its and its customers' assets. Despite the JPLs' efforts to keep the discussion productive, it soon turned unproductive. The U.S. Debtors noted that FTX Digital was the only FTX entity that was not falling in line with their agenda, that the mere filing of the Application would send a "torpedo" into the Chapter 11 Cases, and that the U.S. Debtors would never consent

to any jurisdiction other than the U.S. to resolve any Non-U.S. Law Customer Issues. While sensitive to the U.S. Debtors' concerns, the JPLs explained that, as court-appointed fiduciaries, they are duty-bound to serve and cannot abdicate their duties in deference to the professionals of an afflicted entity. The JPLs reiterated their view that the best path forward would be to work together and come up with a consensual protocol to resolve all issues as to whose customers were whose. But, because the U.S. Debtors insisted that all Antiguan, Bahamian and English law issues should not be resolved at all, or should all be resolved by this Court at some unspecified future time, there was no engagement on any consensual protocol for a coordinated resolution of outstanding legal issues. The meeting ended with the U.S. Debtors committing only to think further on the issues discussed.

46. Without any further engagement, on March 19, 2023, the U.S. Debtors filed the Adversary Proceeding. Adv. Pro. No. 23-50145, Docket No. 1 ("**Adv. Compl.**"). That filing was never substantively discussed with the JPLs, and instead was filed on one hour's notice to one of the JPLs' attorneys. The complaint seeks declaratory judgment on the same issues that the JPLs had been identifying for months and sought to resolve through a consensual cross-border cooperation protocol between the Bahamas and U.S. courts. Among other things, the complaint asks this Court to declare that no customers ever migrated from FTX Trading to FTX Digital under the 2022 Terms of Service and that FTX Digital has no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform *at all*.[38] Adv. Compl. Counts I-IV, ¶¶ 53-87. It also alleges, without any specificity, that every transaction that FTX Digital was involved in during its existence was

[38] The complaint concedes that the 2019 and 2022 Terms of Service govern the relationship between customers and FTX Trading (¶ 36), but fails to mention that those documents are governed by Antiguan and English law, respectively.

fraudulent and is subject to avoidance. *Id*. Counts V-VII, ¶¶ 85-98. The complaint then seeks an order that the U.S. Debtors may recover from the FTX Digital estate all such transfers, and interest thereon to the date of payment, as well as the costs of the Adversary Proceeding. *Id.* at 26 (Prayer for Relief No. 6). The complaint specifically references recovering from FTX Digital's accounts at Moonstone Bank and Silvergate Bank, both of which are located in the U.S.

47. Most inflammatory, the complaint alleges, in contradiction of the U.S. Debtors' prior statements to this Court, that Mr. Sam Bankman-Fried ("**SBF**") moved the FTX enterprise to The Bahamas for the sole purpose of funneling customer deposits and valuable property to The Bahamas, "out of the reach of American regulators and courts." *Id.* ¶ 23. Bizarrely, the U.S. Debtors also allege, for the first time, that FTX Digital's "formation and existence" was in furtherance of FTX's criminal conspiracy (*Id.* ¶ 21) despite the fact that SBF was the same individual who hired the U.S. Debtors' counsel and turned his enterprise over to Mr. Ray. Finally, despite the fact that the SCB was the first regulator to take action against any FTX entity, the U.S. Debtors allege that SBF and those he directed "maintained a close accommodating relationship with Bahamian law enforcement agencies" (*Id*. ¶ 24), that FTX Digital was only "ostensibly regulated by The Bahamas" (*Id.* ¶ 25) and that when operating in The Bahamas, SBF and his cohorts were "outside of the reach of any independent and effective regulatory authority." *Id.* ¶ 5. The JPLs and FTX Digital will respond to the complaint in due course and reserve all rights.

RELIEF REQUESTED

48. By the Motion, the JPLs respectfully request the Court to enter an order ("**Order**") substantially in the form attached as **Exhibit 1** (i) declaring that the automatic stay does not apply to the filing of the Application or in the alternative (ii) granting relief from the automatic stay

under Section 362(d)(1) of the Bankruptcy Code to allow the JPLs to file the Application and thereby start the process of a cross-border protocol for judicial cooperation.

ARGUMENT

I. The Filing and Prosecution Of The Application Is A Normal, Expected Predicate For Cooperation Between This Court And The Bahamas Court Regarding The Resolution Non-U.S. Law Customer Issues

49. As noted above, the resolution of all Non-U.S. Law Customer Issues will require both this Court and the Bahamas Court to coordinate on resolving various legal and factual issues and how they pertain to the estates under their jurisdiction.

50. This is, of course, not the first time that a U.S. bankruptcy court, supervising the chapter 11 case of a U.S. debtor, has had to coordinate with a non-U.S. court to come to closure on issues affecting that U.S. debtor's estate. Indeed, U.S. bankruptcy courts have routinely relied on joint protocols in cross-borders cases such as this one, where coordination is necessary in order to prevent conflicts and the waste of estate resources. This Court's Local Rules expressly provide detailed guidelines for judicial cooperation in parallel cross-border insolvencies, including court-to-court communication in such cases.[39] *See* Local Rules for the United States Bankruptcy Court for the District of Delaware, Effective February 1, 2023, Part X ("Modalities of Court-to-Court Communication); *see also* Appendix A to the Local Rules "Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters" (the "**Guidelines**"). The Guidelines, which "should be considered at the earliest practicable opportunity" state, among other things, that "where a court intends to apply these Guidelines . . . it will need to do so by a protocol

[39] While the Local Rules seem to contemplate a single debtor in multiple parallel proceedings, as opposed to closely affiliated debtors in separate proceedings, the same concepts of comity, coordination, and efficiency should apply here, where the U.S. Debtors and FTX Digital were so closely intertwined in their pre-petition operations.

or an order . . .” (Guideline 2) and note that “[i]n the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.” *Id.* n. 3.

51. Three cases are particularly instructive on how U.S. Courts view what should happen in a “normal” cross-border insolvency.

52. In *Nortel Networks Inc.*, the U.S. debtors moved, on the petition date, for entry of a cross-border protocol, which established procedures for the coordination of cross-border hearings between the U.S. and Canadian courts. *In re Nortel Networks, Inc.,* 532 B.R. 494, 501–02 (Bankr. D. Del. 2015). Both the U.S. and Canadian courts approved the protocol and subsequent amendments to the same. *Id.* The protocol provided for communication and cooperation between the two courts, without divesting either court from its respective jurisdictions. *Id.* at 531-532. The protocol provided that the U.S. and Canadian Courts could coordinate to “determine an appropriate process by which the issue of jurisdiction [over specific issues] will be determined” (after submissions from all interested parties). Order Approving Stipulation of the Debtors and the Official Committee of Unsecured Creditors of Nortel Networks Inc., Et Al., Amending the Cross-Border Court-to-Court Protocol at 7, *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jun 29, 2009) [Docket No. 990-1], attached hereto as **Exhibit 3**. Where one Court had jurisdiction over a matter that required the application of the law of the jurisdiction of the other Court to determine an issue before it, the Court with jurisdiction could, among other things, hear expert evidence or seek the advice and direction of the other Court. *Id.* at 7-8. The protocol further provided that the Courts could communicate with each other to determine whether they could arrive at consistent rulings. *Nortel*, 532 B.R. 494 at 532.

53. Pursuant to the *Nortel* protocol, the two courts held a 21-day cross-border, joint evidentiary trial on a central issue in the case (the allocation of proceeds from the sale of various Nortel assets and business units). *Id.* at 499-500. After the trial, the Courts communicated "in an effort to avoid the travesty of reaching contrary results which would lead to further and potentially greater uncertainty and delay. Based on these discussions, the Courts have learned that although their approaches to the complex issues differ, they agree upon the result." *Id.* at 532. In its decision, the U.S. Court noted that, "one of the reasons the cases have progressed to date is that the Courts have communicated and have arrived at consistent rulings even while exercising their judicial independence." *Id.*

54. In *In re Soundview Elite, Ltd.*, the Court *sua sponte* ordered the parties to work together to create a cross-border protocol for cooperation in a case concerning six U.S. debtors and the Cayman winding-up proceedings of three of those U.S. debtors. *In re Soundview Elite, Ltd.*, 503 B.R. 571, 575 (Bankr. S.D.N.Y. 2014). The Cayman liquidators and certain creditors moved to dismiss the U.S. bankruptcy cases or, alternatively, for relief from the stay. *Id.* The debtors, like the U.S. Debtors here, sought to enforce the stay and prevent any activities in the Cayman proceeding. *Id*. Based on considerations of comity, the U.S. Court instead lifted the automatic stay to allow the existing Cayman proceedings for three of the debtors to continue, and "if necessary, to entertain similar proceedings for the three Debtors in this Court that do not have JOLs[.]" *Id.* at 589. The Court also ordered the parties to create a joint protocol to facilitate the cooperative administration of parallel proceedings in the U.S. and the Cayman Islands. *Soundview*, 503. B.R. at 589. In so doing, Judge Gerber reasoned that "the Cayman and U.S. courts can and should work together cooperatively, with due comity to each other, to address the needs and concerns of stakeholders." *Id.* at 595.

55. In *In re Calpine Corporation,* Case No. 05-60200 (CGM) (Bankr. S.D.N.Y. 2005), Calpine Corporation, and its US affiliates (in chapter 11) were subject to a bond-ownership claim by their Canadian affiliates that were in separate Canadian bankruptcy proceedings. Debtors' Motion for an Order to Approve a Settlement with Calpine Canadian Debtors ("Debtors' Motion to Approve Settlement") at ¶¶ 5-12, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113], attached hereto as **Exhibit 4**. Ultimately, a cross-border protocol was negotiated by the parties and entered by both the Canadian and U.S. courts, which was instrumental in settling the bond-ownership issue. Order Approving Cross-Border Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309], attached hereto as **Exhibit 5**; Court of Queen's Bench of Alberta Approval of Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3], attached hereto as **Exhibit 6**; Debtors' Motion to Approve Settlement at ¶ 25. At a joint hearing to approve the settlement, Judge Lifland (in the U.S. Court) and Justice Romaine (in the Canadian Court) emphasized the importance of the cross-border protocol in helping the parties reach resolution, and the value-draining alternative that the parties would have otherwise faced. Transcript of Joint Hearing with Canadian Judge in re Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and other Relief at 207:20-24, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749], attached hereto as **Exhibit 7**. (Judge Lifland noting that the settlement and efforts to achieve it "go[es] to demonstrate the desirability of approaching these cross-border matters through a medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately."); *id.* at 45:13-20 (Judge Lifland discussing "the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a

different perspective, with coordination and cooperation being the watch word which turned out to be --well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit"); *id*. at 206:18-207:07 (Justice Romaine emphasizing that "the enormous complexity and highly intertwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to proceed cautiously and with careful consideration; nevertheless, we must proceed toward the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian [sic] knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.").

56. Each of these cases demonstrates that the overriding principles in successful cross-border disputes should be coordination, comity, and conservation of estate resources. The filing of the Application is just the necessary first step in that process, and that filing should happen now.

II. The Automatic Stay Does Not Apply to Filing or Prosecution of the Application

57. As the foregoing cases show, rather than using their respective automatic stays to mire the progress of parallel bankruptcy proceedings, courts charged with presiding over cross-border insolvencies tend to favor cooperation and coordination, if only to avoid the chaos and uncertainty of inconsistent rulings on issues that affect their debtors. Here, however, the U.S. Debtors have claimed that the JPLs' mere filing of the Application, much less its prosecution, would constitute a willful violation of their automatic stay imposed by Section 362. That is simply not true.

58. Section 362(a) of the Bankruptcy Code imposes an automatic stay prohibiting, among other things, "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor[,]" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(1), (a)(3). The JPLs' Application is neither.[40]

59. *First*, Section 362(a)(1) does not apply because the Application is not an action *against* the U.S. Debtors. *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) ("Although the scope of the automatic stay is broad, the clear language of section 362(a) indicates that it stays only proceedings against a 'debtor' — the term used by the statute itself."). The Application merely frames for the Bahamas Court the issues of: (i) whether the International Customers were migrated to FTX Digital; (ii) if so, when; (iii) if so, what were FTX Digital's obligations to those International Customers; (iv) if the digital assets or fiat were assets of FTX Digital; legally and beneficially; and (v) whether the perpetual futures contracts (which is part of the Services to which only Digital is named as Service Provider under the 2022 Terms) amounted to a contract between or among customers, or between customers and Digital or someone else. These questions can all be answered without necessarily involving FTX Trading.

60. *Second*, Section 362(a)(3) does not apply because the Application does not seek to "obtain possession of property" of the U.S. Debtors' estates or "to exercise control over property of the estate." Although courts have interpreted 362(a)(3) broadly, its application is not limitless. The JPLs have identified no case holding that the U.S. automatic stay can act to prohibit a foreign

[40] The other subsections of Section 362(a) are inapplicable here: Section 362(a)(2) is not applicable as there is no judgment sought to be enforced; Section 362(a)(4) and (a)(5) are not applicable as there is no lien sought to be created, perfected, or enforced; Section 362(a)(6) is not applicable as there is no act to collect, assess, or recover a claim; Section 362(a)(7) is not applicable as there is no attempt to setoff a debt; Section 362(a)(8) is not applicable as the Application is not a proceeding concerning a tax liability.

debtor from determining the nature and extent of the liabilities and assets of its own estate. Importantly, the Application will not have the effect of transferring or voiding any interest in any property of any U.S. Debtor. Rather, were there to be any asset transfers that are necessitated by a ruling of the Bahamas Court on any of the Non-U.S. Law Customer Issues, those will have to be addressed in subsequent proceedings involving this Court.

61. In addressing overlapping insolvency regimes, courts have acknowledged that a debtor taking actions within its rights under the applicable bankruptcy laws does not violate the stay of another debtor – even if those actions have consequences that flow to the other debtor's estate. Cases involving the rejection of contracts between two debtors help clarify this point. For example, in *In re Old Carco,* the debtor car-manufacturer did not have to seek relief from the automatic stay in another debtor's bankruptcy case before exercising its right to reject a contract in the debtor car-manufacturer's case, even though the counter-party to the rejected contract was another debtor. The court held that rejection of the contract was "a fundamental right" of the debtor to not perform its contractual obligations. *In re Old Carco LLC*, 406 B.R. 180, 211-12 (Bankr. S.D.N.Y. 2009); *see also In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016) (when the debtor sought to reject an executory contract that a debtor in a separate case and court sought to accept, allowing the debtor to reject upon satisfying ordinary business judgment test); *In re Railyard Co.*, 562 B.R. 481, 487 (Bankr. D.N.M. 2016) (following *Old Carco* and *Noranda* and granting stay relief to allow the Chapter 11 Trustee to reject the debtor-landlord's unexpired commercial lease with related company also in bankruptcy, even though related company wished to assume the lease). In a similar vein, one bankruptcy court held that a unilateral price increase by one debtor, did not necessarily violate the automatic stay of another debtor (the counterparty to the contract). *In re Nat'l Steel Corp.*, 316 B.R. 287 (Bankr. N.D. Ill. 2004). *Nat'l*

Steel involved a contract for the supply of steel used to make wheels and both supplier and manufacturer had filed their own chapter 11 petitions. Rather than move to assume or reject the contract, the supplier-debtor unilaterally increased its prices after notifying the debtor-manufacturer that the price increase was necessary to enable it to continue shipping steel. *Id.* at 297-98. The manufacturer-debtor opposed the increase but paid the increased price. *Id.* Thereafter, the manufacturer-debtor moved before the supplier-debtor's court, seeking allowance of an administrative expense and alleging, among other things, that the supplier-debtor had violated the manufacturer-debtor's automatic stay. *Id.* at 299-311. The court held that, although the contract was property of both bankruptcy estates, the supplier-debtor did not violate the manufacturer-debtor's automatic stay. *Id.* at 311. The court reasoned that, because the contract was not assumed, it was not enforceable, and therefore the supplier-debtor's price increase did not constitute an act to obtain possession of or control over property of the estate in violation of Section 362(a)(3). *Id.* Unlike the unilateral financial action that was permitted in *Nat'l Steel*, the Application here merely seeks to obtain clarity on novel issues of Bahamian, Antiguan, and English law that directly affect the FTX Digital estate and its creditors.

62. The same reasoning extends to the JPLs' attempts, by the Application, to identify creditors that may have claims against their estate, and the determination of the extent of their estate's obligations and liabilities. It is within any debtor's rights – indeed, it is paramount to any debtor's bankruptcy proceedings – to determine the extent of the debtor's property and its creditor body. The automatic stay does not function to impede these rights, even if exercising them would "affect" the U.S. Debtors.

63. Finally, the filing of the Application is not an act to control or take possession of the property of the estate of FTX Trading. Ultimately, this Court will decide what is, or is not,

property of FTX Trading's estate whether in its own proceeding or by granting comity to the Bahamas Court's process and rulings either on a prospective or post-hoc basis. *In re SCO Grp., Inc.*, 395 B.R. 852, 858 (Bankr. D. Del. 2007) ("[I]t is the very essence of a bankruptcy court's jurisdiction to decide what is property of the estate."). Asking the Bahamas Court to answer the legal questions that must be resolved before this Court can determine what is and is not property of the U.S. Debtors' estates is not an act to take control over that property. While the JPLs certainly believe that the Bahamas Court's answer will be persuasive and should be adopted by this Court, this Court will ultimately decide for itself what effect the Bahamas Court's order has in these cases. For all of these reasons, the proper view is that the automatic stay does not apply to the Application at all.[41]

III. In the Alternative, The Court Should Lift the Automatic Stay to Allow the JPLs to File the Application and Initiate a Cross-Border Protocol

64. Section 362(d)(1) provides that upon request of a party in interest and after notice and a hearing, the court may grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay — for cause. 11 U.S.C. § 362(d). The Bankruptcy Code does not define "cause." It is a flexible concept that is fact intensive, and must be determined case-by-case upon consideration of the totality of the circumstances. *See In re Scarborough St. James Corp.*, 535 B.R. 60, 67 (Bankr. D. Del. 2015); *see also In re Downey Fin. Corp.*, 428 B.R. 595, 608-09 (Bankr. D. Del. 2010).

65. This Court has developed a three-prong balancing test for determining whether cause exists to lift the stay:

[41] The U.S. Debtors' Adversary Proceeding is a different animal entirely, as it names FTX Digital as a defendant and specifically asserts claims seeking to avoid FTX Digital's interests in its own assets in the United States. As to that violation, FTX Digital and the JPLs reserve all rights.

> (i) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit;
>
> (ii) Whether the hardship to the [movant] by maintenance of the stay considerably outweighs the hardship to the debtor; and
>
> (iii) Whether the creditor has a probability of prevailing on the merits.

In re Scarborough-St. James Corp., 535 B.R. at 68.

66. Courts in the Third Circuit also consider general policies underlying the automatic stay in determining whether to lift it. *In re Abeinsa Holding, Inc.*, Case No. 16-10790 (KJC), 2016 WL 5867039, at *3 (Bankr. D. Del. Oct. 6, 2016). These factors can include considerations of comity and the factors supporting mandatory abstention. *Drauschak v. VMP Holdings Ass'n, L.P. (In re Drauschak)*, 481 B.R. 330, 345-46 (Bankr. E.D. Pa. 2012) (explaining that "[i]ssues of comity and economy may dictate that the non-bankruptcy forum conclude the resolution of . . . [a pending] dispute and the bankruptcy stay should be modified for such purpose" and, "[t]he factors supporting mandatory abstention . . . including judicial economy, would also justify applying the aforementioned exception to modify the automatic stay."); *see also In re SCO Grp., Inc.*, 395 B.R. at 857 (discussing the legislative history of Section 362(d)(1) and the "importance of allowing the case to proceed in the original tribunal so long as there is no prejudice to the estate").

A. The Three Prong Balancing Test Weighs In Favor of Lifting the Stay

1. Resolving the Foreign Law Customer Questions in The Bahamas Does Not Prejudice the U.S. Debtors

67. The first factor in the balancing test is "[w]hether any great prejudice to either the bankrupt estate or the debtor will result from" the proceeding. *In re SCO Grp., Inc.*, 395 B.R. at 857-58; *see also In re Scarborough-St. James Corp*., 535 B.R. at 68.

68. In *Scarborough*, a landlord sought relief from the stay to continue eviction proceedings against the debtor in Michigan state court. The debtor argued that it would suffer

harm if the Michigan litigation continued because (i) a negative determination of the debtor's lease rights would prejudice it in another appeal and, (ii) the Michigan litigation would distract from and interfere with the debtor's reorganization efforts. *In re Scarborough-St. James Corp.*, 535 B.R. at 68. The *Scarborough* court rejected both arguments, finding that there was no prejudice because the issue of "whether or not the lease was terminated prepetition must be decided in order to determine Debtor's interest in the lease . . . [and] . . .the Michigan Court [was] in a position to make that determination and has familiarity with the parties and the facts of the case." *Id.* The court noted that the debtor's rights were not in jeopardy because it could still "raise in the Michigan Court any and all arguments in support of its position." *Id.* The court held that lifting the stay would not cause the debtor great prejudice.

69. Similarly, in the *SCO* litigation, a creditor moved to lift the stay to continue a lawsuit against the debtors concerning software licensing and copyright issues. *In re SCO Grp., Inc.*, 395 B.R. at 856. The court lifted the stay, finding that the debtors would not be prejudiced because, "the Debtors simply cannot file a confirmable plan of reorganization until they know what liability they have to . . . [the creditor]. The resolution of the issues remaining in the District Court litigation will assist the Debtors, not burden them." *Id.* at 859.

70. The facts here compel the same result for four reasons:

71. *First*, the U.S. Debtors cannot be harmed by having the jurisdiction of the Bahamas Court invoked to allow that Court and this Court to decide who decides. The U.S. Debtors consented to jurisdiction in The Bahamas, insisted that they be recognized in that proceeding, and, in fact, have been recognized with full rights of participation. The mere notion, promoted by the U.S. Debtors, that this Court and the Bahamas Court cannot be allowed to talk to one another to explore the contours of an efficient, prompt and coordinated litigation is, frankly, offensive.

72. *Second*, like the *SCO* and *Scarborough* debtors, the U.S. Debtors are not prejudiced by having the Non-U.S. Law Customer Issues submitted to the Court best positioned to resolve them. Indeed, the JPLs submit that the Bahamas Court provides a more appropriate forum for deciding these issues because the Bahamas Court is familiar with the applicable English and Commonwealth laws. This is especially so because the Non-U.S. Law Customer Issues involve largely complex and novel issues of English, Antiguan or Bahamian law relating to cryptocurrency, some of which no court in the Commonwealth has heard before. MacMillan-Hughes Decl. ¶ 9. *See In re DHP Holdings II Corp.*, 435 B.R. 220, 227 (Bankr. D. Del. 2010) (holding that state courts are the best forum to decide novel or unsettled issues of state law); *see also In re A & D Care, Inc.*, 90 B.R. 138, 141-42 (Bankr. W.D. Pa. 1988) (non-bankruptcy court more appropriate especially when the controversy arises on unsettled issue of non-bankruptcy law) (collecting cases).[42] The only alternative – having this Court take jurisdiction over the Non-U.S. Customer Issues – is the least attractive alternative, if only because each party-in-interest on the customer issues, including the JPLs, the U.S. Debtors, the UCC, the Ad Hoc Group of Non-US Customer of FTX, and an unknown number of actual customers would all have to hire and present their own foreign law experts. In contrast, the expert in The Bahamas – the Court – can provide a clear unconflicting depiction of Bahamas law and, unlike almost everyone else in these Cases (save this Court and the U.S. Trustee), will provide its views free of charge.

[42] *See also In re Williams*, 88 B.R. 187, 191 (Bankr. N.D. Ill. 1988) (abstaining from action concerning alleged violation of state insurance laws and reasoning, "[t]he issues are not simple[,]" "[t]he statutes and regulations involved are not clear[,] "[u]nresolved issues of Illinois law are involved[,] and "[s]uch question are best left to the interpretation of an Illinois State judge."); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941) (finding Texas state courts were proper forum to determine state law issues that needed to be resolved); *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940) (affirming Bankruptcy Court's decision that state court was proper forum to determine oil rights, and therefore, the extent of property of the estate); *In re FairPoint Commc'ns, Inc*., 462 B.R. 75, 88 (Bankr. S.D.N.Y. 2012) (finding New Hampshire state courts to be better suited to debtor's rights under the New Hampshire Constitution).

73. *Third*, even an ultimate adjudication of the non-U.S. Law Customer Issues in the Bahamas will not prejudice FTX Trading. As noted, FTX Trading's foreign representative was recognized in the Bahamas, can participate in the Application proceedings, has been involved in the proceedings on the Application to date (through appearing before the Bahamas Court with respect to the Bahamas Lift Stay Order),[43] and will be able to appeal if necessary and if they so choose. *Cf. In re Spanish Cay Co., Ltd.*, 161 B.R. 715, 724-727 (Bankr. S.D. Fla. 1993) (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."). The U.S. Debtors will therefore receive notice and will have the right to oppose the Application and be heard on the matter. Additionally, the laws of The Bahamas provide for due process and a robust appeal process. MacMillan-Hughes Decl. ¶ 12. Courts have recognized that the Bahamian bankruptcy laws are in harmony with those of the United States and should be afforded comity. *See In re Northshore Mainland Servs., Inc.*, 537 B.R. 192 (Bankr. D. Del. 2015) (Winding up Proceeding in the Bahamas was the appropriate forum to adjudicate issues involving the Bahamian Debtor.); *see also Matter of Culmer*, 25 B.R. 621 (Bankr. S.D.N.Y. 1982); *Aranha v. Eagle Fund, Ltd. (In re Thornhill Glob. Deposit Fund Ltd.)*, 245 B.R. 1 (Bankr. D. Mass. 2000) ("The provisions of Bahamian law related to liquidation proceedings are in substantial conformity with our own Bankruptcy Code.").

[43] As mentioned in the Greaves Declaration, through counsel, FTX Trading appeared at the hearing on the Bahamas Lift Stay Order and did not oppose the relief sought by the JPLs in getting leave from the Bahamas Court to file this Motion. Greaves Decl. ¶ 21.

74. *Fourth and finally*, the U.S. Debtors and this Court will not be prejudiced by the adjudication of the Application because it will not ultimately determine what cash or other assets are or are not property of FTX Trading's estate. The Application effectively seeks only to have the Bahamas Court determine (1) which customers are mapped to FTX Digital's estate and (2) what right those customers have in the assets of FTX Digital's estate. Again, courts routinely lift the stay where another court is better positioned to address underlying legal issues, while reserving issues as to how that resolution affects the estate. *See In re Tribune Co.*, 418 B.R. 116, 128 (Bankr. D. Del. 2009) (lifting the stay to allow a California Action to proceed, which would determine whether debtors held rights in the published comic strip series entitled "Dick Tracy" as the questions to be addressed in the California Action would determine whatever rights the debtors held and thus what assets are property of the estate); *Thors v. Allen*, Civ. Nos. 16-2224 (RMB), 16-2225 (RMB), 2016 WL 7326076, at *8 (D.N.J. Dec. 16, 2016) (affirming bankruptcy court decision to lift stay where the state court was "the more capable and the more proper venue to resolve" an issue of state law "that was throwing a wrench in the ability of the bankruptcy to proceed"); *In re Breitburn Energy Partners L.P.,* 571 B.R. 59, 68 (Bankr. S.D.N.Y. 2017) (affirming decision to lift stay to allow Texas court to determine an issue of unsettled Texas law which would "assist [the bankruptcy] court and ultimately contribute to a resolution of the dispute."); *In re Mark Scott Constr., LLC*, Case No. 03-36440 (HCD), at *4-5 (Bankr. N.D. Ind. Apr. 23, 2004) (granting stay relief where Michigan was the proper locale for litigation because, among other things "the Michigan state trial courts have more expertise concerning the interpretation of Michigan's [laws and regulations]," and the contracts at issue were signed in Michigan and involved land and projects in Michigan), attached hereto as **Exhibit 8**; *In re PG & E Corp.*, Case No. 19-30088 (DM), 2019 WL 3889247, at *2 (Bankr. N.D. Cal. Aug. 16, 2019)

(granting stay because, "relief from stay [would] definitively bring a resolution as to Debtors' liability [], and provide an important data point that most likely [would] facilitate resolution of . . . claims in this case."); *see also Int'l Tobacco Partners, Ltd. v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (implicitly lifting the stay by abstaining in favor of a Massachusetts state court proceeding because it "appears to be the more appropriate forum for determining the preliminary questions: whether [d]ebtor holds a valid assignment under Massachusetts law, and whether that assignment has priority over Ohio's attachment and levy.").

2. The Hardship to the JPLs by Maintenance of the Stay Considerably Outweighs the Hardship to the U.S. Debtors

75. The second lift-stay factor is "[w]hether the hardship to the [moving] party by maintenance of the stay considerably outweighs the hardship to the debtor." *In re SCO Grp., Inc*., 395 B.R. at 857.

76. In this case, the hardship to FTX Digital if the JPLs cannot adjudicate the Non-U.S. Law Customer Issues in The Bahamas far outweighs the hardship to the U.S. Debtors if the Court lifts the stay. Indeed, FTX Digital's Provisional Liquidation cannot proceed without resolving:

- the identity of the creditors to whom FTX Digital owes (or does not owe) money or assets;
- which money or assets are FTX Digital's;
- how expansive the FTX Digital estate is;
- whether FTX Digital's assets are held in trust on behalf of customers or not;
- who the real party in interest is in prosecuting clawback actions to recover FTX Digital's assets;
- who the real party in interest is when defending against claims brought by customers; and
- whether FTX Digital has any contractual rights against, or owes obligations to, customers who held perpetual futures.

As the Bahamas Court has already ruled, each of these issues is "fundamental" to the JPLs' mandatory duty to reconcile claims against FTX Digital's estate and affects all aspects of the FTX Digital estate. Greaves Decl. Ex. H., Bahamas Lift Stay Order, p. 2.

77. Moreover, a correct, binding determination of the customer questions under Bahamas, English and Antiguan law is critical for this Court to eventually equitably adjudicate FTX Digital's rights in the U.S. Debtors' cases. *See In re SCO Grp., Inc.*, 395 B.R. at 859 ("[W]ithout a ruling on the Liability Issues . . . [the creditor's] rights in these bankruptcy cases remains undetermined and the value of . . . [the creditor's] claim will remain a troubling issue for the Court . . . [the creditor] . . . and [d]ebtors."). Indeed, adjudication of the issues within the Application remains fundamental whether done by this Courtbre or by the Bahamas Court. The only difference is that the Bahamas Court would not normally need experts to apply the laws of its own jurisdiction and the Commonwealth, whereas this Court would necessarily have to hear from hired experts on Bahamas, Antiguan and English law governed issues. There can be little doubt that if this Court adjudicates these issues, the estates will incur millions more in fees for expert testimony and for U.S. lawyers just to learn the outer bounds of non-U.S. law. Accordingly, this factor supports lifting the stay.

3. The Merits Weigh In Favor of Lifting the Stay

78. Finally, the third lift-stay factor considered in the Third Circuit is "[t]he probability of the [movant] prevailing on the merits." *In re SCO Grp., Inc*., 395 B.R. at 857. For this factor, "[t]he required showing is very slight." *Matter of Rexene Prod. Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992). To meet it, the JPLs merely need to show that their claim is not frivolous. *In re Levitz Furniture*, 267 B.R. 516, 523 (Bankr. D. Del. 2000) ("Defendants have met the third prong, since that merely requires a showing that their claim is not frivolous.").

79. The JPLs clearly exceed that bar here, where there is publicly available documentary evidence that: the FTX Group (1) had a plan to move the international operations to the Bahamas,[44] and (2) began to execute on that plan by, among other things, moving the FTX Group's management team to The Bahamas and establishing the headquarters of the FTX Group there. Greaves Decl. ¶ 14. The U.S. Debtors have also admitted that at least some International Customers of FTX Trading migrated to FTX Digital, *Hr'g Tr. November 22, 2022*, 26:13-18 ("With respect to the Dotcom Silo – and this is the international silo . . . approximately 6 percent were customers of FTX Digital Markets Limited"), and billions of dollars of International Customer money ran through multiple FTX entities' bank accounts.[45] Moreover, the U.S. Debtors have conceded that "open" questions exist about whether the migration of other categories of International Customers were completed as a matter of law. *Hr'g Tr. February 15, 2023,* 30:14-18, 20-21 (U.S. Debtors' counsel stating that "things like assets that were in FTX Digital market accounts, or the migration of customers, and things of that sort. Those are all open issues" and that "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues").

B. Considerations of Comity Also Support Lifting or Modifying the Stay

80. Finally, in addition to all of the foregoing, where a non-U.S. judicial regime is in play, courts within and outside the Third Circuit have considered the same factors that justify abstention, including considerations of comity, to justify lifting the automatic stay to allow

[44] *See* Decrypt, "FTX Relocates from Hong Kong to Bitcoin-Friendly Bahamas", Sept. 24, 2021. Accessible at: https://decrypt.co/81834/ftx-relocates-hong-kong-bitcoin-friendly-bahamas

[45] *See* Ray Testimony (1:12:57-1:13:15) (Ray: "Definitely assets of customers in the Dotcom silo were transferred to Alameda, no question."); *see also id.* (43:25-43:30) (Ray: "We can confirm that funds were deposited directly into Alameda as opposed to FTX.com").

litigation to proceed outside the U.S. *See In re Drauschak*, 481 B.R. at 346; *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987) (holding that reasons given by the district court to support abstention constituted sufficient cause for lifting the stay); *In re Spanish Cay Co.*, 161 B.R. at 725 (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."); *see also Int'l Tobacco Partners, Ltd.*, 462 B.R. at 395 (abstaining in favor of a Massachusetts state court proceeding, reasoning that "the interest of justice . . . the interest of comity with State courts [and] respect for State law" tip the scale in favor of abstaining from this matter). Considerations of comity and judicial economy strongly favor lifting the stay.

81. *First*, as discussed above, the Bahamas Court will need to decide the Non-U.S. Law Customer Issues in the context of FTX Digital's Provisional Liquidation–the winding-up or restructuring of FTX Digital will not be possible otherwise because the JPLs will not know what customers and what assets FTX Digital has. This reality – unless addressed through the formation of a cross-border judicial protocol – presents the very real risk for conflicting rulings among this Court, and the Bahamas Court. This would be an inefficient result, and not an equitable one for creditors of FTX Digital or the U.S. Debtors. [46]

[46] *See Arkwright–Boston Mfrs. Mut. Ins. Co. v. City of New York,* 762 F.2d 205, 211 (2d Cir. 1985) (holding that the scales tipped in favor of abstention because the case raised novel issues of state tort and construction law); *see also In re Advanced Cellular Sys.* , 235 B.R. 713, 726-27 (Bankr. D.P.R. 1999) (the court, while ultimately holding that it did not have jurisdiction, observed that it would have to abstain from the adversary proceeding if it had jurisdiction, otherwise it would run the risk of conflicting rulings, piecemeal litigation of the claims, and unequal treatment of claimants); *In re Lafayette Radio Elecs. Corp.*, 8 B.R. 973, 977 (Bankr. E.D.N.Y. 1981) ("[A]bstention avoids the potential conflict and further avoids duplication by the federal court, of the state court procedures.").

82. *Second*, Courts have "frequently underscored the importance of judicial deference to foreign bankruptcy proceedings." *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 207 (citing *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999)) (abstaining in favor of Bahamian liquidation proceedings); *see also Stonington Partners v. Lernout & Hauspie Speech Prods N.V.*, 310 F.3d 118, 126 (3d Cir. 2002) ("The principles of comity are particularly appropriately applied in the bankruptcy context because of the challenges posed by transnational insolvencies"); *In re Cenargo Int'l*, *PLC*, 294 B.R. 571, 592-93 (Bankr. S.D.N.Y. 2003) (noting prior decision in the *Cenargo* matter to dismiss Chapter 11 proceedings in deference to English administration proceedings); *Maxwell Commc'n. Corp. v. Barclays Bank (In re Maxwell Commc'n. Corp.*), 170 B.R. 800, 817-18 (Bankr. S.D.N.Y. 1994) (dismissing avoidance adversary proceeding in favor of Ch. 11 debtor's U.K. bankruptcy proceeding to allow the U.K. court to decide issues of U.K. law where the challenged transfers occurred in England, the debtors were incorporated and executives ran the company out of England, the loans surrounding the transfers were executed in England and English law were to govern any disputes arising out of the transfers. The Court reasoned that, having found that "English law ought govern, [the issue of whether the preferential transfers were avoidable], considerations of comity dictate that these suits be dismissed.").

83. *In re Soundview,* discussed above, is instructive here. In that case, the Court lifted the automatic stay based largely on considerations of comity. *In re Soundview Elite, Ltd.,* 503 B.R. at 595. . Even though the debtors in *Soundview* had pending U.S. bankruptcy proceedings and their principal places of business were in the U.S., the Court ordered the creation of a joint protocol to allow both proceedings to advance cooperatively, balancing the needs of all stakeholders. *Id.* The Court relied on the reasoning of a Cayman decision which embraced "cooperation and

coordination in cross-border insolvency proceedings where the majority of the investigations to be undertaken for the realization of [debtor's] assets are required to be undertaken in the United States, but the claims that the petitioners and … other investors may have against the company will have to be examined and assessed according to the law of the Cayman Islands." *Id.* (internal citations and quotations omitted).

84. The same reasoning applies even more strongly here where FTX Digital does not have a pending Ch. 11 case, and its place of business was always in The Bahamas. Moreover, in this case, extending comity to the Bahamas Court is particularly important because cooperation will be necessary for any chapter 11 plan for the U.S. Debtors to be enforced in The Bahamas. *In re Spanish Cay Co.*, 161 B.R. at 725 (potential for successful chapter 11 reorganization at best questionable because U.S. court orders may be given no effect in Bahamas); *In re Int'l Admin. Servs., Inc.*, 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997) (noting that bankruptcy court lacks the ability to enforce jurisdiction over property located in foreign country without assistance of foreign court).

85. The U.S. Debtors' U.S.-first position goes squarely against these principles. As discussed above, the JPLs have court-appointed duties and obligations to the Bahamas Court. The JPLs' obligation, just like the U.S. Debtors', is to ensure the highest and best recoveries for the recognized creditors of the estate. But the JPLs cannot produce *any* result for their estate without first answering the threshold questions asked in the Application and in this Motion. The U.S. Debtors instead invite this Court to support their refusal to engage at all on the Non-U.S. Law Customer Issues and to disregard completely the Bahamian Court overseeing FTX Digital's Provisional Liquidation. This Court should decline that invitation. The JPLs have done everything to pay deference and respect to the U.S. Debtors' proceedings and this Court (unlike the liquidators

in *Soundview*, for instance), and this Court should require the U.S. Debtors to do the same for the Bahamas Court and the recognized proceedings before it.

86. *Third*, the Bahamas Court offers a more appropriate forum for resolving the Non-U.S. Law Customer Issues than the U.S. because International Customers of both FTX Digital and FTX Trading would have expected that disputes relating to the Terms of Service would be resolved outside the U.S., by a court familiar with the applicable English and Commonwealth laws, and the opportunity to appeal as far as the Privy Council. *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 206 (dismissing chapter 11 cases in light of a provisional liquidation in The Bahamas and observing that "[e]xpectations of various factors –including the expectations surrounding the question of where ultimately disputes will be resolved –are important, should be respected, and not disrupted unless a greater good is to be accomplished").

87. In that regard, the FTX Group conspicuously relocated its headquarters to The Bahamas in 2021, where the nerve center of its operations and its co-founders were located up until the insolvency proceedings. Greaves Decl. ¶18. FTX Trading operated out of The Bahamas before portions of the International Customers were migrated to FTX Digital. *Id.* Moreover, as a Bahamian regulated entity, it was part of the public record that FTX Digital was licensed under the DARE Act, putting third parties on notice that the FTX Group's international exchange business was operated out of The Bahamas, and subject to the SCB's regulatory oversight. By contrast, the FTX International Platform specifically forbade U.S. users from using the platform. Greaves Decl. ¶11. Moreover, neither FTX Digital nor FTX Trading have a significant creditor body in the United States. First Day Declaration ¶ 33.[47]

[47] There appear to have been a handful of U.S. users that were on the platform improperly. *See* Ray Testimony 2:10:23-2:10:35 "There was a limited number of [U.S. Users] that invested on the .com which was not the intended use of that Exchange"; *see also id.* at 1:11:20-12:00 ("We don't have those kind of

88. *Fourth*, the interests of judicial economy would be well-served by lifting the stay where, as here, the alternative is for this Court to decide unsettled, complex and novel issues of Bahamas, English, and Antiguan law, in a proceeding that is already portending to set records for administrative costs. The decision in *Matter of Williams* is instructive on this point. *In re Williams*, 144 F.3d 544 (7th Cir. 1998). In that case, the Seventh Circuit found that a bankruptcy court did not abuse its discretion by modifying the automatic stay to permit state court action to determine the debtor's interest in a lease and therefore determine "whether the lease had any value that could be assumed under her plan," reasoned that "had the bankruptcy court not modified the stay so that the forcible entry case could go forward, likely it would then have to determine the merits to her right of possession." *Id.* at 550. The bankruptcy court had "no particular expertise under this narrow area of state law," so determining the merits of the debtor's right to possession "would not be a particularly efficient use of judicial resources." The court therefore concluded that the bankruptcy court did not abuse its discretion in lifting the stay because, among other things, "in a case like this all roads lead to the state court" and that "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.* Just as in *Williams*, the Non-U.S. Law Customer Issues will need to be decided and, as in *Williams*, requiring this Court to wrestle with unsettled issues of foreign law "would not be a particularly efficient use of judicial resources." *Id*. Here, "all roads lead to" an English-law governed court – and what better than the Bahamas Court, where these issues are already front and center and where both parties can fully participate and be heard. *Id.* And, indeed, just as in *Williams*, "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.*

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numbers on an investor basis, we have it on a customer basis. But you're talking about less than a couple hundred.")

NOTICE

89. The JPLs will provide notice of this Motion to the following parties: (i) counsel to the U.S. Debtors; (ii) Office of the United States Trustee for the District of Delaware; (iii) counsel to the Official Committee of Unsecured Creditors in the Chapter 11 Cases; and (iv) all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002 and Local Rule 4001-1(a). The JPLs submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

90. No previous request for the requested relief has been made to this or any other Court.

CONCLUSION

WHEREFORE, for the reasons stated above, the JPLs ask the Court to enter the Order, substantially in the form attached hereto as **Exhibit 1**.

[*Remainder of page intentionally left blank.*]

Dated: March 29, 2023

/s/ *Kevin Gross*

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Obj. Deadline: April 5, 2023 at 4:00 p.m. (ET) **Hearing Date: April 12, 2023 at 1:00 p.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves ("**Joint Provisional Liquidators**"), in their capacity as duly appointed joint provisional liquidators of FTX Digital Markets Ltd. ("**FTX Digital**") and foreign representatives of the Provisional Liquidation of FTX Digital, have today filed the *Motion of the Joint Provisional Liquidators for a Determination that the U.S. Debtors' Automatic Stay Does Not Apply to, or in the Alternative for Relief from Stay for Filing of the Application in the Supreme Court of the Commonwealth of the Bahamas Seeking Resolution of Non-US Law and Other Issues* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE that objections or responses to the relief requested in the Motion, if any, must be made in writing and filed with the Court on or before **April 5, 2023 at 4:00 p.m. (prevailing Eastern Time)**.

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' proposed claims and noticing agent at https://cases.ra.kroll.com/FTX.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion, if required, will be held before The Honorable John T. Dorsey, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801, on **April 12, 2023 at 1:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 29, 2023

/s/ Kevin Gross
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Attorneys for the Joint Provisional Liquidators of FTX Digital Markets Ltd. (In Provisional Liquidation)

EXHIBIT 1

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Re: Docket No. ___

ORDER GRANTING MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-U.S. LAW AND OTHER ISSUES

Upon the consideration of the motion (the "**Motion**")[2] of Brian C. Simms KC, Kevin G Cambridge, and Peter Greaves ("**JPLs**"), in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. ("**FTX Digital**") and foreign representatives of the Provisional Liquidation of FTX Digital, seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] Capitalized terms used but not defined herein are to be given the meanings ascribed to them in the Motion.

Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice needs be provided; and the Court having reviewed the Motion, the Greaves Declaration, and the MacMillan-Hughes Declaration; and the Court having determined that the legal and factual bases set forth in the Motion, the Greaves Declaration, and the MacMillan-Hughes Declaration, and on the record made at the hearing (if any) to consider the Motion, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. To the extent applicable, the automatic stay imposed in Chapter 11 Cases by section 362(a) of the Bankruptcy Code is hereby modified to allow the JPLs to seek the relief requested in the Motion.

3. Any relief from the automatic stay shall be effective immediately upon entry of this Order and the 14-day stay provided in Bankruptcy Rule 4001(a)(3) shall not apply.

4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

EXHIBIT 2

Bahamas Order (Settlement and Cooperation Agreement)

COMMONWEALTH OF THE BAHAMAS 2022

IN THE SUPREME COURT COM/com/00060

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER
(Settlement and Co-Operation Agreement)

Before His Lordship, the Honourable Chief Justice, Sir Ian Winder

Dated the 10th day of **February, A.D., 2023**

UPON THE APPLICATION by Summons filed herein on 6th February 2023 on behalf of the Joint Provisional Liquidations **("the JPLs")** of FTX Digital Markets Ltd. **("FTX DM")**.

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the JPLs and Mr. Robert Adams KC with Mr. Edward Marshall Jr. of Counsel for the Securities Commission of The Bahamas **("SCB")**.

AND UPON READING the Third Affidavit of Brian Simms KC filed herein on 6th February 2023.

IT IS HEREBY ORDERED that: -

1. The Settlement and Co-Operation Agreement dated 6th January 2023 **("the Agreement")** between (i) FTX DM, acting by its JPLs, and (ii) the companies in the FTX group of companies that filed chapter 11 cases in the United States Bankruptcy Court for the District of Delaware **("the US Bankruptcy Court")** on 11th and 14th November 2022 (and whose names are listed in Annex A to the Summons filed 6th February 2023), the effectiveness of which is subject to sanction of this Honourable Court and the US Bankruptcy Court is hereby sanctioned by this Court.

2. The Confidentiality Arrangements Agreement ("the NDA") dated 30th January 2023 is hereby sanctioned.

3. The costs of and occasioned by this application to be paid out of the assets of the FTX DM.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER
(Settlement and Co-Operation Agreement)

2022
COM/com/00060

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The Bahamas
Attorneys for the Joint Provisional Liquidators

EXHIBIT 3

In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jun. 29, 2009)
[Docket No. 990]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Nortel Networks Inc., *et al.*,[1]	Case No. 09-10138 (KG)
Debtors.	Jointly Administered
	RE: D.I. 18, 54 + 983

ORDER APPROVING STIPULATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC., ET AL., AMENDING THE CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the stipulation dated June 26, 2009 (the "Stipulation")[2] attached hereto as Exhibit A between Nortel Networks Inc. and its affiliated debtors, as debtors and debtors in possession in the above-captioned cases (the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee") to amend the cross-border court-to-court protocol approved by the Court in the Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [D.I. 54], and good cause appearing for the approval thereof;

IT IS HEREBY ORDERED THAT:

1. The Stipulation is APPROVED.

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567). Addresses for the Debtors can be found in the Debtors' petitions, which are available at http://chapter11.epiqsystems.com/nortel.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stipulation.

2. The Amended Protocol, as attached to the Stipulation as Exhibit 1, is approved in all respects, subject to approval of the same by the Canadian Court.

3. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June 29, 2009
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Nortel Networks Inc., *et al.*,[1]	Case No. 09-10138 (KG)
Debtors.	Jointly Administered
	RE: D.I. 18, 54

STIPULATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC., ET AL., AMENDING THE CROSS-BORDER COURT-TO-COURT PROTOCOL

This stipulation (the "Stipulation") is by and between Nortel Networks Inc. ("NNI") and certain of its affiliates, as debtors and debtors in possession, (collectively, the "Debtors") and the Official Committee of Unsecured Creditors (the "Committee"). The parties hereby stipulate and agree as follows.

Background

1. On January 14, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code").

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Nortel Networks Inc. (6332), Nortel Networks Capital Corporation (9620), Nortel Altsystems Inc. (9769), Nortel Altsystems International Inc. (5596), Xros, Inc. (4181), Sonoma Systems (2073), Qtera Corporation (0251), CoreTek, Inc. (5722), Nortel Networks Applications Management Solutions Inc. (2846), Nortel Networks Optical Components Inc. (3545), Nortel Networks HPOCS Inc. (3546), Architel Systems (U.S.) Corporation (3826), Nortel Networks International Inc. (0358), Northern Telecom International Inc. (6286) and Nortel Networks Cable Solutions Inc. (0567). Addresses for the Debtors can be found in the Debtors' petitions, which are available at http://chapter11.epiqsystems.com/nortel.

3. Also on the Petition Date, the Debtors' ultimate corporate parent Nortel Networks Corporation ("NNC"), NNI's direct corporate parent Nortel Networks Limited ("NNL," and together with NNC and their affiliates, including the Debtors, "Nortel"), and certain of their Canadian affiliates (collectively, the "Canadian Debtors")[2] filed an application with the Ontario Superior Court of Justice (the "Canadian Court") under the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), seeking relief from their creditors (collectively, the "Canadian Proceedings"). The Canadian Debtors continue to manage their properties and operate their businesses under the supervision of the Canadian Court. Ernst & Young Inc., as court-appointed Monitor in the Canadian Proceedings and as foreign representative for the Canadian Debtors (the "Monitor"), has filed petitions in this Court for recognition of the Canadian Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. On January 14, 2009, the Canadian Court entered an order recognizing these chapter 11 proceedings as a foreign proceeding under section 18.6 of the CCAA. On February 27, 2009, this Court entered an order recognizing the Canadian Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. In addition, at 8 p.m. (London time) on January 14, 2009, the High Court of Justice in England placed nineteen of Nortel's European affiliates (collectively, the "EMEA Debtors")[3] into administration under the control of individuals from Ernst & Young LLC (collectively, the "Joint Administrators"). On May 28, 2009, at the request of the Administrators, the Commercial Court of Versailles, France (Docket No. 2009P00492) ordered

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[2] The Canadian Debtors include the following entities: NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation.

[3] The EMEA Debtors include the following entities: Nortel Networks UK Limited, Nortel Networks S.A., Nortel Networks (Ireland) Limited, Nortel GmbH, Nortel Networks France S.A.S., Nortel Networks Oy, Nortel Networks Romania SRL, Nortel Networks AB, Nortel Networks N.V., Nortel Networks S.p.A., Nortel Networks B.V., Nortel Networks Polska Sp. z.o.o., Nortel Networks Hispania, S.A., Nortel Networks (Austria) GmbH, Nortel Networks, s.r.o., Nortel Networks Engineering Service Kft, Nortel Networks Portugal S.A., Nortel Networks Slovensko, s.r.o. and Nortel Networks International Finance & Holding B.V.

the commencement of secondary proceedings in respect of Nortel Networks S.A. ("NNSA"), which consist of liquidation proceedings during which NNSA will continue to operate as a going concern for an initial period of three months. In accordance with the European Union's Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings, the English law proceedings remain the main proceedings in respect of NNSA. On June 8, 2009, Nortel Networks UK Limited ("NNUK") filed petitions in this Court for recognition of the English Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code. On June 26, 2009, the Court entered an order recognizing the English Proceedings as foreign main proceedings under chapter 15 of the Bankruptcy Code.

4. On January 15, 2009, this Court entered an order of joint administration pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") that provided for the joint administration of these cases and for consolidation for procedural purposes only [D.I. 36].

5. On January 26, 2009, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee") pursuant to section 1102(a)(1) of the Bankruptcy Code [D.I.s 141, 142]. An ad hoc group of bondholders holding claims against certain of the Debtors and certain of the Canadian Debtors has also been organized (the "Bondholder Group"). No trustee or examiner has been appointed in the Debtors' cases.

The Cross-Border Court-to-Court Protocol

6. On January 14, 2009, the Debtors filed the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [D.I. 18] (the "Cross-Border Protocol Motion") for the purpose of establishing a cross-border court-to-court

protocol to govern the chapter 11 and Canadian Proceedings (the "First Day Protocol"). On January 15, 2009, the Court entered the Cross-Border Protocol Order [D.I. 54]. Likewise, on January 14, 2009, the Canadian Court issued an order (the "Initial Order") granting the Canadian Debtors various forms of relief, including approval of the First Day Protocol. Initial Order at ¶ 49.

7. Since the Petition Date, the Court has, on six occasions, approved stipulations among the Debtors and the Committee extending the Committee's time to file a motion for reconsideration of the Cross-Border Protocol Order [D.I.s 318, 466, 549, 676, 799, 900] pursuant to Rule 9013-1(m) Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). During this time, the Debtors, the Canadian Debtors and the Committee have engaged in constructive, good faith discussions regarding the terms of the First Day Protocol and possible amendments thereto. The changes reflected in the amended cross-border court-to-court protocol (the "Amended Protocol"), attached hereto as Exhibit 1, are the result of those discussions.

8. In addition to a variety of ministerial changes, the Amended Protocol provides greater clarity on a number of issues including the right to appear and be heard, mutual recognition of the stay of proceedings entered in the U.S. and Canadian Proceedings and the contemplation of a claims protocol. Most importantly, the Amended Protocol clarifies matters for which a joint hearing between the U.S. and Canadian Courts might be necessary and sets forth procedures for obtaining such joint hearings. A blackline reflecting all amendments from the First Day Protocol to the Amended Protocol is attached to the Stipulation as Exhibit 2.

9. As the Court is aware, the Debtors have entered into the Interim Funding and Settlement Agreement dated as of June 9, 2009 (the "Agreement") with the Canadian Debtors

and the EMEA Debtors, excluding Nortel Networks S.A. A joint hearing between this Court and the Canadian Court has been scheduled for June 29, 2009 (to be continued on June 30, 2009 if necessary) regarding the funding of NNL by NNI and other related issues addressed by the Agreement. Obtaining court approval of the amendments to the cross-border protocol constitutes an express condition required for the Agreement to become effective. See Agreement at ¶ 13(a).

Stipulation

NOW, THEREFORE, the Debtors and the Committee hereby stipulate and agree that the First Day Protocol shall be amended to incorporate the changes reflected in the Amended Protocol attached hereto as Exhibit 1 and that the Court should approve the Amended Protocol in all respects.

Dated: June 26, 2009
Wilmington, Delaware

By: _____

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EXHIBIT 1

Amended Cross-Border Court-to-Court Protocol

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Nortel Networks Inc. ("NNI") is the wholly owned U.S. subsidiary of Nortel Networks Limited ("NNL"), the principal Canadian operating subsidiary of Nortel Networks Corporation ("NNC"). NNC is a telecommunications company headquartered in Toronto, Ontario, Canada. NNI is incorporated under Delaware law and is headquartered in Richardson, Texas.

2. NNI and certain of its affiliates (collectively, the "U.S. Debtors"),[1] have commenced reorganization proceedings (the "U.S. Proceedings") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"), and such cases have been consolidated (for procedural purposes only) under Case No. 09-10138 (KG). The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the U.S. Proceedings. On January 22, 2009,

[1] The Debtors in the U.S. Proceedings (as defined herein) are: NNI, Nortel Networks Capital Corporation, Nortel Altsystems Inc., Nortel Altsystems International Inc., XROS, Inc., Sonoma Systems, QTERA Corporation, CoreTek, Inc., Nortel Networks Applications Management Solutions Inc., Nortel Networks Optical Components Inc., Nortel Networks HPOCS Inc., Architel Systems (U.S.) Corporation, Nortel Networks International Inc., Northern Telecom International Inc. and Nortel Networks Cable Solutions Inc.

the Office of United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors Committee") in the U.S. Proceeding. An ad hoc committee of bondholders (the "Bondholders Committee") has also been organized.

3. On January 14, 2009, the U.S. Debtors' ultimate corporate parent NNC, NNI's direct corporate parent NNL (together with NNC and their affiliates, including the U.S. Debtors, "Nortel"), and certain of their Canadian affiliates (collectively, the "Canadian Debtors")[2] filed an application with the Ontario Superior Court of Justice (the "Canadian Court") under the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), seeking relief from their creditors (collectively, the "Canadian Proceedings"). The Canadian Debtors have obtained an initial order of the Canadian Court (as amended and restated, the "Canadian Order"), under which, inter alia: (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA; (b) Ernst & Young Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the Canadian Order; and (c) a stay of proceedings in respect of the Canadian Debtors has been granted.

4. The Monitor filed petitions and obtained an order in the U.S. Court granting recognition of the Canadian Proceedings under chapter 15 of the Bankruptcy Code (the "Chapter 15 Proceedings"). NNI also filed an application and obtained an order in the Canadian Court pursuant to section 18.6 of the CCAA recognizing the U.S. Proceedings as "foreign proceedings" in Canada and giving effect to the automatic stay thereunder in Canada. None of the U.S. Debtors or Canadian Debtors are applicants in both the U.S. Proceedings and Canadian Proceedings.

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[2] The Canadian Debtors include the following entities: NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation.

5. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "Debtors," (b) the U.S. Proceedings and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and each individually as a "Court."

B. Purpose and Goals

6. Though full and separate plenary proceedings are pending in the United States for the U.S. Debtors and in Canada for the Canadian Debtors, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

a. harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

b. promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Creditors Committee, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

e. facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Subject to the provisions of this Protocol, including, without limitation, those included in paragraph 15 hereof, where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

7. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

8. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

9. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief on an ex parte or "limited notice" basis to the extent permitted under applicable law;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Creditors Committee, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

f. preclude the Debtors, the Creditors Committee, the Monitor, the U.S. Trustee, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

10. The Debtors, the Creditors Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the Canadian Order and other applicable laws.

D. Cooperation

11. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the U.S. Debtors and Canadian Debtors may be creditors of the others'

estates, the Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

12. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Insolvency Proceedings.

b. Where the issue of the proper jurisdiction of either Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the Creditors Committee, the Monitor, the Bondholders Committee (collectively the "Core Parties"), the U.S. Trustee and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings (each a "Joint Hearing") with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a Joint Hearing to be necessary or advisable, or as otherwise provided herein, to, among other things, facilitate or coordinate proper and efficient conduct of the Insolvency Proceedings or the resolution of any particular issue in the Insolvency Proceedings. With respect to any Joint Hearing, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear and/or view the proceedings in the other Court.

(ii) Submissions or applications by any party that are or become the subject of a Joint Hearing (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed in advance of the Joint Hearing with both Courts.

(iii) Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing (collectively, "Evidentiary Materials") shall file or otherwise submit such materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings, being deemed to have appeared in or attorned to the jurisdiction of such Court in which such material is filed, so long as such party does not request any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the Joint Hearing shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, (1) to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts; and (2) to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any joint hearing, with or without counsel present, for the purposes of (1) determining whether consistent rulings can be made by both Courts; (2) coordinating the terms upon of the Courts' respective rulings; and (3) addressing any other procedural or administrative matters.

13. Notwithstanding the terms of the paragraph 12 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) the conduct of the parties appearing in matters presented to such Court; and (b) matters presented to such Court, including, without limitation, the right to determine if matters are properly before such Court.

14. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court, such Court may, without limitation, hear expert evidence of such law or, subject to paragraph 15 herein, seek the written advice and direction of the other Court which advice may in the discretion of the receiving Court, be made available to parties in interest.

15. Notwithstanding anything to the contrary herein contained, to the extent any motion is filed or relief is sought (collectively, "Requested Relief") in either Court relating to: (i) the proposed sale of assets for gross proceeds in excess of U.S. $30 million and where at least one U.S. Debtor and one Canadian Debtor are parties to the related sale agreement or that involves assets owned by at least one U.S. Debtor and one Canadian Debtor; (ii) any motion to allocate sale proceeds which are in the aggregate more than U.S. $30 million and where at least one U.S. Debtor and one Canadian Debtor are parties to the related sale agreement or that involves assets owned by at least one U.S. Debtor and one Canadian Debtor; (iii) matters relating to the advanced pricing agreement involving both the United States and Canadian taxing authorities; (iv) matters regarding transfer pricing methodology relating to an obligation for the transfer of goods and services between one or more U.S. Debtors and one or more Canadian

Debtors; (v) any matter relating to alleged fraudulent conveyance or preference claims in excess of U.S. $30 million and which may have a material impact on both one or more U.S. Debtors and one or more Canadian Debtors; (vi) matters relating to any proposal or approval of a disclosure statement, information circular, plan of reorganization or plan of compromise and arrangements in either the U.S. Proceedings or the Canadian Proceedings; (vii) any motion to appoint a Trustee or Examiner in the U.S. Proceedings, any motion to convert the U.S. Proceedings to a Chapter 7 proceeding, any motion to appoint a Receiver in the Canadian Proceedings, or any motion to convert the Canadian Proceedings to a bankruptcy or proposal proceeding under the Bankruptcy and Insolvency Act (Canada); (viii) any motion to substantively consolidate the Debtors' estates; (ix) matters impacting the material tax attributes of the U.S. Debtors, including the net operating losses of the U.S. Debtors in any prior fiscal year; (x) any motion to amend the terms of any of the Debtors' registered pension plans the effect of which would increase the liability of any Debtor thereunder; (xi) any motion to assume, ratify, reject, repudiate, modify or assign executory contracts having a material impact on the assets, operations, obligations, rights, property or business of both the U.S. and Canadian estates and accounting for annual gross revenue in excess of U.S. $30 million ("Material Contracts"); (xii) any motion seeking relief from the automatic stay in the U.S. Proceedings and/or the stay of proceedings in the Canadian Proceedings (1) involving any Material Contract or (2) to pursue actions having a material impact on the assets, operations, obligations, rights, property or business of at least one U.S. Debtor and one Canadian Debtor and involving damages in excess of U.S. $30 million; (xiii) any motion seeking to create or extend any program, plan, proposal or scheme relating to or authorizing payments to employees where the consideration relates to non-ordinary course incentive performance, retention, severance, termination or such like payments; and (xiv) any

motion regarding any program, plan proposal, scheme or similar course of action related to the wind-down of one or more of the Debtors' businesses;

Then the following procedures shall be followed:

a. unless otherwise consented to by the Core Parties, any and all documents, other than any Monitor's report related to the Requested Relief, shall be filed (as applicable) and served on the Core Parties on not less than seven days notice prior to the proposed hearing date for such Requested Relief in the Court of the forum country where the party seeking the Requested Relief intends the Requested Relief to be heard; *provided, however*, that to the extent the Requested Relief is necessary to avoid irreparable harm to the Debtors and/or the Debtors' bankruptcy estates, as may be determined by the Court of the forum country where the Requested Relief is being sought or such Court otherwise determines, such documents related to the Requested Relief shall be served on the Core Parties on such reasonable notice as such Court may determine;

b. upon notice of such Requested Relief being provided to the Core Parties, each of the Core Parties will have not less than two business days from receipt of such notice (or such shorter period as the Court of the forum country where the Requested Relief is being sought shall determine, as set forth in paragraph 15(a) herein) to request, in writing, that the filing party seek a Joint Hearing for the Requested Relief;

c. if the filing party agrees to seek a Joint Hearing, the Requested Relief shall be heard at a Joint Hearing conducted by the Courts in accordance with the procedures set forth in paragraph 12 herein; and

d. if the filing party does not agree to seek a Joint Hearing, the party seeking to have the Requested Relief heard at a Joint Hearing may file a notice of Joint Hearing dispute in both the Court of the forum country and the Court of the non-forum country and serve notice thereof on the remaining Core Parties, whereupon the respective Courts of the forum country and the non-forum country may consult with one another in accordance with paragraphs 6 and 12 hereof, in order to determine whether a Joint Hearing is necessary or may otherwise consult with the Core Parties prior to any party proceeding with the underlying Requested Relief in the original proposed forum country.

E. Recognition of Stays of Proceedings

16. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the

Bankruptcy Code (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (i) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

17. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the Canadian Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (i) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the United States.

18. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to paragraph 15, herein, motions brought respecting the application of the stay of proceedings with respect to assets or operations of the Canadian Debtors shall be heard and determined by the Canadian Court. Subject to paragraph 15 herein, motions brought respecting the application of the stay of proceedings with respect to assets or operations of the U.S. Debtors shall be heard and determined by the U.S. Court.

F. Rights to Appear and Be Heard

19. The Debtors, the Core Parties, and any other committee that may be appointed by the U.S. Trustee, and the professionals and advisors for each of the foregoing, shall have the right and standing: (i) to appear and to be heard in either the U.S. Court or Canadian Court in the U.S. Proceedings or Canadian Proceedings, respectively, to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or

regulations generally applicable to all parties appearing in the forum; and (ii) to file notices of appearance or other papers with the clerk of the U.S. Court or the Canadian Court in respect of the U.S. Proceedings or Canadian Proceedings, respectively; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that an appearance by the Creditors Committee in the Canadian Proceedings shall not form a basis for personal jurisdiction in Canada over the members of the Creditors Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above, including, inter alia, paragraph 12 above; (i) the Canadian Court shall have jurisdiction over the Chapter 11 Representatives (as defined below) solely with respect to the particular matters as to which the Chapter 11 Representatives appear before the Canadian Court; and (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives (as defined below) solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

20. In connection with any matter in the Canadian Proceedings in which the Creditors Committee seeks to become involved and which would otherwise require the Creditors Committee to execute a confidentiality agreement, the Creditors Committee, its individual members and professionals shall not be required to execute confidentiality agreements but instead the Creditors Committee and its members shall be bound by the confidentiality provisions contained in the Creditors Committee bylaws, and the Creditors Committee's professionals shall be bound by the terms of the confidentiality agreement with the Debtors dated February 2, 2009.

G. Claims Protocol

21. The Debtors anticipate that it will be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing, process,

jurisdiction and applicable governing law to be applied to the resolution of intercompany claims filed by the Debtors' creditors in the Canadian Proceedings and the U.S. Proceedings. In such event, and in recognition of the inherent complexities of the inter-company claims that may be asserted in the Insolvency Proceedings, the Debtors shall use commercially reasonable efforts to negotiate a specific claims protocol, in form and substance satisfactory to the Debtors, the Monitor, and the Creditors Committee, which protocol shall be submitted to the Canadian Court and the U.S. Court for approval. In the event that the Debtors fail to reach agreement among such parties, the Debtors shall file a motion in both the Canadian Court and the U.S. Court seeking approval of such claims protocol as the Debtors shall determine to be in the best interest of the Debtors and their creditors.

H. Retention and Compensation of Estate Representative and Professionals

22. The Monitor, its officers, directors, employees, counsel and agents, wherever located, (collectively the "Monitor Parties") and any other estate representatives appointed in the Canadian Proceedings (collectively, the "Canadian Representatives") shall (subject to paragraph 19) be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Canadian Debtors solely in accordance with the CCAA, the Canadian Order and other applicable

Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S Court.

23. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the Canadian Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the Canadian Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the Canadian Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

24. Any estate representative appointed in the U.S. Proceedings, including without limitation any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "Chapter 11 Representatives") shall (subject to paragraph 19) be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives shall not be required to seek approval of their retention in the Canadian Court and (a) shall be compensated for their services to the U.S. Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek

approval of their compensation for services performed for the U.S. Debtors in the Canadian Court.

25. Any professionals (i) retained by and being compensated solely by, or (ii) being compensated solely by, the Canadian Debtors including in each case, without limitation, counsel and financial advisors (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Such Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the Canadian Order and any other applicable Canadian law or orders of the Canadian Court with respect to services performed on behalf of the Canadian Debtors; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

26. Any professionals (i) retained by, or (ii) being compensated by, the U.S. Debtors including in each case, without limitation, counsel and financial advisors (collectively, the "U.S. Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

27. Subject to paragraph 19 herein, any professional retained by the Creditors Committee, including in each case, without limitation, counsel and financial advisors (collectively, the "Committee Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the

Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court or any other court.

I. Notice

28. Notice of any motion, application or other Pleading or paper (collectively the "Court Documents") filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to the Debtors; the U.S. Trustee; the Monitor; the Creditors Committee; the Bondholders Committee and any other statutory committees appointed in the Insolvency Proceedings and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

29. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 28 above.

J. Effectiveness; Modification

30. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

31. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with the notice provisions set forth above.

K. Procedure for Resolving Disputes Under this Protocol

32. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 28 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 12 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

33. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 28 hereof;

d. the Courts may jointly decide to invite the Debtors, the Creditors Committee, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and

e. for clarity, the provisions of this paragraph shall not be construed to restrict the ability of either Court to confer as provided in paragraph 12 above whenever it deems it appropriate to do so.

L. Preservation of Rights

34. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Creditors Committee, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including, without limitation, the Bankruptcy Code the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

EXHIBIT 4

In re Calpine Corp., Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113]

Hearing Date: July 24, 2007 at 2:00 p.m. (EST)
Objection Deadline: July 16, 2007 at 4:00 p.m. (EST)
Reply Deadline: July 20, 2007 at Noon (EST)

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Edward O. Sassower (ES 5823)

Counsel for the Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
Calpine Corporation, et al.,	Chapter 11
Debtors.	Case No. 05-60200 (BRL) Jointly Administered

NOTICE OF DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS AND FOR OTHER RELIEF

PLEASE TAKE NOTICE that at **2:00 p.m. (EST)** on **July 24, 2007**, the Debtors, by their counsel, shall appear before the Honorable Judge Burton R. Lifland, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 623, or soon thereafter as counsel may be heard (the "Hearing"), and present the Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Bankruptcy Rule 9019(a) to Approve a Settlement With the Calpine Canadian Debtors and for Other Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court-to-Court Protocol approved by this Court on April 12, 2007 [Docket No. 4309] the Hearing will be a joint

videoconference hearing between Judge Lifland and the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary, Court House, 611 - 4 St. S.W., Calgary, Alberta, presiding over the Canadian insolvency proceedings instituted by certain Calpine subsidiaries and affiliates under the *Companies' Creditors Arrangement Act*.

PLEASE TAKE FURTHER NOTICE that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Hearing or at a subsequent hearing.

PLEASE TAKE FURTHER NOTICE that the Motion may be examined and inspected by interested parties between the hours of 9:00 a.m. and 4:30 p.m. (Prevailing Eastern Time), during the days when the Court is in session, at the offices of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, or viewed online at http://www.nysb.uscourts.gov/.

PLEASE TAKE FURTHER NOTICE that the Motion and related documents may be viewed at www.kccllc.net/calpine/canadasettlement.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at http://www.nysb.uscourts.gov/, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (in either case, with a hard copy delivered directly to Chambers) and shall be

served upon: (a) counsel to the Debtors, Kirkland and Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022, Attn.: Edward Sassower; (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn.: Paul Schwartzberg, (c) counsel to the Unofficial Committee of Second Lien Debtholders, Paul Weiss Rifkind Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attn.: Alan W. Kornberg, Andrew N. Rosenberg, Elizabeth R. McColm; (d) counsel to the Official Committee of Unsecured Creditors, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022-2524, Attn.: Michael S. Stamer, Philip C. Dublin, Alexis Freeman; (e) counsel to the Official Committee of Equity Security Holders, Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attn.: Matthew Gluck; (f) Canadian counsel to the Canadian Debtors, Goodmans LLP, 250 Yonge Street, Toronto, Canada M5B 2M6, Attn: Jay A. Carfagnini; and (g) U.S. counsel to the Canadian Debtors, Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, New York 10022, Attn: Philip D. Anker, so as to be received no later than **4:00 p.m. (EST) on July 16, 2007** (the "Objection Date").

Dated: June 28, 2007
New York, New York

Respectfully submitted,

/s/ David R. Seligman

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Counsel for the Debtors

Hearing Date: July 24, 2007 at 2:00 p.m. (EST)
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Counsel for the Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
Calpine Corporation, et al.,	)	
	)	Case No. 05-60200 (BRL)
Debtors.	)	Jointly Administered

DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS AND FOR OTHER RELIEF

Calpine Corporation and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, "Calpine" or the "Debtors"), hereby file this motion (the "Motion") pursuant to sections 105(a) and 363(b) of the United States Bankruptcy Code (as amended from time to time, the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), for the entry of an order (the "Order"), substantially in the form attached hereto as Exhibit A, approving a settlement by and between the Debtors and Calpine Canada Energy Ltd. and its Canadian subsidiaries or affiliates that are Applicants or CCAA Parties (collectively, the "Canadian Debtors") in Action No. 0501-17864 under the *Companies' Creditors Arrangement Act,* R.S.C.

1985, c. C-36, as amended, the ("CCAA Proceedings") in the Court of Queen's Bench of Alberta (the "Canadian Court"), and for other related relief.[1]

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code, and Rule 9019(a) of the Bankruptcy Rules.

Background

3. Calpine Corporation ("Calpine" and, together with its direct and indirect subsidiaries, the "Company") is involved in the development, construction, ownership and operation of power generation facilities and the sale of electricity and its by-product, thermal energy, primarily in the form of steam, predominantly in North America. The Company operates the largest fleet of natural gas-fired power plants in North America. The Company has ownership interests in, and operates, gas-fired power generation and cogeneration facilities, pipelines, geothermal steam fields and geothermal power generation facilities.

4. The Company owns, leases and operates power plants throughout the United States. The Company also has interests in several plants under active construction. The Company markets electricity produced by its generating facilities to utilities and other third party purchasers while thermal energy produced by the gas-fired power cogeneration facilities is sold primarily to industrial users. The Company offers to third parties energy procurement,

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[1] All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Settlement Outline and ULC1 Settlement (as defined below).

liquidation and risk management services, combustion turbine component parts, engineering and repair and maintenance services.

5. On December 20, 2005 (the "Commencement Date"), the Debtors filed their voluntary petitions for relief (the "U.S. Cases") under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On January 9, 2006, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Creditors Committee") in these U.S. Cases. On May 9, 2006, the United States Trustee appointed an Official Committee of Equity Security Holders (the "Equity Committee"). No trustee or examiner has been appointed in these U.S. Cases.

6. Also on December 20, 2006 nine of Calpine's Canadian subsidiaries and affiliates commenced proceedings in Canada under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "CCAA"). An additional three Calpine Canadian affiliated partnerships were designated as "CCAA Parties" and granted the protection of the stay of proceedings by the Canadian Court. The Canadian Cases are under the supervision of the Court of Queen's Bench of Alberta, Judicial District of Calgary, the Honourable Madam Justice B.E.C. Romaine presiding. The Canadian Court appointed Ernst & Young, Inc. as the monitor (the "Monitor") in the CCAA Proceedings. After the 2005 fiscal year, the Canadian Debtors were deconsolidated from the U.S. Debtors for accounting and financial reporting purposes.

7. In contrast to the U.S. Debtors, a number of the Canadian Debtors are not operating entities, but investment vehicles created to raise funds for, and make investments on behalf of, Calpine and certain of its U.S. subsidiaries in Canada, the United Kingdom, and other foreign jurisdictions.

8. As of the commencement of the CCAA Proceedings, the Canadian Debtors' principal assets were intercompany claims against the U.S. Debtors, cash, and certain subordinated interests in the Calpine Power Income Fund, an entity holding interests in several power generation facilities in Canada. The expected outcome of the CCAA Proceedings is an orderly liquidation, rather than the restructuring of an ongoing business. At present, the Canadian Debtors have only a handful of employees remaining. Even before the commencement of the Canadian Cases, Calpine's Canadian operations were in the process of being wound down.

9. Soon after the commencement of the U.S. Cases and the CCAA Proceedings, the U.S. and Canadian Debtors realized that a host of cross-border issues needed to be addressed, the most significant of which are discussed below:

A. Sale of the ULC1 Bonds

10. One way that Calpine raised funds for its corporate needs was through the issuance of certain debt instruments through indirect, wholly-owned, non-operating Canadian subsidiaries of Calpine. In 2001, Calpine Canada Energy Finance ULC (defined in the Settlement Outline as "ULC1") issued approximately US$2.03 billion and C$200 million of senior notes, in two separate issuances (defined in the Settlement as the "ULC1 Bonds"). Calpine is alleged to have guaranteed these ULC1 Bonds. ULC1 was a non-operating Canadian "unlimited liability company" incorporated for the purpose of raising funds for Calpine and its subsidiaries, and did not have its own funding sources. The reason for raising funds through the creation of Canadian unlimited liability companies (rather than through U.S. subsidiaries) was to obtain certain favorable tax treatment in multiple jurisdictions. In July 2005, in connection with the repayment of certain intercompany loans associated with a preferred stock offering triggered by the sale of Calpine's Saltend Energy Centre in the UK, Calpine and certain U.S. subsidiaries

transferred approximately $360 million of repurchased ULC1 Bonds to Calpine Canada Resources Company ("CCRC"), now one of the Canadian Debtors. That put CCRC in the position of having both claims against ULC1, the issuer of the bonds and another of the Canadian Debtors, as well as guarantee claims against Calpine, one of the U.S. Debtors, and the alleged guarantor of these bonds.

11. Because these repurchased ULC1 Bonds represented perhaps the Canadian Debtors' single largest asset, the Canadian Debtors desired to sell and monetize them. However, the U.S. Debtors believed that the transfer of the ULC1 Bonds to CCRC may have been avoidable under the Bankruptcy Code. In July 2006, the Canadian Debtors instituted a process to have the Canadian Court determine CCRC's rights in the repurchased ULC1 Bonds (the "Bond Differentiation Process"). In late 2006 the Canadian and U.S. Debtors attempted to negotiate an arrangement whereby the ULC1 Bonds held by CCRC could be sold while preserving any rights of the U.S. Debtors to the proceeds; however, the bond sale did not proceed at that time.

12. Later, the U.S. Debtors filed their Partial Objection to Proof of Claim No. 5742 [Docket No. 3667], which, *inter alia*, asserts Section 502(d) defenses against certain claims held by CCRC based on the repurchased ULC1 Bonds. CCRC responded to the partial claims objection [Docket No. 3863], and the U.S. Debtors filed a reply [Docket No. 4275]. This partial claims objection (the "ULC1 Bond Objection") is still pending before this Court. CCRC's desire to determine its rights to, and sell, the repurchased ULC1 Bonds in the CCAA Proceedings, as well as Calpine's ULC1 Bond Objection in the U.S. Cases, raise complicated and difficult cross-border jurisdictional issues that, unless resolved, could result in time-consuming, expensive, and

uncertain litigation that could seriously delay the resolution of both the CCAA Proceedings and the U.S. Cases.

B. The Saltend Proceeds

13. As referenced above, in 2005 Calpine sold the Saltend Energy Centre. On the Petition Date, the net proceeds from the Saltend sale were held in the bank account of a wholly-owned indirect UK subsidiary of CCRC, a Canadian Debtor. The U.S. Debtors believe that they also may have claims to the Saltend proceeds, based on avoidance actions stemming from the transfer of the repurchased ULC1 Bonds discussed above. However, the Canadian Debtors disagreed and desired to "repatriate" the Saltend proceeds to CCRC to advance the liquidation of the CCAA estates.

14. Thus, in 2006 the U.S. Debtors and the Canadian Debtors cooperated to "repatriate" the Saltend proceeds to CCRC, on condition that the proceeds would be held by CCRC subject to any claims of the U.S. Debtors that might be established in the claims process (and subject to any defenses of the Canadian Debtors thereto). The disposition of the Saltend proceeds also created complex and difficult cross-border jurisdictional issues that potentially could involve the laws of the U.S., Canada, the U.K., Luxembourg, and Jersey (Channel Islands), and that, absent consensual resolution, could result in time-consuming, expensive and uncertain litigation in multiple jurisdictions that could delay the administration of both the U.S. Cases and the CCAA Proceedings.

C. Claims of the ULC1 Bondholders and Others

15. The corporate and financing structure underlying the original ULC1 Bond issuance is extremely complex and has resulted in multiple multi-billion dollar claims being asserted in the U.S. Cases that have complicated both the U.S. Cases and the CCAA

Proceedings. Not only were the ULC1 Bonds issued by ULC1, but in addition a "hybrid note structure" was created that added two additional contractual layers to facilitate the payment of interest and principal on the ULC1 Bonds. These contractual layers included "subscription agreements" and "share purchase agreements," under which (among other things) Quintana Canada Holdings, LLC ("QCH," a Calpine U.S. subsidiary and a U.S. Debtor) essentially agreed to purchase shares of Calpine Canada Energy Ltd. ("CCEL," a Canadian Debtor). Both the subscription agreements and the share purchase agreements were allegedly guaranteed by Calpine Corporation.

16. This "hybrid note structure" was further supplemented by certain related debentures between CCEL and ULC1, a subordinated debenture between CCRC and CCEL, and certain related promissory notes between CCRC and CCEL. This "hybrid note structure" ultimately caused the filing of multiple multi-billion dollar claims by multiple parties on account of what the U.S. Debtors believed should be characterized as one underlying obligation – *i.e.*, the defaulted principal and interest on the ULC1 Bonds. For example, CCEL filed Claim No. 3730 against QCH for US$2.56 billion based on the subscription agreements, and also filed Claim No. 4512 against Calpine Corporation for US$2.56 billion based on Calpine's guarantee of the subscription agreements. In addition, ULC1 filed Claim No. 4513 against QCH for US$2.56 billion based on the subscription agreements, and also filed Claim No. 4515 against Calpine Corporation for US$2.56 billion based on the subscription agreements guarantee. Similarly, ULC1 filed Claim No. 4514 against QCH in an unliquidated amount based on the share purchase agreement, and also filed Claim No. 4511 against Calpine Corporation for unliquidated amounts based on the share purchase agreement guarantee. Claims were also filed in both the Canadian Proceedings and the U.S. Cases by the Indenture Trustee and other parties related to the ULC1

Bonds and "hybrid note structure." Although the U.S. Debtors believe that they have good arguments that all of these claims on account of the ULC1 Bonds are duplicative and/or redundant, other parties (including the Canadian Debtors) disagree. The issue is not free from doubt and to litigate these multi-billion dollar issues would be time-consuming, costly, and uncertain. Given their size, failure to resolve these claims on account of the ULC1 Bonds could threaten to seriously delay and hamper the prompt and efficient administration of both the U.S. Cases and the CCAA Proceedings.

D. Claims of the ULC2 Bondholders

17. Calpine also had raised approximately $553.7 million[2] through another Canadian subsidiary ("ULC2") by issuing bonds (the "ULC2 Bonds") that were also allegedly guaranteed by Calpine Corporation. Even though the ULC2 Bonds lacked the complex "hybrid note" structure of the ULC1 Bonds, claims were filed by ULC2 bondholders both in the CCAA Proceedings against ULC2 and in the U.S. Cases based on Calpine's alleged guarantee obligations. Again, the U.S. Cases and the CCAA Proceedings were hampered by the complex primary and secondary obligation issues involved in the adjudication of multiple claims in multiple jurisdictions on account of the same bonds in both the CCAA Proceedings and the U.S. Cases.

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2 This figure was calculated using the principal of the ULC2 Bonds (which were denominated in pounds sterling and Euros), and applying the exchange rates as of the Petition Date.

E. The Greenfield Litigation

18. Before the Petition Date, Calpine had entered into a joint venture with a unit of Mitsui Corporation to develop the Greenfield Energy Centre, a large (1,005 MW) power plant project under development in Ontario. In late 2006, a Canadian Debtor, Calpine Canada Natural Gas Partnership, filed a fraudulent conveyance action in the Canadian Court against Calpine Greenfield Commercial Trust (a Canadian trust controlled by U.S. Calpine entities, "CGCT") alleging that a 2005 transfer of Calpine's limited partnership interest in the project to CGCT was avoidable under Canadian law. The pendency of this action initially delayed certain third-party financing of the Greenfield project, but the U.S. and Canadian Debtors ultimately reached a partial settlement whereby the Canadian Debtors essentially agreed to waive all claims against Greenfield-related entities in exchange for the U.S. Debtors' agreement to allow an administrative claim against Calpine's estate for any liquidated judgment obtained in the avoidance action. However, even with this interim settlement, unresolved complex, time-consuming and potentially expensive litigation still remained.

F. Claims of the Calpine Power Income Fund

19. In 2002 Calpine concluded a series of complex transactions that created the Calpine Power Income Fund (the "Fund"), a Canadian entity that enjoys favorable tax treatment, which held interests in four power plants formerly owned by Calpine. As part of the transaction Calpine allegedly guaranteed certain obligations by its Canadian subsidiaries to the Fund. The Fund has filed claims in both the CCAA Proceedings and the U.S. Cases related to the breach of two of these agreements, based on (respectively) the underlying contractual obligation and Calpine's guarantees of those obligations. The U.S. Debtors believe that the claims asserted by the Fund are in the hundreds of millions of dollars. The guarantee claims filed in these Chapter

11 Cases were in unliquidated amounts. The existence of such guarantee claims also has created complex cross-border jurisdictional issues that, if not resolved, could result in time-consuming, expensive, and uncertain litigation in multiple jurisdictions.

G. Intercompany "Books and Records" Claims

20. Currently, the Canadian Debtors have filed approximately $1.1 billion of claims against the U.S. Debtors, and the U.S. Debtors have filed approximately $250 million of claims against the Canadian Debtors, both based on intercompany amounts shown on both sets of companies' books and records. The Canadian and U.S. Debtors and their advisors have worked intensely with the Monitor over a period of months to reconcile these claims and reduce them to agreed amounts. Even though the amounts were reconciled, complex jurisdictional and cross-border issues of setoff, priorities and allowance still remained to be resolved.

The Settlement

21. After struggling with these issues for almost a year, the U.S. and Canadian Debtors realized that the only way to break the various intertwining logjams and unlock the values of the estates on both sides of the border was by investing time and effort in intense negotiations, focusing on the goal of a consensual resolution. The Canadian and U.S. Debtors realized that absent a consensual resolution, the two estates could be litigating for years, and with no end in sight given the fact at least two jurisdictions were involved. Therefore, the Canadian and U.S. Debtors engaged in intensive settlement discussions over a period of more than five months, involving their legal, financial and other advisors, all laboring to reach a mutually beneficial result.

22. The U.S. and Canadian Debtors are pleased that they have reached a comprehensive consensual and global resolution of virtually all major cross-border issues (the

"Settlement").[3] The U.S. and Canadian Debtors and their financial and legal professionals have spent many hours negotiating this complex and comprehensive Settlement. Ernst & Young, Inc., appointed by the December 20, 2005 Initial Order of the Canadian Court as the Monitor in the CCAA Proceedings, has participated in the negotiation of the Settlement and will recommend approval of the Settlement to the Canadian Court. The Settlement resolves, among other things, all the major issues discussed above, and creates a clear path forward by addressing how the remaining unresolved issues will be addressed. The Settlement allows the Canadian Debtors to move forward with the CCAA Proceedings, and allows the U.S. Debtors to resolve the claims and other pending litigation and turn their attention to their plan confirmation and exit process. The Settlement therefore creates significant value for both estates, and should be viewed as a major accomplishment.

23. The Settlement (and the incorporated ULC1 Settlement) are carefully crafted and were heavily negotiated to balance numerous issues among a group of debtors, creditors and stakeholders. The Settlement is a comprehensive whole, in that every element is related to, and affects, every other element in a cohesive, comprehensive manner, thereby striking a delicate consensual balance among multiple competing interests. The Settlement is an integrated resolution with no "one off" issues. Simply put, the Settlement is like a jigsaw puzzle – remove any one piece, and the whole is incomplete.

24. The Settlement is embodied in a settlement agreement, substantially in the form attached hereto as Exhibit B (the "Settlement Agreement"). The U.S. and Canadian Debtors are currently finalizing the Settlement Agreement, and the definitive Settlement Agreement will be

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[3] To the extent there are any inconsistencies between the Motion and the Settlement Agreement (defined below), the terms of the Settlement Agreement shall govern.

filed with this Court and posted at the web site of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine/canadasettlement no later than fourteen (14) days prior to the Hearing. The U.S. and Canadian Debtors believe that the Settlement, as embodied in the Settlement Agreement, is highly beneficial to the Debtors, their estates, creditors and other stakeholders, will resolve virtually all major cross-border issues, allow the removal of a large number of claims from the Debtors' claims register, and allow the dismissal of all currently-pending cross-border litigation.

25. The highlights of the Settlement include:

(i) All intercompany claims between the U.S. and Canadian Debtors will be resolved and the amounts fixed – this will eliminate more than $841 million of unsecured claims from the U.S. Debtors' claims register.

(ii) The Greenfield Litigation against the U.S. Debtors will be dismissed with prejudice. This will allow Calpine and Mitsui to proceed with the third party financing, development and completion of the Greenfield Energy Centre.

(iii) The ULC1 Bond Objection will be withdrawn with prejudice. The ULC1 Bonds held by CCRC will then be sold and the proceeds will flow to the Canadian Debtors to be distributed to their creditors, in accordance with the Settlement Agreement, thereby allowing the CCAA Proceedings to move forward.[4]

(iv) The Canadian and U.S. Debtors have agreed on a procedure by which certain third-party claims filed in the CCAA Proceedings and the related guarantee claims filed in the U.S. Cases will be resolved. The interests of the U.S. Debtors and their estates will be protected by allowing the U.S. Debtors and their official committees the right to fully participate in any settlement or adjudication of these claims.

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[4] Notwithstanding the consent of the U.S. Debtors to the sale of the CCRC Senior Notes, the U.S. Debtors shall not be deemed to have any responsibility whatsoever for any securities law liability arising from the sale by the Canadian Debtors of the CCRC ULC1 Senior Notes.

(v) Well over $10.5 billion in claims filed by third parties in both the CCAA Proceedings and the U.S. Cases are also resolved by the Settlement and will be withdrawn or deemed to have no value.

(vi) Approximately $15 million in proceeds from the 2006 sale of Calpine subsidiary Thomassen Turbine Systems, B.V., which have been in an escrow account since the sale, will be split evenly among the U.S. and Canadian Debtors, thereby avoiding lengthy separate negotiations or possible litigation.

26. The Settlement also incorporates a settlement previously announced on April 19, 2007 between the U.S. Debtors and an ad hoc group of ULC1 bondholders (the "ULC1 Settlement").[5] Highlights of the ULC1 Settlement are:

(i) Approximately $12 billion of claims filed in the U.S. Cases are reduced to a maximum third party obligation of approximately $3.5 billion (the actual amount of the Debtors' obligation under the hybrid note structure will essentially be capped at the principal amount of the ULC1 Bonds, plus interest, certain costs, and fees);

(ii) The distribution under the Debtors' plan of reorganization on account of the ULC1 Settlement will be accorded the same treatment as the plan treatment of certain Calpine senior notes (as defined in the ULC1 Settlement), capped as indicated in subparagraph (i) above;

(iii) The Debtors are given the flexibility on how the ULC1 Indenture Trustee's claims are classified in its plan of reorganization; and

(iv) The "marker" claims filed in both the U.S. Cases and Canadian Proceedings by the ULC1 Indenture Trustee will be disallowed.[6]

27. The success of the ULC1 Settlement in fact relies on the resolution of the global Settlement with the Canadian Debtors, because the ULC1 Settlement is based on the U.S. Debtors obtaining the cooperation of the Canadian Debtors in winding up the "hybrid note structure" and the claims relating thereto. An ad hoc committee of ULC1 bondholders – which

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5 *See* Calpine Corporation Form 8-K, filed on April 19, 2007.

6 In the event of any discrepancy between the description of the ULC1 Settlement herein and the Settlement Agreement, the terms of the Settlement Agreement control.

may be one of the largest bondholder groups in the U.S. Cases – endorsed the larger global Settlement with the Canadian Debtors, and the ad hoc committee has presented the Indenture Trustee for the ULC1 Bonds (the "ULC1 Indenture Trustee") with the form of a letter from holders of a majority in aggregate principal amount of the ULC1 Bonds, directing the ULC1 Indenture Trustee to enter into the Settlement, and to take all such actions necessary or appropriate to consummate the Settlement, and offering the ULC1 Indenture Trustee an indemnity pursuant to the ULC1 Trust Indenture.[7]

28. The Settlement and execution, delivery and implementation of the Settlement Agreement will resolve globally virtually all major cross-border issues and will clearly confer a substantial benefit on, and are in the best interests of, the Debtors' estates, their creditors and stakeholders.

Relief Requested

29. By this Motion, the Debtors seek the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (a) approving and authorizing the Settlement, including the ULC1 Settlement, (b) as part of the Settlement, authorizing the Debtors to cooperate in the Canadian Debtors' sale of the ULC1 Bonds held by CCRC, and (c) authorizing the Debtors to execute, deliver and implement the Settlement Agreement.[8]

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7 However, as of the date of the Motion, the ULC1 Indenture Trustee has not yet accepted the terms of this direction and indemnity letter. The proposed Order (attached hereto as Exhibit A) contains language providing for findings concerning the form and manner of notice given to the holders of the ULC1 Bonds of this Motion, the Settlement, Settlement Agreement and the ULC1 Settlement. The proposed Order also contains provisions to protect HSBC in its capacity as Indenture Trustee in the actions it is taking in connection with the ULC1 Settlement.

8 The Canadian Debtors are simultaneously filing a motion, with supporting affidavits, in the Canadian Court seeking approval of the Settlement (the "Canadian Approval Motion)." The Canadian Approval Motion will be filed with this Court pursuant to Section 13(d)ii of the Cross-Border Insolvency Protocol
(footnote continued)

Basis for Relief

30. Compromises and settlements are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Bankruptcy Rule 9019 requires bankruptcy court approval of compromises entered into by a debtor. Bankruptcy Rule 9019(a) provides in pertinent part that "[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The decision whether to accept or reject a compromise lies within the sound discretion of the Bankruptcy Court. *See Nellis v. Shugrue*, 165 B.R. 115, 122-23 (S.D.N.Y. 1994). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and reasonable. *Id*. at 122. The court may consider the opinions of the debtor in possession and its counsel that the settlement is fair and reasonable. *Id.; see In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). This discretion should be exercised by the bankruptcy court "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *Shugrue*, 165 B.R. at 123 ("the general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above").

31. Section 363 of the Bankruptcy Code is the statutory vehicle for considering approval of the Settlement under Bankruptcy Rule 9019. *In re Myer*, 91 F.3d 389, 395 n.2 (3d Cir. 1996); *In re Sparks*, 190 B.R. 842, 845 (Bankr. N.D. Ill. 1996) *aff'd* 1997 WL 156488 (N.D. Ill. 1997); *In re Dow Corning Corp.*, 198 B.R. 214, 246 (Bankr. E.D. Mich. 1996). Section

for Calpine Corporation and its Affiliates (*see* Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [Docket No. 4309], the "Protocol"). The 23rd Report of the Monitor in support of the Settlement will also be filed with this Court pursuant to the Protocol.

363(b) of the Bankruptcy Code provides in relevant part that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." A court can authorize a debtor to use property of the estate pursuant to Section 363(b)(1) of the Bankruptcy Code when such use is an exercise of the debtor's sound business judgment and when the use of the property is proposed in good faith. *In re Delaware & Hudson R.R. Co.*, 124 BR. 169, 176 (D. Del. 1991). The debtor has the burden to establish that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor articulates a valid business justification, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. *See In re Integrated Resources, Inc.*, 147 BR. 650, 656 (Bankr. S.D.N.Y. 1992). The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. *Id.; see In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor's management decisions").

32. To approve a compromise and settlement under Section 363 and Bankruptcy Rule 9019, a bankruptcy court should find that the compromise and settlement is fair and equitable, reasonable and in the best interests of the debtor's estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994) (citations omitted); *In re Enron Corp.*, 2003 WL 230838, *2 (S.D.N.Y. 2003). More specifically, "[i]n making this comparison the bankruptcy judge should consider the litigation's probable costs and probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay." *In re Miller*, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992) (internal citation omitted).

33. In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *In re W.T. Grant Co*., 699 F.2d 599, 608 (2d Cir. 1983). In deciding whether a particular settlement falls within the "range of reasonableness," courts consider the following factors:

(i) the probability of success in the litigation;

(ii) the difficulties associated with collection;

(iii) the complexity of the litigation, and the attendant expense, inconvenience and delay; and

(iv) the paramount interests of creditors.

Purofied Down Prods. at 522 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1989)); *Six West Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp.*, 286 B.R. 236, 248 n.13 (S.D.N.Y. 2002), *see also In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992).

34. The court need not conduct a 'mini-trial' to determine the merits of the underlying dispute; rather, the court need only consider those facts that are necessary to enable it to evaluate the settlement and to make an informed and independent judgment about the settlement. *Purofied Down Prods.*, 150 B.R. at 522; *Energy Cooperative*, 886 F.2d at 924-25 (7th Cir. 1989).

The Settlement Should Be Approved

35. The Debtors submit that the Settlement is beneficial to their estates and creditors and that therefore good cause exists for approval. The Settlement is fair and equitable, and falls well within the range of reasonableness. More specifically, the Settlement will resolve virtually all major cross-border issues between the U.S. and Canadian Debtors. Not only will the

Settlement cause the dismissal of all currently-pending cross-border litigation, which is complex, costly, time-consuming and uncertain, but the Debtors will receive a US$75 million first ranking administrative charge against the net proceeds realized by the Canadian Debtors from the sale of the CCRC ULC1 Senior Notes. The Settlement will cause the elimination of billions of dollars of claims against the Debtors' estates, and help crystallize the claims register as the Debtors are seeking confirmation of their plan of reorganization. As a result of the Settlement, the Debtors will be able to proceed with the Greenfield Energy Centre project without the spectre of the overhanging litigation filed by the Canadian Debtors. All intercompany "books and records" claims will be resolved and their amounts fixed, and most claims against the Canadian Debtors and the U.S. Debtors will be resolved. Although the Settlement does not resolve the guarantee claims by the Fund against the U.S. Debtors, the Settlement nonetheless creates a process for resolving those claims in a manner that fully protects the interests of the Debtors, their estates and their stakeholders. The Settlement provides for an equitable division between the U.S. and Canadian Debtors of the proceeds from last year's sale of Calpine's subsidiary Thomassen Turbine Systems, currently held in escrow, eliminating the necessity of lengthy separate negotiations or possible litigation. Finally, as a result of the Settlement, among other things, there is a possibility that the U.S. Debtors may receive a distribution in the CCAA Proceedings on account of their equity interests in certain of the Canadian Debtors. The Debtors therefore respectfully request that this Court approve the Settlement and the ULC1 Settlement in their entirety.

Injunction Protecting the ULC1 Indenture Trustee

36. As referenced above,[9] the proposed Order attached hereto as Exhibit A requests certain protections for HSBC Bank USA, acting in its capacity ULC1 Indenture Trustee, in the actions it is taking in connection with the ULC1 Settlement. Included in those protections is an injunction in favor of the ULC1 Indenture Trustee, prohibiting current, former and future holders and beneficial holders of the ULC1 Bonds from commencing or continuing any action or proceeding against the ULC1 Indenture Trustee arising out of, relating to or in connection with the ULC1 Indenture Trustee's support of the Settlement and the ULC1 Settlement and the execution, delivery and implementation by the ULC1 Indenture Trustee of the Settlement Agreement and the Ancillary Documents, if any.

37. Section 105(a) of the Bankruptcy Code grants broad authority to this Court to issue "any order, process or judgment that is necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). "In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization." *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992). As in *Drexel*, the Settlement is a major accomplishment and an essential element of the Debtors' reorganization, and the requested injunction is a key component of the Settlement Agreement, because it assures the ULC1 Indenture Trustee's participation. The Second Circuit in *Drexel* approved a similar injunction because "the directors and officers [protected by the injunction] would be less likely to settle." 960 F.2d at 293. In the present case, this threshold is not only met, but exceeded, because without the injunction the ULC1 Indenture Trustee would not only

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9 *See* footnote 5.

"be less likely to settle," but its very willingness to participate in the Settlement would be called into question. Without the ULC1 Indenture Trustee's participation, the Settlement could not be consummated. Therefore, the Debtors suggest that Section 105(a) gives this Court the requisite authority to issue the limited injunction requested in the Order, and respectfully request that the Court grant the injunction.

Memorandum of Law

38. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

39. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the Creditors Committee; (c) counsel to the administrative agents for the Debtors' prepetition secured lenders; (d) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the Debtors' secured indentures; (f) counsel to the Debtors' postpetition lenders; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the United States Department of Justice; (j) counsel to the Equity Committee; and (k) all parties that have requested notice pursuant to Bankruptcy Rule 2002. A copy of the Motion is also available on the website of the Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine.

40. Moreover, in connection with the ULC1 Settlement, the Debtors intend to provide notice of the proposed Settlement to all interested parties, including the record holders and beneficial holders of the ULC1 Bonds, by:

(i) Delivering the Motion and the Canadian Approval Motion to all ULC1 bondholders of record as of June 20, 2007, to enable the record holders to distribute the Approval Motions to the beneficial holders of the ULC1 Bonds. Pursuant to the provisions of 17 C.F.R. § 240.14b-1(b)(2) and § 240.14b-2(b)(3), the record holders are required to forward the Motions to said beneficial holders no later than five days after the date each record holder received the Motions;

(ii) Publication of a notice (the "Notice," substantially in the form attached hereto as Exhibit C) in The Wall Street Journal, The Financial Times, Investor's Business Daily, The Globe & Mail (Canada) and the National Post (Canada);

(iii) Posting of the Notice on the Legal Notice System (LENS) of the Depositary Trust Company;

(iv) Posting of the Notice, the Motion and the Canadian Approval Motion at http://www.kccllc.net/calpine/canadasettlement; and

(v) Issuing a press release notifying ULC1 bondholders and others of the hearing on the Settlement and providing the necessary information to electronically access the Motion and the Settlement Agreement.

In light of the nature of the relief requested herein, the Debtors submit that the foregoing notice is sufficient and appropriate under the circumstances and that no other or further notice is required.

No Prior Request

41. No prior Motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors request the Court to enter an order, substantially in the form attached hereto as Exhibit A (a) approving and authorizing the Settlement, including the ULC1 Settlement, (b) authorizing the Debtors to execute, deliver and implement the Settlement Agreement, (c) authorizing the Debtors to cooperate in the Canadian Debtors' sale of the ULC1 Bonds held by CCRC as provided in the Settlement Agreement, and (c) granting such other and further relief as is just and proper.

Dated: June 28, 2007
New York, New York

Respectfully submitted,

/s/ David R. Seligman

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Counsel for the Debtors

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
Calpine Corporation, et al.,	)	
	)	Case No. 05-60200 (BRL)
Debtors.	)	Jointly Administered

ORDER GRANTING DEBTORS' MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND BANKRUPTCY RULE 9019(a) TO APPROVE A SETTLEMENT WITH THE CALPINE CANADIAN DEBTORS

Upon the Motion (the "Motion")[1] of the above-captioned debtors (collectively, the "U.S. Debtors") for entry of an Order pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a); it appearing that the relief requested is in the best interest of the U.S. Debtors' estates, their creditors and other parties in interest; it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that notice of the Motion and the opportunity for a hearing on the Motion were appropriate under the particular circumstances and that no other or further notice need be given; the Motion having been heard by way of joint video conference by this Court and the Honourable Madam Justice B.E.C. Romaine of the Canadian Court pursuant to the Cross-Border Insolvency Protocol for Calpine Corporation and its Affiliates; and after due deliberation and sufficient cause appearing therefor;

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion, or, if not defined therein, in the Settlement Agreement.

The Court, having considered the relief requested in the Motion and being duly advised of the premises, hereby finds that:[2]

A. On April 25, 2001, ULC1 issued US$1,500 million of 8.5% senior notes due May 1, 2008 (the "8.5% ULC1 Senior Notes") under an indenture dated as of April 25, 2001 between ULC1 and Wilmington Trust Company, as predecessor trustee (as amended by an Amended and Restated Indenture dated October 16, 2001, the "ULC1 Indenture").

B. On October 16, 2001, ULC1 issued an additional US$530 million of 8.5% ULC1 Senior Notes under the ULC1 Indenture (the April 25, 2001 issuance and the October 16, 2001 issuance are collectively referred to as the "8.5% ULC1 Senior Notes").

C. On October 18, 2001, ULC1 issued approximately C$200 million of 8.75% senior notes due October 15, 2007 (the "8.75% ULC1 Senior Notes," and collectively with the 8.5% ULC1 Senior Notes, the "ULC1 Bonds").

D. HSBC Bank USA, National Association is the successor indenture trustee under the ULC1 Indenture (the "Indenture Trustee").

E. On December 20, 2005 (the "Commencement Date"), the U.S. Debtors filed their voluntary petitions for relief (the "U.S. Cases") under chapter 11 of the Bankruptcy Code. The U.S. Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

F. The U.S. Debtors and the Ad Hoc ULC1 Noteholders Committee (as defined in the ULC1 Settlement) engaged in good faith, arm's-length negotiations culminating in their

[2] To the extent necessary, findings of fact shall be deemed conclusions of law, and conclusions of law shall be deemed findings of fact.

execution and delivery, as of April 13, 2007, of a Preliminary Settlement Outline (defined in the Motion as the "ULC1 Settlement").

G. The U.S. Debtors and the Canadian Debtors engaged in good faith, arm's-length negotiations and on May 13, 2007 reached a comprehensive consensual and global resolution of virtually all major cross-border issues (defined in the Motion as the "Settlement"). The Settlement incorporates the ULC1 Settlement.

H. The Settlement and the ULC1 Settlement, as definitively embodied in the Settlement Agreement, are fair, reasonable, and represent a sound exercise of the U.S. Debtors' business judgment, and are in the best interests of the U.S. Debtors' estates, creditors, and other stakeholders.

I. On June 28 2007 the Canadian Debtors filed a motion (the "Canadian Approval Motion" and together with the Motion, the "Approval Motions") seeking, among other things, approval of the Settlement Agreement, which definitively embodies the Settlement and the ULC1 Settlement described in the Motion.

J. This Court has core jurisdiction over the Cases, this Motion and the parties and property affected hereby pursuant to 28 U.S.C. Sections 157 (b) and 1334.

K. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) counsel to the Creditors Committee; (c) counsel to the ad hoc committees; (e) the indenture trustees pursuant to the U.S. Debtors' secured indentures; (e) counsel to the U.S. Debtors' postpetition lenders; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the United States Department of Justice; (i) counsel to the Equity Committee; and (j) all parties that have requested notice pursuant to Bankruptcy Rule

2002. A copy of the Motion has been also made available on the website of the U.S. Debtors' notice and claims agent, Kurtzman Carson Consultants LLC, at http://www.kccllc.net/calpine.

L. The U.S. Debtors provided notice of the proposed Settlement to all interested parties, including all record holders of the ULC1 Bonds (the "Holders"), by:

(a) Delivering the Motion and the Canadian Approval Motion to all Holders of the ULC1 Bonds as of June 20, 2007, to enable such Holders to distribute the Approval Motions to the beneficial holders of the ULC1 Bonds. Pursuant to the provisions of 17 C.F.R. § 240.14b-1(b)(2) and § 240.14b-2(b)(3), the record holders are required to forward the Motions to said beneficial holders no later than five days after the date each record holder received the Motions;

(b) Publication of a notice (the "Notice," substantially in the form attached to the Motion as Exhibit C) in The Wall Street Journal, The Financial Times, Investor's Business Daily, The Globe & Mail (Canada) and the National Post (Canada);

(c) Posting of the Notice on the Legal Notice System (LENS) of the Depositary Trust Company; and

(d) Posting of the Notice, the Motion and the Canadian Approval Motion at http://www.kccllc.net/calpine/canadasettlement.

(e) Issuing a press release dated July 9, 2007 notifying the Holders and others of the hearing on the settlement and providing the necessary information to electronically access the Motion and the Settlement Agreement.

M. As described in the Motion, a draft of the Settlement Agreement was attached as Exhibit B to the Motion. Also as specified in the Motion, the U.S. Debtors posted the Settlement Agreement at http://www.kccllc.net/calpine/canadasettlement on [July 9], 2007, at least fourteen (14) days before July 24, 2007, the date of the joint hearing held in this matter. Due and adequate notice of the Settlement Agreement has been provided to all parties in interest.

N. The statutory bases for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

It is hereby ORDERED

1. The Motion is approved in its entirety.

2. The Settlement Agreement is approved in its entirety.

3. The settlements and compromises set forth in the Settlement and the ULC1 Settlement, as embodied in the Settlement Agreement, are approved, and the U.S. Debtors and HSBC are authorized and directed to enter into, execute, deliver and implement the Settlement Agreement, conditional upon the Canadian Court granting an order (the "Canadian Approval Order" and together with this Order, the "Approval Orders") approving the Settlement and authorizing the Canadian Debtors to enter into the Settlement Agreement and to carry out the transactions contemplated by the Settlement Agreement.

4. The U.S. Debtors and each party to the Settlement Agreement are authorized, from time to time, to enter into such other and further documents, agreements and instruments (collectively, the "Ancillary Documents"), and take such other actions, as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of the Settlement Agreement or to perform its or their respective obligations under the Settlement Agreement and the transactions contemplated thereby.

5. Other than paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 22, 27, 28, 29, 30, 32, 33 and 34 of this Order, which paragraphs are effective upon the entry of this Order, and other than paragraph 26 which is effective on the date of the sale of CCRC Senior Notes, the balance of the paragraphs of this Order shall only be effective upon the date the Canadian Debtors, the U.S. Debtors and the ULC1 Indenture Trustee have executed and filed a certificate with this Court advising that all of the conditions in the Settlement Agreement have been either waived or satisfied (including, without limitation, the condition that the sale of the CCRC Senior Notes (described below) be completed), and advising of the Effective Date (as defined in the Settlement Agreement).

6. The notice of the Motion and the Settlement Agreement given by the U.S. Debtors is approved, both in form and content, and was timely, fair, and adequate, sufficient and appropriate under the circumstances to (a) apprise interested parties of the Motion, the Canadian Approval Motion and the respective hearings scheduled thereon, and the Settlement Agreement and (b) to afford them an opportunity to present any objections, and no other or further notice is or was required.

7. This Order is binding and effective upon the Holders, as well as all current, former, and future beneficial holders of the ULC1 Bonds (the "Beneficial Holders"), and all indenture trustees for the ULC1 Bonds, or predecessors or successors thereto (solely in their capacity as indenture trustees with respect to the ULC1 Bonds and not in any other capacity, including, but not limited to, their capacity as the holder of any claim against the U.S. Debtors or as indenture trustees with respect to any other securities related to the U.S. Debtors or their affiliates).

8. The compromises and settlements embodied in the Settlement Agreement are fair and reasonable to the U.S. Debtors, the Holders, the Beneficial Holders, and the Indenture Trustee.

9. The execution, delivery and implementation by the Indenture Trustee of the Settlement Agreement, and the Ancillary Documents, if any, are authorized and approved and are determined to be consistent with and in furtherance of the Indenture Trustee's duties and responsibilities under the ULC1 Indenture, and not prejudicial to the rights of the Holders or the Beneficial Holders of the ULC1 Bonds.

10. In consenting to and supporting the Settlement and the ULC1 Settlement, and in executing and delivering the Settlement Agreement and the Ancillary Documents, if any, the

Indenture Trustee is exercising reasonably, prudently and in good faith its rights and powers vested in it under the ULC1 Indenture and is using the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

11. Without further order of this Court, and without further action by the parties to the Settlement Agreement, the Indenture Trustee shall be, and hereby is, exculpated and fully, finally and irrevocably released and discharged by all persons and entities, including, without limitation, the Holders and all current, former and future Beneficial Holders, from, and shall not have or incur any liability for, any and all claims, causes of action and other assertions of liability arising out of, relating to, or in connection with the Indenture Trustee's support of the Settlement and the ULC1 Settlement and its execution, delivery and implementation of the Settlement Agreement and the Ancillary Documents, if any. To implement the exculpation provided herein, all Persons and entities, including, without limitation, the Holders and all current, former and future Beneficial Holders, shall be, and hereby are, permanently and irrevocably enjoined from commencing or continuing in any manner any action or proceeding against the Indenture Trustee arising out of, relating to or in connection with the Indenture Trustee's support of the Settlement and the ULC1 Settlement and its execution, delivery and implementation of the Settlement Agreement and the Ancillary Documents, if any.

12. The Canadian Debtors, for themselves and their successors, assigns, affiliates (other than the U.S. Debtors or their affiliates), and anyone claiming through them (including, without limitation, creditors of the Canadian Debtors claiming through the Canadian Debtors) (each in their capacity as such) shall and are deemed to have irrevocably, fully, finally, and forever waived, released, and discharged any and all Claims against the U.S. Debtors and their

affiliates (other than the Canadian Debtors and Calpine's Canadian affiliates), successors and assigns, and estates, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, save and except only as specifically provided for otherwise in the Settlement Agreement.

13. Except only as specifically provided for otherwise in the Settlement Agreement, distributions on all of the Claims listed on Exhibit A and Exhibit B of the Settlement Agreement shall only be made after distributions have been made on account of all other Claims against the applicable Canadian Debtor or U.S. Debtor.

14. All claims (other than those specifically provided for in the Settlement Agreement) by the U.S. Debtors and Canadian Debtors, and their respective successors, assigns, applicable affiliates, and anyone claiming through them (including without limitation creditors of the respective Canadian and U.S. Debtors) (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, including claims for oppression or similar statutory or common law relief, are hereby barred forever.

15. In the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to ULC2 Accrued Interest, fees incurred in the Harbert Litigation, and/or to a "make whole amount," has not been resolved by the date distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, if any, as may be subsequently determined by this Court to be payable in accordance with the terms of the ULC2 Indenture and related agreements.

16. The claims included in Exhibit G to the Settlement Agreement are hereby dismissed with prejudice or deemed to have been withdrawn with prejudice.

17. All of the HSBC U.S. Marker Claims and all of the HSBC Canadian Marker Claims are hereby dismissed with prejudice or deemed to have been withdrawn with prejudice.

18. The U.S. Debtors are authorized and directed to take any and all steps to perform any and all acts necessary or reasonably requested by CCRC to implement or assist CCRC in the sale of the ULC1 Bonds held by CCRC (the "CCRC Senior Notes"), provided, however, that no such acts shall cause or be deemed to cause the sale of the CCRC Senior Notes to be, or have been done, "by" any of the U.S. Debtors for purposes of any applicable securities laws, nor shall any U.S. Debtor be deemed to be a participant, issuer or control person with respect to the sale of the CCRC Senior Notes for purposes of any applicable securities laws.

19. Without limiting the generality of the preceding paragraph, Calpine Corporation is specifically authorized and directed in connection with CCRC's sale of the CCRC Senior Notes to:

(i) execute the Guarantee attached to the 144A Global Security; and

(ii) execute the Guarantee attached to the Regulation S Global Security;

provided, however, that any obligations of Calpine Corporation under the Guarantees shall remain prepetition liabilities, and such execution, even though occurring after the Petition Date, shall not convert Calpine Corporation's prepetition liabilities under the Guarantees into postpetition liabilities, administrative expense claims under section 503 of the Bankruptcy Code, or administrative claims or restructuring claims under the CCAA.

20. Calpine Corporation's prepetition obligations under the Guarantee Agreement are hereby affirmed, including in respect of the 144A Global Security, the Regulation S Global Security and the CCRC Senior Notes.

21. All persons and entities are forever barred, estopped and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding, with respect to any claim or cause of action against any of the U.S. Debtors in relation to or arising from the sale of the CCRC Senior Notes by CCRC, and any of the transactions associated therewith, including without limitation, the authentication and delivery of the Guarantees attached to the 144A Global Security and the Regulation S Global Security.

22. The Intercompany Claims outlined in Exhibit D to the Settlement Agreement are deemed allowed, general, non-subordinated, unsecured claims against the applicable Canadian Debtor(s) in the CCAA proceedings and U.S. Debtor(s) in the U.S. Cases, as the case may be, and shall be treated the same as all other allowed non-subordinated, general, unsecured claims against the applicable Canadian Debtor(s) or U.S. Debtor(s), as the case may be, under any plan of arrangement sanctioned in the CCAA Proceedings ("POA") or plan of reorganization in the U.S. Cases ("POR"), provided, however, that Claim No. 4448 of CCRC against QCH, set forth on Exhibit D of the Settlement Agreement, which includes CCRC's claim against the U.S. Debtors in respect of the liability of CCRC for applicable non-resident withholding taxes related to the intercompany advance that is the basis of Claim No. 4448, shall be satisfied through the granting to CCRC of an allowed non-subordinated general unsecured Claim (not subject to setoff, counterclaim or defense) against QCH in the amount of U.S.$232 million (the "CCRC Claim"), which shall be guaranteed in full by Calpine Corporation ("CORPX"). The CCRC Claim is hereby granted and allowed; provided further that in no event shall distributions to CCRC under the POR on account of the CCRC Claim (or any guarantee thereof) exceed C$181,431,000 (plus an amount equal to the aggregate of all liabilities and obligations of CCRC

for tax penalties and interest, if any, arising from the non-resident withholding taxes described in Section 2.3(c)(iii) of the Settlement Agreement).

23. The CCRC Claim shall be calculated for distribution purposes in U.S. dollars in an amount yielded by the conversion from Canadian dollars at the noon spot rate effective as of the date of confirmation of the POR for Canadian currency posted at Scotiabank and such conversion shall be calculated and performed in consultation with the Monitor.

24. The rights of the U.S. Debtors with respect to the treatment of any allowed Intercompany Claims of the U.S. Debtors under any POA (including with respect to any possible substantive consolidation of some or all of the Canadian Debtors) and the rights of the Canadian Debtors with respect to the treatment of any allowed Intercompany Claims of the Canadian Debtors under any POR (including, with respect to any possible substantive consolidation of some or all of the U.S. Debtors) are fully preserved.

25. The ULC2 Indenture Trustee shall be granted one allowed, general unsecured claim in the U.S. Proceedings against CORPX in the amount of U.S.$361,660,821.40, which equals the principal and unpaid accrued interest due in respect of the ULC2 Senior Notes as of December 20, 2005 (the "ULC2 Indenture Trustee's Allowed Guarantee Claim"). Any recovery by the ULC2 Indenture Trustee shall come first from distributions from ULC2 in the CCAA Proceedings and, to the extent of any deficiency, second from distributions in the U.S. Proceedings. Any recovery by the ULC2 Indenture Trustee from ULC2 will be applied as follows: first, to Reasonable Costs; second, to accrued and unpaid interest on the ULC2 Senior Notes at the contract rate (including interest accrued and unpaid after the commencement of the CCAA Proceedings and through the date on which the Allowed ULC2 Indenture Trustee Claim is satisfied in full (including interest compounded semi–annually)); and third, to principal owing

in respect of the ULC2 Senior Notes. Any recovery received by the ULC2 Indenture Trustee from ULC2 will not reduce the amount of the ULC2 Indenture Trustee's Allowed Guarantee Claim and there shall be no reallocation of payments received in the CCAA Proceedings of Reasonable Costs or interest to payment of principal in respect of the Allowed ULC2 Indenture Trustee Claim; provided, however, the ULC2 Indenture Trustee shall not be entitled to actually receive any distributions under or through the POR in excess of any portion of the ULC2 Indenture Trustee's Allowed Guarantee Claim that remains unpaid after any distributions are made on the Allowed ULC2 Indenture Trustee Claim in the CCAA Proceedings (and after such distributions are allocated as provided in the first paragraph of the Settlement Agreement), unless the POR provides for the payment of postpetition interest on similarly situated claims, in which case the ULC2 Indenture Trustee's Allowed Guarantee Claim shall include a claim in respect of postpetition interest.

26. In accordance with the Settlement Agreement, the U.S. Debtors' Partial Objection to Proof of Claim No. 5742, relating to the CCRC Senior Notes [Docket No. 3667], is withdrawn with prejudice, and the U.S. Debtors are hereby deemed to have irrevocably waived their right to assert any other claims and/or defenses in respect of the CCRC Senior Notes against CCRC or any prior or subsequent owner of the CCRC Senior Notes (including, without limitation, any Bond Differentiation Claims).

27. In accordance with the Settlement Agreement, (a) the U.S. Debtors waive the right to challenge any alleged guarantee of the Guaranteed Claims (as that term is defined in the Settlement Agreement); (b) this Court shall grant comity to the determination by the Canadian Court (and any Canadian appellate court) of the validity and quantum of any Guaranteed Claim; and (c) claims filed in the U.S. Cases on account of any Guaranteed Claims will be allowed, as

general unsecured non-subordinated claims against the U.S. Debtor that is the guarantor, in the U.S. Cases in the amount of the Guaranteed Claim as determined by the Canadian Court, without any further claim adjudication process or order of this Court and without any right of any party in interest to challenge the validity or quantum of such allowed Guaranteed Claims; provided, however, that holders of the Guaranteed Claims shall not be entitled to actually receive any distributions under or through the POR (as that term is defined in the Settlement Agreement) in excess of any actual unpaid portion of such Guaranteed Claims, unless the POR provides for the payment of postpetition interest on other general unsecured non-subordinated claims, in which case the Guaranteed Claims shall include postpetition interest.

28. CORPX is empowered and authorized by each of the entities of Calpine U.S. to act on their behalf in connection with the execution of the Settlement Agreement and the performance of the terms, conditions and obligations of the Settlement Agreement, and shall remain so empowered and authorized for the duration of the Settlement Agreement.

29. The U.S. Debtors and the Canadian Debtors are hereby relieved of any further duties or obligations to negotiate and/or present to this Court a "Canada-U.S. Claims-Specific Protocol" (as that term is defined in the Motion of Canadian Debtors for Entry of an Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-to-Court Protocol [Docket No. 4242]); provided, however, that the U.S. Debtors and Canadian Debtors shall confer in good faith to determine whether any remaining claims unresolved by the Settlement Agreement warrant the approval of a claims-specific protocol by this Court and the Canadian Court.

30. Except as may be specifically provided herein, the Canadian Debtors shall retain any administrative expense priority claims that have been, or may in the future be, asserted against the U.S. Debtors in the U.S. Cases pursuant to Section 503(b) or any other applicable

provision of the Bankruptcy Code for postpetition goods or services rendered to the U.S. Debtors ("U.S. Administrative Claims"); provided, however, that the U.S. Debtors reserve their rights with respect to the allowance of any such U.S. Administrative Claims.

31. The Stipulation and Agreed Order Approving Interim Resolution of Certain Disputes Relating to the Greenfield Energy Centre [Docket No. 4345] (the "U.S. Interim Resolution Order") is hereby amended to provide that the terms of the Settlement Agreement shall constitute full satisfaction of the Administrative Claim (as that term is defined in the U.S. Interim Resolution Order) and that no further amounts shall be due and owing now or in the future under the U.S. Interim Resolution Order.

32. The failure to mention any provision of the Settlement, the ULC1 Settlement, or the Settlement Agreement in this Order shall not impair its efficacy, it being the intent and effect of this Order that the Settlement, the ULC1 Settlement, and the Settlement Agreement are approved in all respects and all relief contemplated by the Settlement, the ULC1 Settlement and the Settlement Agreement is hereby granted.

33. This Order is granted in conjunction with, is complementary to and is a companion Order to the Order of the Court of Queen's Bench granted in the CCAA Proceedings and is to be read and interpreted in a manner that is not inconsistent with, and in furtherance of, the provisions of such Court of Queen's Bench Order. Any determination by either this Court or the Canadian Court contemplated by the Settlement Agreement shall be given comity by the other Court.

34. Except as may be specifically provided herein, notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

35. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

36. The requirement set forth in Rule 9013-1(b) of the Local Rules that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

37. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

38. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York
Dated: _____, 2007

_____
United States Bankruptcy Judge

<u>EXHIBIT B</u>

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SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "**Agreement**") dated as of _____, 2007

AMONG:

CALPINE CORPORATION ("**CORPX**"), on behalf of itself and on behalf of its U.S. subsidiaries (collectively with CORPX, "**Calpine U.S.**")

OF THE FIRST PART

- and -

CALPINE CANADA ENERGY LTD. ("CCEL"), CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC ("ULC1"), CALPINE ENERGY SERVICES COMPANY LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC ("ULC2"), CALPINE NATURAL GAS SERVICES LIMITED, 3094479 NOVA SCOTIA COMPANY, CALPINE ENERGY SERVICES CANADA PARTNERSHIP, CALPINE CANADA NATURAL GAS PARTNERSHIP AND CALPINE CANADIAN SALTEND LIMITED PARTNERSHIP (collectively, the "**Canadian Debtors**")

OF THE SECOND PART

- and -

HSBC BANK USA, NATIONAL ASSOCIATION, as successor indenture trustee under the ULC1 Indenture, as such trustee may be amended, replaced or succeeded from time to time (solely in its capacity as indenture trustee, the **"ULC1 Indenture Trustee"** and, together with Calpine U.S. and the Canadian Debtors, the **"Parties"**)

OF THE THIRD PART

R E C I T A L S:

A. On December 20, 2005 (the "**Petition Date**"), the U.S. Debtors filed the U.S. Proceedings in the U.S. Bankruptcy Court, and are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

B. On the Petition Date, the Canadian Debtors commenced the CCAA Proceedings in the Canadian Court;

C. Pursuant to the terms of a certain Indenture (the "**Original ULC1 Indenture**") dated as of April 25, 2001, between ULC1 and Wilmington Trust Company, as indenture trustee, as amended by that certain Amended and Restated Indenture (the "**Amended ULC1 Indenture**") dated as of October 16, 2001, between ULC1 and Wilmington Trust company (the Original ULC1 Indenture, as amended and restated by the Amended ULC1 Indenture, the "**ULC1 Indenture**"), ULC1 issued (i) those certain 8-3/4% Senior Notes due October 15, 2007, issued on October 18, 2001 in the original, aggregate principal amount of C$200,000,000 (the "**Canadian ULC1 Notes**"), (ii) those certain 8-1/2% Senior Notes due May 1, 2008, issued on April 25, 2001 in the original, aggregate principal amount of US$1,500,000,000, and/or (iii) those certain 8 1/2% Senior Notes due May 1, 2008, issued on October 16, 2001 in the original aggregate principal amount of US$530,000,000 (the notes described in clauses (i), (ii) and (ii), collectively, the "**ULC1 Notes**");

D. The ULC1 Indenture Trustee has received a written and binding letter from holders of a majority in aggregate principal amount of each of the two series of the ULC1 Notes directing the ULC1 Indenture Trustee to enter into this Agreement, and to take all such further actions necessary or appropriate to consummate the transactions contemplated by this Agreement;

E. Certain holders (the "**Ad Hoc ULC1 Noteholders**") are members of an informal committee of unaffiliated holders of the ULC1 Notes (the "**Ad Hoc ULC1 Noteholders Committee**") formed for the purposes of protecting their interests in the U.S. Proceedings and the CCAA Proceedings and exploring and negotiating with CORPX a potential settlement regarding the treatment of the Claims evidenced by the ULC1 Notes, and certain Claims and guarantees related thereto, filed in the U.S. Proceedings and the CCAA Proceedings, as the case may be;

F. CORPX and the Canadian Debtors entered into a Global Settlement Outline for Certain Claims Between and Relating to Calpine U.S. and Calpine Canada (the "**Global Settlement Outline**"), dated as of May 13, 2007, which, among other things, set forth various agreements among CORPX and the Canadian Debtors relating to the resolution of certain Claims and other matters;

G. CORPX and the Ad Hoc ULC1 Noteholders entered into a Preliminary Settlement Outline dated as of April 13, 2007 Regarding Claims Held by Members of the Ad Hoc ULC1 Noteholders Committee (the "**Preliminary ULC1 Settlement Outline**"), which is incorporated in and attached as Exhibit C to the Global Settlement Outline and which, among other things, sets forth various agreements among CORPX and the Ad Hoc ULC1 Noteholders Committee concerning the following Claims:

(i) the ULC1 Indenture Trustee Notes Guarantee Claim;

(ii) the CCEL Subscription Agreement Claim;

(iii) the CCEL Subscription Agreement Guarantee Claim;

(iv) the ULC1 Common "B" Share Purchase Agreement Claim;

(v) the ULC1 Common "B" Share Purchase Agreement Guarantee Claim;

(vi) the ULC1 Indenture Trustee Notes Claim;

(vii) the HSBC Canadian Marker Claims;

(viii) the HSBC U.S. Marker Claims; and

(ix) the Claims of CCEL against CCRC;

H. On April 18, 2007, CORPX filed with the SEC a report on Form 8-K disclosing that CORPX and the Ad Hoc ULC1 Noteholders Committee had entered into the Preliminary ULC1 Settlement Outline, a copy of which was annexed to such Form 8-K as an exhibit; and

I. On May 14, 2007 CORPX filed with the SEC a report on Form 8-K disclosing that CORPX and the Canadian Debtors had entered into the Global Settlement Outline, a copy of which was annexed to such Form 8-K as an exhibit.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereto agree as follows:

ARTICLE I – INTERPRETATION

1.1 Definitions

"Ad Hoc Committee Fees" has the meaning set forth in Section 3.3(a)(ii)(C);

"Ad Hoc ULC1 Noteholders" has the meaning set forth in Recital E;

"Ad Hoc ULC1 Noteholders Committee" has the meaning set forth in Recital E;

"Agreement", "Settlement Agreement", "hereto", "herein", "hereby", "hereunder", "hereof" and similar expressions refer to this Agreement and not to any particular Article, Section, subsection, clause, subdivision or other portion hereof and include any and every instrument supplemental or ancillary hereto;

"Allowed ULC2 Claim" has the meaning set forth in Section 2.3(e)(ii);

"Allowed ULC2 Indenture Trustee Claim" has the meaning set forth in Section 2.3(e)(i);

"**Allowed U.S. Administrative Charge**" has the meaning set forth in Section 2.4(e);

"**Amended ULC1 Indenture**" has the meaning set forth in Recital C;

"**Applicable Law**", in respect of any Person, property, transaction or event, means all laws, statutes, regulations, treaties, judgments and decrees of any Governmental Authority applicable to that Person, property, transaction or event which have the force of law, all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any Governmental Authority having authority over that Person, property, transaction or event and which have the force of the law**;**

"Approval Date" means the date on which the last of the Approval Orders has been entered on the relevant court's docket;

"Approval Orders" means orders of the Canadian Court and the U.S. Bankruptcy Court, respectively, in substantially the forms attached hereto as Schedules II and III, respectively;

"Bankruptcy Code" means the *United States Bankruptcy Code*, 11 U.S.C. §§ 101, et seq.;

"**Bond Differentiation Claim**" has the meaning set forth in the Order of the Canadian Court dated September 11, 2006;

"**British Pounds Sterling**" and "**£**" each means lawful currency of the United Kingdom;

"**Business Day**" has the meaning set forth in Section 5.6;

"**CCAA Proceedings**" means the proceedings pending in the Canadian Court bearing Action No. 0501-17864;

"CCEL" has the meaning set forth in the preamble of this Agreement;

"**CCEL Member Liability Claim**" means any claim against, liability of, or indebtedness of CCEL on account of it being the member of CCRC;

"**CCEL Subscription Agreement Claim**" means Claim No. 3730 of CCEL against QCH listed in Exhibit A;

"**CCEL Subscription Agreement Guarantee Claim**" means Claim No. 4512 of CCEL against CORPX listed in Exhibit A;

"CCEL-ULC1 Term Debentures" means those three Term Debentures issued by CCEL to ULC1, each as amended by a separate Amending Agreement dated as of March 8, 2002;

"CCNGP" means Calpine Canada Natural Gas Partnership;

"CCNGP Action" means the action No. 0601 14198 entitled *Calpine Canada Natural Gas Partnership v. Calpine Energy Services Canada Partnership and Lisa Winslow* commenced in the Canadian Court on December 14, 2006;

"CCRC" means Calpine Canada Resources Company;

"**CCRC Claim**" has the meaning set forth in Section 2.3(c)(iii);

"CCRC Partnership Claims" means any Claims against CCRC on account of it being a partner in CESCA or CCNGP, to the extent there is a shortfall at CESCA or CCNGP, including any Claims of Calpine Power, L.P. against CCRC;

"**CCRC ULC1 Notes**" means the 8½% ULC1 Notes due 2008 in the principal amount of US$359,770,000 held by CCRC on the date hereof;

"**CCRC ULC1 Notes Sale**" has the meaning set forth in Section 2.4(a);

"CESCA" means Calpine Energy Services Canada Partnership;

"**CORPX"** has the meaning set forth in the preamble of this Agreement;

"**CORPX Notes Guarantee**" means that certain Guarantee Agreement dated as of April 25, 2001 executed by CORPX, as amended by a certain First Amendment to Guarantee Agreement dated as of October 16, 2001, executed by CORPX;

"**CORPX Releasors**" has the meaning set forth in Section 3.7;

"**CORPX Subscription Agreement Guarantee**" means the Guarantee dated as of March 8, 2002, executed by CORPX in favor of CCEL;

"**Calpine Senior Notes**" means, collectively, the 10.5% Senior Notes due 2006, the 7.625% Senior Notes due 2006, the 8.75% Senior Notes due 2007, the 7.875% Senior Notes due 2008 and the 7.75% Senior Notes due 2009, issued in each case by CORPX;

"**Calpine U.S.**" has the meaning set forth in the preamble of this Agreement;

"**Canadian Administrative Claims**" has the meaning set forth in Section 2.3(d)(ii)(B);

"**Canadian Affiliates**" means any affiliates under the Control of the Canadian Debtors;

"Canadian Court" means the Court of Queen's Bench of Alberta;

"**Canadian Debtors**" has the meaning set forth in the preamble of this Agreement;

"**Canadian Dollars**" and "**C$**" each means lawful money of Canada;

"**Canadian Guaranteed Claims Determination Order**" has the meaning set forth in Section 2.8(a)(iv);

"**Canadian Order**" has the meaning set forth in Section 2.8(a);

"**Canadian ULC1 Notes**" has the meaning set forth in Recital C;

"**Canadian ULC1 Notes Sale Order**" has the meaning set forth in Section 2.4(b)(ii);

"**Claim**" means any right of a first Person against a second Person in connection with any indebtedness, liability or obligation of any kind of the second person in existence at the Petition Date and any interest accrued thereon and costs payable in respect thereof to and including the

Petition Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety, insurance deductible or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Petition Date;

"**Claims Procedure Order**" means the Order of the Canadian Court dated April 10, 2006, as amended by Order of the Canadian Court dated September 11, 2006;

"**Committees**" has the meaning set forth in Section 2.8(a)(iv);

"**Common "B" Share Purchase Agreements**" means those three share purchase agreements, each dated as of March 8, 2002, between ULC1 and QCH;

"**Control**" of a Person by another Person means that the second Person directly or indirectly possesses the power to direct or cause the direction of the management and policies of the first Person, whether through the ownership of securities or by contract;

"**Direct Claims Against CCRC**" means, collectively, (i) the Allowed ULC2 Claim, and (ii) all Claims against CCRC other than: (A) the CCRC Partnership Claims, and (B) all Claims of CCEL against CCRC;

"Effective Date" means the first Business Day following the date on which the last of the conditions set forth in Section 2.9 shall have been satisfied or complied with, or shall have been waived in accordance with this Agreement;

"**Euros**" and "**€**" each means lawful money of certain countries of the European Union;

"Filed Amount" means US$2,124,356,213.11, the stated amount of the ULC1 Indenture Trustee Notes Guarantee Claim, as of the Petition Date, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim**;**

"Final Order" means an order of a court of competent jurisdiction in respect of which the applicable appeal periods have expired without an appeal having been filed, or if an appeal has been filed, which order has been affirmed by a final order not subject to further appeal or review;

"**Global Settlement Outline**" has the meaning set forth in Recital F;

"**Governmental Authority**" means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government agency, tribunal, commission or other authority lawfully exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government**;**

"Greenfield" means Greenfield Energy Centre;

"**Greenfield Dismissal Order"** has the meaning set forth in Section 2.3(g);

"**Guaranteed Claims**" means those Claims set forth in Exhibit F;

"Harbert Litigation" means the proceedings in the Nova Scotia Supreme Court entitled *Harbert Distressed Investment Master Fund, Ltd. and Wilmington Trust Company v. Calpine Canada Energy Finance II ULC, et al.*, Docket S.H. 245975;

"HSBC" means HSBC Bank USA, National Association;

"HSBC Canadian Marker Claims" means, collectively, Claims No. 2-006, 3-018, 4-004, 5-032, 6-004, 7-012, 8-004, 9-002, 10-002, 11-004 and 12-031 set forth in Exhibit G;

"HSBC U.S. Marker Claims" means all claims referenced in Claim No. 5740 set forth in Exhibit G;

"**Intercompany Claims**" means the Claims between the Canadian Debtors and the U.S. Debtors, other than the Claims set forth in Exhibit E;

"KERP" means the Key Employee Retention Plan approved by order of the Canadian Court dated July 12, 2006;

"Monitor" means Ernst & Young Inc., the monitor of the Canadian Debtors during the CCAA Proceedings appointed by the Canadian Court;

"Non-Approval Date" shall mean the date that the Parties, acting together, mutually agree that one or more of the conditions set forth in Section 2.9 has not been and shall not be satisfied or waived on or prior to the Outside Date;

"Original ULC1 Indenture" has the meaning set forth in Recital C;

"Outside Date" means November 1, 2007, or such other date as may be mutually agreed to in writing by the Parties;

"Parties" has the meaning set forth in the preamble;

"**Person**" means any natural person, sole proprietorship, partnership, corporation, trust, joint venture, any Governmental Authority or any incorporated or unincorporated entity or association**;**

"Petition Date" has the meaning set forth in Recital A;

"POA" means a plan of arrangement sanctioned in the CCAA Proceedings;

"POR" means a plan of reorganization confirmed in the U.S. Proceedings;

"POR Effective Date" has the meaning set forth in Section 3.7;

"**Postpetition Interest**" has the meaning set forth in Section 3.3(a)(ii)(B);

"**Preliminary ULC1 Settlement Outline**" has the meaning set forth in Recital G;

"Proven Claim" means the amount of a Claim as conclusively determined, or deemed to have been determined, in accordance with the Claims Procedure Order, this Agreement or the CCAA;

"QCH" means Quintana Canada Holdings, LLC;

"**Reasonable Costs**" has the meaning set forth in Section 2.3(e)(i)(D);

"Restructuring Claim" means any right of any Person against one or more of the CCAA Debtors in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation or termination by the CCAA Debtors after the Petition Date of any contract, lease or other agreement, whether written or oral;

"Saltend Corporate Entities" means, collectively, Calpine European Finance, LLC, Calpine Finance (Jersey) Limited, Calpine European Funding (Jersey) Holdings Ltd., Calpine (Jersey) Holdings Limited, Calpine (Jersey) Limited, Calpine European Funding (Jersey) Limited, Calpine Energy Finance Luxembourg S.A.R.L., and Calpine UK Holdings Limited;

"SEC" means the Securities and Exchange Commission;

"**Subscription Agreements**" means those three Subscription Agreements executed by CCEL and QCH, each as amended by a separate Amending Agreement dated as of March 8, 2002;

"**ULC1**" has the meaning set forth in the preamble of this Agreement;

"**ULC1 Common "B" Share Purchase Agreement Claim**" means Claim No. 4514 of ULC1 against QCH listed on Exhibit A;

"**ULC1 Common "B" Share Purchase Agreement Guarantee Claim**" means Claim No. 4511 of ULC1 against CORPX listed on Exhibit A;

"**ULC1 Hybrid Note Structure**" means the contractual relationship among CORPX, QCH, ULC1 and CCEL, evidenced by, among other things, the Subscription Agreements, the Common "B" Share Purchase Agreements and the CCEL-ULC1 Term Debentures;

"**ULC1 Indenture**" has the meaning set forth in Recital C;

"**ULC1 Indenture Trustee**" has the meaning set forth in the preamble of this Agreement;

"**ULC1 Indenture Trustee Fees**" has the meaning set forth in Section 3.3(a)(ii)(D);

"**ULC1 Indenture Trustee Notes Claim**" means the Claim of the ULC1 Indenture Trustee, on behalf of itself and the ULC1 Noteholders, against ULC1 arising under the ULC1 Indenture;

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim**" has the meaning set forth in Section 3.3(a)(i);

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount**" has the meaning set forth in Section 3.3(b)(ii);

"**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment**" has the meaning set forth in Section 3.3(b)(ii);

"**ULC1 Indenture Trustee Notes Guarantee Claim**" means the Claim of the ULC1 Indenture Trustee, on behalf of all ULC1 Noteholders, against CORPX, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim, arising under the CORPX Notes Guarantee;

"**ULC1 Indenture Trustee Notes Guarantee Proof of Claim**" means the proof of claim No. 5742 filed in the U.S. Proceedings, in the Filed Amount, as of the Petition Date;

"**ULC1 Noteholders**" means all holders of the ULC1 Notes;

"**ULC1 Releasees**" has the meaning set forth in Section 3.7:

"**ULC1 Security Interest**" means the valid, duly-perfected, first-priority security interest granted by CCEL to ULC1 pursuant to the CCEL-ULC1 Term Debentures, which security interest encumbers, among other things, the rights, interests and benefits of CCEL under the CORPX Subscription Agreement Guarantee, including the CCEL Subscription Agreement Guarantee Claim, and the proceeds thereof;

"**ULC1 Notes**" has the meaning set forth in Recital C;

"**ULC2**" has the meaning set forth in the preamble of this Agreement;

"**ULC2 Accrued Interest"** has the meaning set forth in Section 2.3(e)(vi);

"**ULC2 Indenture**" means that certain Indenture dated as of October 18, 2001 between ULC2 and Wilmington Trust Company;

"**ULC2 Indenture Trustee**" means Manufacturers and Traders Trust Company, solely in its capacity as indenture trustee under the ULC2 Indenture;

"**ULC2 Indenture Trustee's Allowed Guarantee Claim**" has the meaning set forth in Section 2.3(e)(iii);

"**ULC2 Senior Notes**" means (i) £200 million 8.875% Senior Notes due October 15, 2011 issued by ULC2 on October 18, 2001, and (ii) €175 million 8.375% Senior Notes due October 15, 2008 issued by ULC2 on October 18, 2001;

"**United States Dollars**", "**US Dollars**" and "**US$**" each means lawful money of the United States of America;

"**U.S. Administrative Claims**" has the meaning set forth in Section 2.3(d)(i);

"U.S. Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York;

"**U.S. Debtors**" means, collectively, CORPX and those of its U.S. subsidiaries that are debtors in the U.S. Proceedings;

"**U.S. Order**" has the meaning set forth in Section 2.8(b);

"**U.S. Guaranteed Claims Determination Order**" has the meaning set forth in Section 2.8(b)(v);

"**U.S. Proceedings**" means the proceedings pending in the U.S. Bankruptcy Court under Case No. 05-60200, in Re: Calpine Corporation, et al.

1.2 Headings

The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references herein to "**Articles**", "**Sections**" or "**Schedules**" are to articles or sections of, or schedules to, this Agreement.

1.3 Gender and Number

In this Agreement, unless the context indicates otherwise, words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa.

1.4 Day Not a Business Day

In the event that any day on or before which any action is required to be taken hereunder is not a Business Day, then such action will be required to be taken on or before the requisite time on the next succeeding day that is a Business Day.

1.5 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.6 Construction

The words "including" and "includes" where used in this Agreement will be deemed to mean "including, without limitation" and "includes, without limitation", respectively.

ARTICLE II
SETTLEMENT BETWEEN THE U.S. DEBTORS AND CANADIAN DEBTORS

2.1 Mutual Release of Claims.

Except as otherwise is specifically provided herein, as of the Effective Date:

(a) the Canadian Debtors, for themselves, their successors, assigns, and the Canadian Affiliates, and anyone claiming through them (including, without limitation, creditors of the Canadian Debtors claiming through the Canadian Debtors) (each in their capacity as such) hereby irrevocably, fully, finally, and forever waive, release, and discharge any and all Claims against all of the entities constituting Calpine U.S. and their successors, assigns, affiliates (other than the Canadian Debtors and Canadian Affiliates) and estates, in law, equity or otherwise, including all Claims filed by the Canadian Debtors in the U.S. Proceedings, all of which shall be withdrawn with prejudice; and

(b) all of the entities constituting Calpine U.S. for themselves and their successors, assigns, affiliates (other than the Canadian Debtors and the Canadian Affiliates, but including the estates of the U.S. Debtors established under the Bankruptcy Code), and anyone claiming through them (including, without limitation, creditors of the U.S. Debtors claiming through the U.S. Debtors) (each in their capacity as such) hereby irrevocably, fully, finally, and forever waive, release, and discharge any and all Claims against the Canadian Debtors and their successors, assigns and the Canadian Affiliates, in law, equity or otherwise, including all Claims filed by the U.S. Debtors in the CCAA Proceedings (including any Claims relating to the sales proceeds of the sale of the Saltend Energy Centre), all of which shall be withdrawn with prejudice,

provided that the Parties do not intend for this Section 2.1 to constitute, and in no event shall this Section 2.1 be deemed to be a release by the Canadian Debtors or by Calpine U.S., as the case may be, of any of the Claims listed on Exhibit D and Exhibit E.

2.2 Release of Claims Listed on Exhibit A and Exhibit B

(a) Notwithstanding the introductory language of Section 2.1, the parties hereby agree that, for the purposes of the Claims listed on Exhibit A and Exhibit B, the releases and withdrawals of such Claims, as prescribed by Section 2.1, shall become effective on a date as mutually agreed in writing by the Canadian Debtors and the U.S. Debtors but in no event later than the POR Effective Date, provided, however, that the Canadian Debtors and the U.S. Debtors may, by mutual written agreement entered into on or prior to the POR Effective Date:

(i) elect to delay the effectiveness of the release and withdrawal of one or more of the Claims listed on Exhibit A and Exhibit B to a date that is subsequent to the POR Effective Date, or

(ii) elect to exclude one or more of the Claims listed on Exhibit A or Exhibit B from the release and withdrawal prescribed by Section 2.1, in which event such excluded Claims shall remain subject to the treatment set forth in Section 2.2(b).

(b) With effect as of the Effective Date, and pending any release and/or withdrawal contemplated by Section 2.2(a), the Canadian Debtors and the U.S. Debtors hereby agree that any distributions on any of the Claims listed in Exhibit A and Exhibit B shall only be made after distributions have been made on account of all other Claims against the applicable Canadian Debtor or U.S. Debtor, provided, however, that the Canadian Debtors and the U.S. Debtors may, by mutual written agreement, elect to exclude one or more of the Claims listed on Exhibit A or Exhibit B from the treatment contemplated by this Section 2.2(b).

(c) For the avoidance of doubt, the Canadian Debtors and the U.S. Debtors hereby acknowledge and agree that this Section 2.2 shall not cause the settlement or extinguishment of any Claims listed in Exhibit A and Exhibit B prior to the POR Effective Date, unless such Claims are satisfied in full.

2.3 Settlements and other Resolutions of Claims.

(a) Delay for Distribution of CCEL Claims. With effect as of the Effective Date, CCEL hereby agrees that distributions, if any, on all of the Claims of CCEL against CCRC including any Claims arising from the ULC1 Hybrid Note Structure, shall only be made after distributions have been made on account of the Claims against CCRC in the priority set forth in Section 2.9(e).

(b) Settlement of CCRC ULC1 Notes Claim.

(i) Subject to Article IV, with effect as of the CCRC ULC1 Notes Sale, the U.S. Debtors shall withdraw, with prejudice, their partial objection filed in the U.S. Proceedings to Proof of Claim No. 5742 relating to the CCRC ULC1 Notes [Docket No. 3667].

(ii) Subject to Article IV, with effect as of the CCRC ULC1 Notes Sale, the U.S Debtors hereby irrevocably waive their right to assert any other Claims and/or defences in respect of the CCRC ULC1 Notes against CCRC or any prior or subsequent owner of the CCRC ULC1 Notes (including any Bond Differentiation Claims and/or any Claims and/or defences with respect to the sales proceeds from the sale of the Saltend Energy Centre) and any discovery rights in relation to any such Claims and/or defences.

(c) Settlement of Canada and U.S. Intercompany Claims. As of the Effective Date:

(i) the dollar amount of all Intercompany Claims is as set forth in Exhibit D attached hereto;

(ii) the Intercompany Claims in the dollar amounts set forth in Exhibit D will be allowed, general non-subordinated unsecured Claims against the applicable debtor(s) in the U.S. Proceedings or the CCAA Proceedings, as the case may be, that will be treated the same as all other allowed non-subordinated general unsecured Claims against the applicable Debtor(s) under any POR or under any POA, as the case may be;

(iii) Claim No. 4448 of CCRC against QCH set forth on Exhibit D, which includes CCRC's Claim against the U.S. Debtors in respect of the liability of CCRC for applicable non-resident withholding taxes related to the intercompany advance that is the basis of Claim No. 4448, shall be satisfied through the granting to CCRC in the U.S. Proceedings of an allowed non-subordinated general unsecured Claim (not subject to set-off, counterclaim or defence) against QCH, in the amount of US$232 million (the "**CCRC Claim**"), which CCRC Claim shall be guaranteed in full by CORPX;

(iv) in no event shall distributions to CCRC under the POR on account of the CCRC Claim (or any guarantee thereof) exceed an amount equal to C$181,431,000 (plus an amount equal to the aggregate of all liabilities and obligations of CCRC for tax penalties and interest, if any, arising from the non-resident withholding taxes described in Section 2.3(c)(iii)). The CCRC Claim shall be calculated for distribution purposes in U.S. dollars in an amount yielded by the conversion from Canadian dollars at the noon spot rate effective as of the date of confirmation of the POR for Canadian currency of Scotiabank, and such conversion shall be calculated and performed in consultation with the Monitor. Unless otherwise prohibited by order in the U.S. Proceedings or the CCAA Proceedings, QCH shall pay or make distributions on account of interest at the rate set out in the promissory note supporting Claim No. 4448; and

(v) except as otherwise specifically provided in this Section 2.3(c), the Parties acknowledge and agree that the rights of the Canadian Debtors with respect to the treatment under any POR of any allowed Intercompany Claims of the Canadian Debtors (including with respect to any possible substantive consolidation of some or all of the U.S. Debtors and their estates), and the rights of the U.S. Debtors with respect to the treatment under any POA of any allowed Intercompany Claims of the U.S. Debtors (including with respect to any possible substantive consolidation of some or all of the Canadian Debtors), shall be fully preserved.

(d) Post-Petition Claims.

(i) The Canadian Debtors shall retain any administrative expense priority claims that have been, or may in the future be, asserted against the U.S. Debtors in the U.S. Proceedings pursuant to Section 503(b) or any other applicable provisions of the Bankruptcy Code relating to goods or services rendered by any Canadian Debtor to one or more of the U.S. Debtors

following the Petition Date (the "**U.S. Administrative Claims**"), provided, however, that the U.S. Debtors reserve their rights with respect to the allowance of any such U.S. Administrative Claims.

(ii) The U.S. Debtors shall retain:

(A) any Restructuring Claims that have been, and may in the future be, asserted against the Canadian Debtors in the CCAA Proceedings, and

(B) any claims for unpaid costs and expenses pursuant to paragraphs 9(a) and 18(a) of the Initial Order of the Canadian Court, relating to goods or services rendered by any U.S. Debtor to one or more of the Canadian Debtors following the Petition Date ("**Canadian Administrative Claims**"), including:

(1) goods or services provided by any U.S. Debtor to any Canadian Debtor in connection with that certain Transition Agreement between Calpine Canada Power Ltd. and HCP Acquisition Inc. dated February 13, 2007;

(2) any amounts in CESCA bank accounts owing to U.S. Debtors relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(3) any amounts in CESCA bank accounts owing to the U.S. Debtors relating to Canadian Goods and Services Tax refunds relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(4) the U.S. Debtors' share of any U.S. posted refundable deposits in CESCA bank accounts relating to U.S. postpetition gas procurement and transportation activity under CESCA contracts;

(5) any reasonable attorneys' fees and reasonable costs incurred in connection with the dissolution of the Saltend Corporate Entities and/or the liquidation of the assets of the Saltend Corporate Entities; and

(6) any other appropriate and supportable Canadian Administrative Claims;

provided, however, that the Canadian Debtors reserve their rights with respect to allowance of any such Restructuring Claims and Canadian Administrative Claims.

(e) Settlement of ULC2 Claims.

As of the Effective Date:

(i) the ULC2 Indenture Trustee, in its capacity as such and on behalf of the ULC2 Noteholders, is hereby afforded one allowed general unsecured Claim in the CCAA Proceedings against ULC2 in an amount in Canadian Dollars equivalent to the following amounts and in respect of the following components:

(A) for outstanding principal amount of the ULC2 Senior Notes, £121,409,000 and €117,360,000;

(B) for accrued and unpaid interest until the Petition Date, £1,975,426 and €1,801,965;

(C) for accrued and unpaid interest from December 21, 2005 through the date of distribution, £14,037,494 and €12,804,873 as of April 15, 2007, plus a per diem amount equal to £29,931 and €27,303 to and including the date of distribution;

(D) an amount equal to the reasonable professional fees, costs and expenses of the Ad Hoc ULC2 Noteholders Committee and the ULC2 Indenture Trustee, including the reasonable professional fees, costs and expenses of their respective U.S. and Canadian counsel incurred in connection with the U.S. Proceedings and CCAA Proceedings (collectively, the "**Reasonable Costs**") through to the date of distribution in the CCAA Proceedings;

all on account of the ULC2 Senior Notes (collectively, the "**Allowed ULC2 Indenture Trustee Claim**"). The Parties hereby acknowledge and agree that the components of the Allowed ULC2 Indenture Trustee Claim are and will be denominated in United States Dollars, Euros and/or British Pounds Sterling (as applicable), and that any such amounts as may be payable by a Canadian Debtor hereunder, or as may be allowed as a Claim in the CCAA Proceedings, shall be paid or allowed, as the case may be, in Canadian Dollars in an amount yielded by the conversion from United States Dollars, Euro and/or British Pounds Sterling (as applicable) at the noon spot rate effective on the date of distribution for Canadian currency of Scotiabank, and such conversion shall be calculated and performed in consultation with the Monitor;

(ii) ULC2 is hereby afforded one general, unsecured Proven Claim in the CCAA Proceedings against CCRC (the "**Allowed ULC2 Claim**") in an amount not less than an amount equal to the aggregate of the Allowed ULC2 Indenture Trustee Claim plus all other Proven Claims against ULC2.

(iii) the ULC2 Indenture Trustee is hereby granted one allowed, general unsecured Claim in the U.S. Proceedings against CORPX in an amount equal to US$361,660,821.40 (the "**ULC2 Indenture Trustee's Allowed Guarantee Claim**");

(iv) the U.S. and Canadian Debtors hereby acknowledge and agree that:

(A) any recovery by the ULC2 Indenture Trustee pursuant to this Section 2.3(e) shall come first from distributions from ULC2 in the CCAA Proceedings and, to the extent of any deficiency, second from distributions in the U.S. Proceedings, and

(B) any recovery by the ULC2 Indenture Trustee from ULC2 pursuant to this Section 2.3(e) will be applied as follows: first, to Reasonable Costs; second, to interest calculated in accordance with Section 2.3(e)(i)(B) and(C); and third, to principal owing in respect of the ULC2 Senior Notes.

(v) the U.S. Debtors hereby acknowledge and agree that any recovery received by the ULC2 Indenture Trustee from ULC2 pursuant to this Section 2.3(e) will not reduce the amount of the ULC2 Indenture Trustee's Allowed Guarantee Claim and that there shall be no reallocation of payments received in the CCAA Proceedings of Reasonable Costs or interest to payment of principal in respect of the Allowed ULC2 Indenture Trustee Claim; provided, however, that the ULC2 Indenture Trustee shall not be entitled to receive any distributions under or through the POR in excess of any portion of the ULC2 Indenture Trustee's Allowed Guarantee Claim that remains unpaid after any distributions are made on the Allowed ULC2 Indenture Trustee Claim in the CCAA Proceedings (and after such distributions are allocated as provided in the first paragraph of this Section 2.3(e)(v)), unless the POR provides for the payment of interest accruing from and after the Petition Date on similarly situated claims, in which case the ULC2 Indenture Trustee's Allowed Guarantee Claim shall include a Claim in respect of such accrued interest; and

(vi) the U.S. Debtors and the Canadian Debtors hereby acknowledge and agree that the ULC2 Indenture Trustee may assert, in the CCAA Proceedings and/or the U.S. Proceedings, on their own behalf or on behalf of the ULC2 Noteholders, that it is entitled to payment of amounts beyond those encompassed in the Allowed ULC2 Indenture Trustee Claim and/or the ULC2 Indenture Trustee's Allowed Guarantee Claim, including interest accrued on amounts of unpaid interest due and owing from April 15, 2006 to the date of distribution ("**ULC2 Accrued Interest**"), fees incurred in the Harbert Litigation, and/or a "make-whole amount". The U.S. Debtors and the Canadian Debtors reserve all of their respective rights to contest any such assertion.

(f) Settlement of Claims against Canadian Debtors with related CORPX Guarantees.

(i) Forthwith following the date of this Agreement, the U.S. and Canadian Debtors shall request that the U.S. Bankruptcy Court and Canadian Court, respectively, set aside any orders outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol. Following the date of this Agreement, the U.S. and Canadian Debtors hereby agree to confer in good faith to determine whether any remaining Claims unresolved by this Agreement warrant the approval of a claims specific protocol by the U.S. Bankruptcy Court and the Canadian Court.

(ii) Forthwith following the date of this Agreement, the Canadian Debtors shall seek and consent to a Canadian Guaranteed Claims Determination Order. The Canadian Debtors hereby agree that the U.S. Debtors and Committees will be entitled to the same document production, written and oral discovery, evidence presentation and appeal rights as any other full party in interest in the CCAA Proceedings with respect to the adjudication of Guaranteed Claims.

(iii) From the date of this Agreement, the Canadian Debtors shall not commence the process for the delivery of further notices of revision or notices of disallowance by the Monitor pursuant to paragraph 23 of the Claims Procedure Order, nor seek any determination with respect to any Guaranteed Claim, without the written consent of the U.S. Debtors; provided, however, that nothing herein shall be construed as limiting the Canadian Court from continuing to exercise its jurisdiction over such process.

(iv) From the date of this Agreement, no Guaranteed Claim shall be settled or otherwise consensually resolved by the Canadian Debtors or the Monitor without the written consent of the U.S. Debtors.

(v) From the date of this Agreement, the U.S. Debtors and the Canadian Debtors shall cooperate with each other in sharing with and otherwise making available to each other such documents, information and witnesses relating to the Guaranteed Claims and the position of each with respect thereto, all in accordance with the terms of a common interest privilege agreement to be negotiated and agreed upon by both Parties, acting reasonably.

(vi) Forthwith following the date of this Agreement, the U.S. Debtors shall seek and consent to a U.S. Guaranteed Claims Determination Order.

(vii) Nothing herein shall be interpreted or construed so as to prevent the U.S. Debtors from collecting from the Canadian Debtors any guarantee fee to which the U.S. Debtors are contractually entitled.

(g) Settlement of Greenfield Litigation.

(i) Forthwith following the date of this Agreement, CCNGP shall apply to the Canadian Court to request that the CCNGP Action be dismissed with prejudice and without costs and shall consent to such dismissal, with such dismissal to be effective as of the Effective Date (the "**Greenfield Dismissal Order**").

(ii) The U.S. Bankruptcy Court's order approving this Agreement shall contain language amending that certain Stipulation and Agreed Order Approving Interim Resolution of Certain Disputes Relating to the Greenfield Energy Centre [Docket No. 4345], dated April 12, 2007, to make it consistent with the terms of this Agreement.

(h) TTS Allocation.

Upon the Effective Date, the sale proceeds from the sale of Thomassen Turbine Systems, B.V. held under the Escrow Agreement dated as of September 15, 2006 among CCRC, Power Systems MFG., LLC, Calpine European Finance, LLC, Calpine Unrestricted Holdings, LLC and CORPX shall be distributed 50% to CCRC and 50% to CORPX, net of escrow fees and other reasonable administrative expenses to be shared equally by CCRC and CORPX, pursuant to the terms of such Escrow Agreement. CCRC, in its sole discretion, may elect to not share in the TTS sale proceeds and, in so doing, CCRC will reduce the amount payable pursuant to the Allowed U.S. Administrative Charge by the amount CCRC would have received from the TTS sale proceeds had CCRC not so elected to not share in the TTS sale proceeds.

2.4 Sale of CCRC ULC1 Notes and Charge Upon the Proceeds in Favor of the U.S. Debtors.

(a) Forthwith following the date of this Agreement, CCRC shall commence a process for the sale of the CCRC ULC1 Notes (the "**CCRC ULC1 Notes Sale**") so as to be in a position, as soon as practicable following the Approval Date, to pursue and complete the CCRC ULC1 Notes Sale, subject to the provisions of Section 2.4(b) below.

(b) As soon as reasonably practicable following the Approval Date, CCRC shall, subject to the provisions of this Section 2.4(b), conclude the CCRC ULC1 Notes Sale, which CCRC ULC1 Notes Sale:

(i) shall be at a price and on other terms satisfactory to CCRC in its sole discretion acting reasonably, and with the consent of the Monitor, and consistent with CCRC's duties to maximize value for its stakeholders; and

(ii) shall be pursuant to an order of the Canadian Court (the "**Canadian ULC1 Notes Sale Order**") that:

(A) shall be in substantially the form attached hereto as Schedule IV; and

(B) shall be acceptable to the U.S. Debtors acting reasonably.

(c) From the Approval Date until the closing of the CCRC ULC1 Note Sale, the Canadian Debtors and the Monitor will consult with the Canadian Debtors' stakeholders, including the U.S. Debtors, about the CCRC ULC1 Notes Sale terms and process as it develops. The Canadian Debtors and the Monitor shall report to the Canadian Court on the progress of the CCRC ULC1 Notes Sale if such sale has not closed by a date that is 30 days after the Approval Date.

(d) From the Approval Date until the closing of the CCRC ULC1 Note Sale, the U.S. Debtors shall provide any and all administrative cooperation required by the Canadian Debtors to effect the CCRC ULC1 Notes Sale pursuant to authority provided by an order of the U.S. Bankruptcy Court, which order shall be acceptable to the Canadian Debtors acting reasonably and shall be part of the U.S. Order.

(e) CORPX shall be granted, and the Canadian Debtors shall seek and consent to, an allowed first ranking charge (the "**Allowed U.S. Administrative Charge**") against CCRC on the net proceeds from the CCRC ULC1 Notes Sale in the amount of US$75 million, without interest, with priority of distribution over any distributions made by CCRC on account of: (i) the Direct Claims Against CCRC, and (ii) the CCRC Partnership Claims.

(f) As soon as practicable after closing of the CCRC ULC1 Notes Sale and the occurrence of the Effective Date, the Canadian Debtors shall apply for and use their commercially reasonable efforts to obtain an order of the Canadian Court authorizing an immediate distribution of cash from CCRC to CORPX on account of the Allowed U.S. Administrative Charge and to pay all of the Direct Claims Against CCRC in full.

2.5 Allocation of Costs.

The payment of any amounts under this Agreement shall be subject to the Monitor and the Canadian Debtors being reasonably satisfied that, following such payment, the Canadian Debtors shall retain sufficient funds to pay the following amounts in full, when such amounts become due and payable:

(a) the amounts payable pursuant to the KERP. Without limiting the foregoing, the Parties hereby agree that the amount of the Pool 4 payments payable pursuant to the KERP is equal to C$1,331,000.

(b) the professional costs of the Canadian Debtors and Monitor, as may be allocated by the Monitor, acting reasonably.

2.6 Mutual Tax Benefits.

The U.S. and Canadian Debtors shall use commercially reasonable efforts to cooperatively implement, perform and execute the terms of the Agreement in a manner that is tax advantageous for both the U.S. Debtors and the Canadian Debtors while retaining the same

economic benefits of the Agreement. Such efforts (which may occur before the Effective Date) may include, without limitation:

(a) taking steps so as to change the tax classification of any of the U.S. Debtors or Canadian Debtors, including the making of any elections necessary to change such classification;

(b) the issuance of stock by CORPX to any direct or indirect subsidiaries of CORPX as a capital contribution or in exchange for shares of the subsidiary;

(c) the reduction of capital in any direct or indirect subsidiary of CORPX;

(d) the payment or the repayment of any indebtedness in order to avoid withholding tax;

(e) the delivery or transfer of CORPX stock in payment of any intercompany indebtedness;

(f) the transfer of contractual rights against a Canadian Debtor from one U.S. Debtor to a different U.S. Debtor; or

(g) the implementation of Section 2.2.

2.7 Plan Matters

(a) The Parties acknowledge and agree that the Claims between the Canadian Debtors and the U.S. Debtors listed in Exhibit E shall be subject to treatment under any POR, provided that the U.S. Debtors hereby reserve all rights with respect to the allowance of such Claims, and the Canadian Debtors hereby reserve all rights to argue that such Claims should be allowed in such amounts that they believe are appropriate, and reserve all rights with respect to the treatment of such Claims.

(b) The U.S. Debtors hereby covenant that they shall not propose or support any POR that is inconsistent with the terms of this Agreement.

(c) The Canadian Debtors hereby covenant that they shall not propose or support any POA that is inconsistent with the terms of this Agreement.

2.8 Court Approval Process.

(a) Forthwith following the date of this Agreement, the Canadian Debtors shall seek and consent to an order, in substantially the form attached hereto as Schedule II (the "**Canadian Order**"), from the Canadian Court approving this Agreement, which order shall include:

(i) an order barring forever all Claims (except as otherwise specifically provided in this Agreement) by the Canadian Debtors and U.S. Debtors, and their respective successors, assigns, applicable affiliates, and anyone (including creditors of the respective Canadian and U.S. Debtors) claiming

through them (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, including Claims for oppression or similar statutory or common law relief;

(ii) a provision whereby, in the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to the ULC2 Accrued Interest, fees they incurred in the Harbert Litigation, and/or to a "make-whole amount", has not been resolved by the date upon which distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, as may be subsequently determined by the U.S. Bankruptcy Court to be payable in accordance with the terms of the Indenture and related agreements, which are governed by New York law;

(iii) a provision whereby CORPX shall be granted, and the Canadian Debtors agree to seek and consent to, the Allowed U.S. Administrative Charge against CCRC on the net proceeds from the CCRC ULC1 Notes Sale in the amount of US$75 million, without interest, with priority of distribution over any distributions made by CCRC on account of (i) the Direct Claims Against CCRC, and (ii) any CCRC Partnership Claims;

(iv) an order made under paragraph 29 of the Claims Procedure Order (the "**Canadian Guaranteed Claims Determination Order**"), which grants to the U.S. Debtors, and the official statutory committees appointed in the U.S. Proceedings (the "**Committees**"), full standing in any claims determination hearing process held by the Canadian Court (and any Canadian appellate court) in respect of the Guaranteed Claims. Without limiting the generality of the foregoing, the U.S. Debtors and the Committees will be entitled to all document production, written and oral discovery, evidence presentation and appeal rights as any other full party in interest. The Canadian Guaranteed Claims Determination Order will also provide for the manner of participation in the judicial claims determinations of Guaranteed Claims by guarantors who have admitted their guarantee obligations to ensure that such guarantors have all of their rights of participation preserved, including the right to raise and have fully determined any defences that the Canadian Debtor or Monitor could have raised to the creditor's claims notwithstanding any statements of the Canadian Debtors' positions in any notices of revision that they have issued to date;

(v) an order that any orders of the Canadian Court outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol be set aside; and

(vi) an order releasing CCEL from all CCEL Member Liability Claims, and barring forever all CCEL Member Liability Claims.

(b) Forthwith following the date of this Agreement, the U.S. Debtors shall seek and consent to an order, in substantially the form attached hereto as Schedule III (the "**U.S. Order**"), from the U.S. Bankruptcy Court approving this Agreement which order shall include:

(i) an order barring forever all Claims (except as otherwise specifically provided in this Agreement) by the Canadian Debtors and U.S. Debtors, and their respective successors, assigns, applicable affiliates, and anyone (including creditors of the respective Canadian and U.S. Debtors) claiming through them (all in their capacity as such), against the other, whether or not asserted in the CCAA Proceedings, the U.S. Proceedings or other court proceedings, including Claims for oppression or similar statutory or common law relief;

(ii) a provision whereby, in the event that the entitlement of the ULC2 Indenture Trustee and/or the ULC2 Noteholders to ULC2 Accrued Interest, fees they incurred in the Harbert Litigation, and/or to a "make-whole amount", has not been resolved by the date upon which distributions are to be made from CCRC, CCRC may establish and fund, as appropriate, an escrow account or other reserve for the payment of such amounts, as may be subsequently determined by the U.S. Bankruptcy Court to be payable in accordance with the terms of the Indenture and related agreements, which are governed by New York law;

(iii) a provision detailing all administrative cooperation required by the Canadian Debtors to effect the CCRC ULC1 Notes Sale;

(iv) an order that any orders of the U.S. Bankruptcy Court outstanding as of the date of this Agreement requiring the negotiation and approval of a claims specific protocol be set aside.

(v) an order (the "**U.S. Guaranteed Claims Determination Order**"), which shall:

(A) waive the U.S. Debtors' right to challenge any alleged guarantee of the Guaranteed Claims;

(B) grant comity to the determination by the Canadian Court (and any Canadian appellate court) of the validity and quantum of any Guaranteed Claim; and

(C) provide that Claims filed in the U.S. Proceedings on account of any Guaranteed Claims will be allowed, as general unsecured non-subordinated claims against the U.S. Debtor that is the guarantor, in the U.S. Proceedings in the amount of the Guaranteed Claim as determined by the Canadian Court, without any further claim adjudication process or order of the U.S. Bankruptcy Court and

without any right of any party in interest to challenge the validity or quantum of such allowed Guaranteed Claims;

provided, however, that the holders of the Guaranteed Claims shall not be entitled to actually receive any distributions under or through the POR in excess of any actual unpaid portion of such Guaranteed Claims, unless the POR provides for the payment of postpetition interest on other general unsecured non-subordinated Claims, in which case the Guaranteed Claims shall include postpetition interest.

2.9 Conditions to Settlement between the U.S. Debtors and the Canadian Debtors

Except as otherwise specifically provided for in this Agreement, the obligations of each of the Parties to complete the transactions contemplated in Article II of this Agreement are subject to the satisfaction of, or compliance with, on or prior to the Outside Date, each of the following conditions, provided that the U.S Debtors and the Canadian Debtors may mutually agree in writing to waive, one or more of the following conditions or any term or condition thereof (and in the case of waiver of any of the conditions specified in Section 2.9(b)(i), 2.9(b)(ii) or 2.9(f), such mutual written agreement shall include the ULC1 Indenture Trustee):

(a) Compliance with and Performance of Covenants. Each party will have fulfilled or complied in all material respects with all covenants and obligations set forth in the following provisions of this Settlement Agreement, to be fulfilled or complied with by it at or prior to the Effective Date:

(i) Section 2.3(b);

(ii) Section 2.3(f);

(iii) Section 2.3(g);

(iv) Section 2.4;

(v) Section 2.5;

(vi) Section 2.6; and

(vii) Section 2.8.

(b) Court Approvals. The following orders will have been granted and be in full force and effect:

(i) the U.S. Order will have been entered by the U.S. Bankruptcy Court.

(ii) the Canadian Order will have been entered by the Canadian Court.

(iii) the Canadian Guaranteed Claims Determination Order will have been entered by the U.S. Court.

(iv) the U.S. Guaranteed Claims Determination Order will have been entered by the Canadian Court.

(v) the Canadian ULC1 Notes Sale Order will have been entered by the Canadian Court.

(c) Sale of CCRC ULC1 Notes. CCRC shall have sold the CCRC ULC1 Notes (the "**CCRC ULC1 Notes Sale**") in accordance with Section 2.4.

(d) Withdrawal of Certain Non Debtor Claims. The Claims set forth on Exhibit G shall have been withdrawn with prejudice or dismissed with prejudice.

(e) Settlement of Priorities at CCRC. The Canadian Court shall have ordered, as part of the Canadian Order, that the priorities of Claims against CCRC shall be as follows:

(i) all Direct Claims Against CCRC are to be paid before any CCRC Partnership Claims; and

(ii) all CCRC Partnership Claims are to be paid before any of CCEL's Claims against CCRC.

(f) Settlement Between the U.S. Debtors and the ULC1 Indenture Trustee. The conditions set forth in Section 3.8 shall have been satisfied or waived in writing by the Parties on or prior to the Effective Date.

ARTICLE III
SETTLEMENT BETWEEN THE U.S. DEBTORS AND THE ULC1 INDENTURE TRUSTEE

3.1 Representations and Warranties Relating to the ULC1 Indenture Trustee.

The ULC1 Indenture Trustee, for itself, represents and warrants to CORPX and the Canadian Debtors as follows:

(a) Organization, Existence, Good Standing and Authority. The ULC1 Indenture Trustee is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute this Agreement and to consummate the transactions contemplated hereby.

(b) Corporate Power. The ULC1 Indenture Trustee has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (A) have been duly and validly authorized by it and (B) are not in contravention of its organization documents or any material agreement specifically applicable to it. Without limiting the foregoing, the ULCI Indenture Trustee hereby represents and warrants that it has received a written and binding direction from holders of a majority in aggregate principal amount of each of the two series of the ULC1

Notes to enter into this Agreement, and to take all such further actions necessary or appropriate to consummate the transactions contemplated by this Agreement.

(c) Enforceability. Subject to the entry of the U.S. Order, this Agreement constitutes the legal, valid and binding obligation of the ULC1 Indenture Trustee, enforceable against it in accordance with its terms.

(d) No Violation. The execution, delivery and performance of this Agreement does not and will not (i) violate any law, rule, regulation or court order to which the ULC1 Indenture Trustee is subject; or (ii) conflict with or result in a breach of the organizational or governing documents of the ULC1 Indenture Trustee or any agreement or instrument to which it is a party or by which it or its properties are bound.

(e) No Proceedings Adversely Affect Agreement. No proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against the ULC1 Indenture Trustee which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

3.2 Withdrawal of Marker Claims.

With effect as of the Effective Date:

(a) the HSBC U.S. Marker Claims shall be withdrawn with prejudice or dismissed with prejudice; and

(b) the HSBC Canadian Marker Claims shall be withdrawn with prejudice or dismissed with prejudice.

3.3 Allowance, Treatment and Classification of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim.

(a) Allowance. The U.S. Debtors and the ULC1 Indenture Trustee hereby acknowledge and agree that:

(i) as of the Effective Date, the ULC1 Indenture Trustee, on behalf of the ULC1 Noteholders, shall be afforded one allowed, general, unsecured Claim against CORPX's estate in the amount of US$3,505,187,751.63 (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim**") based upon the ULC1 Notes, which amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim is equal to the product of 1.65 times the Filed Amount[1];

[1] Approximately $134 million of ULC1 Notes are held by CORPX and $10 million of ULC1 Notes are held by QCH. For the avoidance of doubt, in addition to the ULC1 Notes held by parties other than the U.S. Debtors, the

(ii) the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall include the following components, each of which shall be deemed allowed:

(A) a claim for the outstanding principal balance of the ULC1 Notes, together with accrued and unpaid interest thereon, as of the Petition Date, as set forth in the ULC1 Indenture Trustee Notes Guarantee Proof of Claim;

(B) a claim for the accrued and unpaid interest on the Filed Amount at the contract rate from the Petition Date up to and including the date on which the ULC1 Indenture Trustee Notes Guarantee Allowed Claim (including interest compounded semi-annually) ("**Postpetition Interest**") is satisfied in full, to the extent provided in Section 3.3(b)(ii);

(C) a claim for the reasonable fees, costs and expenses of the Ad Hoc ULC1 Noteholders Committee, including the reasonable fees, costs and expenses of its U.S. and Canadian counsel and its financial adviser, incurred, and to be incurred, by the Ad Hoc ULC1 Noteholders Committee in connection with the U.S. Proceedings and the CCAA Proceedings (all such reasonable fees, costs and expenses, collectively, the "**Ad Hoc Committee Fees**"), in an amount not to exceed US$8 million; and

(D) a claim for the reasonable fees, costs and expenses of the ULC1 Indenture Trustee, including the reasonable fees, costs and expenses of its U.S. and Canadian counsel, incurred, and to be incurred, by the ULC1 Indenture Trustee in connection with the U.S. Proceedings and the CCAA Proceedings (all such reasonable fees, costs and expenses, collectively, the "**ULC1 Indenture Trustee Fees**").

(b) Treatment of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim under a POR.

(i) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that the ULC1 Indenture Trustee Notes Guarantee Claim (and the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, as a multiple of the Filed Amount of the ULC1 Indenture Trustee Notes Guarantee Claim) are substantially similar to the claims held by holders of the Calpine Senior Notes.

(ii) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that any POR to be filed, confirmed and consummated by CORPX and/or

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ULC1 Notes held by CORPX and QCH are also subject to the settlement embodied in this Agreement and shall have the same rights and benefits as other holders of ULC1 Notes under the Agreement.

the U.S. Debtors in the U.S. Proceedings shall afford to the ULC1 Indenture Trustee Notes Guarantee Allowed Claim the same treatment (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment**") as shall be afforded to the claims filed against CORPX that arise from the Calpine Senior Notes; provided, however, that the distribution to be made by CORPX in respect of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim pursuant to such POR shall not exceed an amount (the "**ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount**") equal to the aggregate of (i) the Filed Amount, (ii) the Postpetition Interest, (iii) the Ad Hoc Committee Fees, and (iv) the ULC1 Indenture Trustee Fees, in each of the foregoing instances, subject to the foreign exchange adjustment described in Section 3.3(b)(iii).

(iii) It is acknowledged that certain components of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim and the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount are denominated in Canadian Dollars. Without limitation, the indebtedness evidenced by the Canadian ULC1 Notes, including principal, accrued and unpaid interest thereon, and portions of the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees relating to the services of Canadian professionals) are and will be denominated in Canadian dollars. Such amounts of such components shall be allowed in the U.S. Proceedings and distributions under the POR shall be calculated in U.S. Dollars in an amount yielded by the conversion from Canadian Dollars at the noon spot rate effective on the fifth Business Day prior to the date of distribution under the POR for U.S. currency of Scotiabank, and such conversion shall be performed by CORPX and subject to the approval of the ULC1 Indenture Trustee.

(iv) CORPX and the ULC1 Indenture Trustee hereby acknowledge and agree that the POR shall provide that the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees shall be paid in full from the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount, on the effective date of the POR, in the same currency as is distributed in respect of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, unless CORPX, in consultation with its official unsecured creditors committee, has determined to pay the Ad Hoc Committee Fees and the ULC1 Indenture Trustee Fees in full, in cash, on the effective date of the POR as a "substantial contribution" administrative expense under Section 503(b) of the Bankruptcy Code. Notwithstanding anything herein to the contrary, for all purposes under a POR other than distributions (for example, voting), the amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall be deemed to be the Filed Amount.

(c) Classification of ULC1 Indenture Trustee Notes Guarantee Allowed Claim under POR.

CORPX, in its discretion, may classify the ULC1 Indenture Trustee Notes Guarantee Allowed Claim under a POR (i) separately in its own class; (ii) in a class that includes other Claims arising from senior, unsecured, funded indebtedness of CORPX; or (iii) otherwise, consistent with the provisions of the Bankruptcy Code, the Bankruptcy Rules and other applicable law; provided, however, that, in any of the foregoing cases, subject to the provisions of Section 3.3(b)(ii) hereof, the POR shall provide that the ULC1 Indenture Trustee Notes Guarantee Allowed Claim shall receive the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Treatment.

3.4 CORPX Support for Substantial Contribution Claim Application.

In the event that, as a prerequisite to the allowance of the Ad Hoc Committee Fees and/or the ULC1 Indenture Trustee Fees, as provided for in Section 3.2, the U.S. Bankruptcy Court requires or requests that the Ad Hoc ULC1 Noteholders Committee and/or the ULC1 Indenture Trustee, as the case may be, file an application with the U.S. Bankruptcy Court seeking an order allowing the Ad Hoc Committee Fees and/or the ULC1 Indenture Trustee Fees as an administrative expense for "substantial contribution" under Section 503(b) of the Bankruptcy Code, CORPX shall support such application(s) filed by the Ad Hoc ULC1 Noteholders Committee and/or the ULC1 Indenture Trustee and urge the U.S. Bankruptcy Court to grant it (or them) and enter such order.

3.5 Application of Distributions Under POR.

CORPX, on behalf of itself and the U.S. Debtors, agrees that any distribution received by the ULC1 Indenture Trustee or an agent of CORPX making distributions under the POR, as the case may be, on behalf of the ULC1 Indenture Trustee and/or the ULC1 Noteholders, pursuant to a POR shall be applied as follows: first, to the ULC1 Indenture Trustee Fees and the Ad Hoc Committee Fees, second, to Postpetition Interest, and third, to the Filed Amount. The portion of any such distribution that is allocable to the Ad Hoc Committee Fees shall be remitted by the ULC1 Indenture Trustee, or an agent of CORPX making distributions under the POR, as the case may be, to those ULC1 Noteholders who paid such fees in the first instance in accordance with written instructions to be delivered to the ULC1 Indenture Trustee, or such agent, as the case may be, by counsel to the Ad Hoc ULC1 Noteholders Committee.

3.6 Effect of Settlement Agreement on Proposal of POR and Voting by ULC1 Noteholders.

For the avoidance of doubt, nothing herein constitutes a "lock-up" of the votes of the Ad Hoc ULC1 Noteholders or any other ULC1 Noteholder for a POR. Nothing herein shall limit the ability of CORPX to propose a POR or the right of the ULC1 Indenture Trustee or the ULC1 Noteholders to vote to accept or reject such POR, contest confirmation of such POR, or take any other action that they deem appropriate in the U.S. Proceedings or the CCAA Proceedings that is not inconsistent with the Settlement. Nevertheless, the Parties agree that the amount of the ULC1 Indenture Trustee Notes Guarantee Allowed Claim, the ULC1 Indenture Trustee Notes

Guarantee Allowed Claim Plan Treatment, and the right of the ULC1 Indenture Trustee, on behalf of the ULC1 Noteholders, to receive, subject to the provisions of Section 3.3(b)(ii) hereof, a distribution under a POR up to the ULC1 Indenture Trustee Notes Guarantee Allowed Claim Plan Distribution Amount shall be irrevocably resolved for all purposes in accordance with the provisions of this Agreement.

3.7 Release of ULC1 Noteholders Under POR.

CORPX hereby agrees and covenants that any POR to be filed, confirmed and consummated by CORPX and/or the U.S. Debtors in the U.S. Proceedings shall provide that, provided that the POR is accepted by (a) at least two-thirds in amount of the outstanding aggregate principal amount of the ULC1 Notes held by ULC1 Noteholders that vote to accept or reject a POR and (b) more than one-half in number of the ULC1 Noteholders that vote to accept or reject a POR, as of the effective date (the "**POR Effective Date**") of such POR, to the fullest extent permissible under applicable law, CORPX, as debtor and debtor in possession, for itself and its officers, directors, employees, members, partners, representatives, attorneys, financial advisors, subsidiaries, affiliates, successors and assigns (other than the Canadian Debtors and the Canadian Affiliates, but including the estates of the U.S. Debtors established under the Bankruptcy Code), each in their capacity as such (collectively, the "**CORPX Releasors**"), shall be deemed absolutely, unconditionally and irrevocably, to release and forever discharge the ULC1 Indenture Trustee and the ULC1 Noteholders, together with their respective officers, directors, employees, members, partners, representatives, attorneys, financial advisors, subsidiaries, affiliates, successors and assigns, each in their capacity as such (collectively, the "**ULC1 Releasees**"), of and from any and all claims, demands, allegations, actions, causes of action, suits, debts, sums of money, accounts, reckonings, controversies, losses, damages, judgments, agreements, and warranties of any nature whatsoever, from the beginning of time through and including the POR Effective Date, whether fixed or contingent, asserted or unasserted, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, anticipated or unanticipated, which the CORPX Releasors, or any of them, have, had, claim to have had or hereafter claim to have against the ULC1 Releasees, or any of them, by reason of any act or omission on the part of the ULC1 Releasees, or any of them, occurring on or prior to the POR Effective Date and relating to or arising from the ULC1 Notes, the U.S. Proceedings, the CCAA Proceedings, the POR, the disclosure statement related to the POR, or the preparation, solicitation, confirmation, consummation and implementation of the POR.

3.8 Conditions to Effectiveness of the Settlement Agreement Between the U.S. Debtors and the ULC1 Indenture Trustee.

Except as otherwise specifically provided for in this Agreement, the obligations of each of the Parties to complete the transactions contemplated in Article III of this Agreement is subject to the satisfaction of, or compliance with, on or prior to the Outside Date, each of the following conditions, provided that the Parties may mutually agree in writing to waive, one or more of the following conditions (or any term or condition thereof):

(a) Withdrawal or Dismissal of HSBC U.S. Marker Claims. The HSBC U.S. Marker Claims shall have been withdrawn with prejudice or dismissed with prejudice.

(b) Withdrawal or Dismissal of HSBC Canadian Marker Claims. The HSBC Canadian Marker Claims shall have been withdrawn with prejudice or dismissed with prejudice.

(c) Withdrawal of Marker Claims. The marker claims filed by the Canadian Debtors against the U.S. Debtors that in any way are on account of, relate to, or arise from the transactions giving rise to, the ULC1 Notes shall have been withdrawn with prejudice or dismissed with prejudice.

(d) Settlement Between the U.S. Debtors and the Canadian Debtors. The conditions set forth in Section 2.9 shall have been satisfied or waived in writing, by the Parties on or prior to the Effective Date.

ARTICLE IV – FAILURE TO BECOME EFFECTIVE

In the event that: (i) any of the conditions set forth in Sections 2.9 and 3.8 are not satisfied (or, if permitted pursuant to this Agreement, are not waived by the relevant Parties pursuant to the terms of this Agreement) on or prior to the Outside Date, or (ii) the Parties, acting reasonably, mutually agree that one or more of the conditions set forth in Sections 2.9 and 3.8 will not be satisfied (or, if permitted pursuant to this Agreement, will not be waived by the relevant Parties pursuant to the terms of this Agreement) on or prior to the Outside Date, then the Parties hereto shall be returned to their respective positions as they existed before they executed this Settlement Agreement**.**

ARTICLE V
MISCELLANEOUS PROVISIONS APPLICABLE TO THIS SETTLEMENT AGREEMENT

5.1 Retention of U.S. Debtors' Equity Interests.

Notwithstanding any term or provision of this Agreement, the U.S. Debtors shall retain their equity interests in the Canadian Debtors, including for purposes of distributions in the CCAA Proceedings.

5.2 Further Assurances.

The Parties, and each of them, covenants to, from time to time, execute and deliver such further documents and instruments and take such other actions as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of this Agreement or to perform its obligations under this Agreement and the transactions contemplated thereby.

5.3 Benefit of Agreement.

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any Person other than the Parties hereto and their respective successors and assigns any legal or equitable benefit, right, remedy, cause of action or claim of any kind under or by reason of this Agreement or any covenant, condition or stipulation hereof.

5.4 Integration.

This Agreement, together with the exhibits and schedule hereto, constitutes the entire agreement and understanding among the Parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements, representations and understandings between or among any of the Parties hereto relating to such subject matter. In entering into this Agreement, the Parties and each of them acknowledge that they are not relying on any statement, representation, warranty, covenant or agreement of any kind made by any other party hereto or any employee or agent of any other party hereto, except for the representations, warranties, covenants and agreements of the Parties expressly set forth herein. For greater certainty, the Parties acknowledge and agree that the Global Settlement Outline and the Preliminary ULC1 Settlement Outline have been superseded in all respects by the provisions of this Agreement.

5.5 Counterparts; Facsimile Signatures.

This Agreement may be executed in any number of counterparts and by different Parties to this Agreement on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by any of the Parties by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement, shall be deemed to be an original signature hereto, and shall be admissible as such in any legal proceeding to enforce this Agreement.

5.6 Notices.

Any notice, demand, request, consent, approval, declaration or other communication under this Agreement shall be in writing and shall be given or delivered by personal delivery, by facsimile, by registered or certified mail (first class postage prepaid) or by a nationally recognized private overnight courier service addressed as indicated in Schedule I annexed hereto or to such other address (or facsimile number) as such party may indicate by a notice delivered to the other Parties hereto in accordance with the provisions hereof. Any notice, demand, request, consent, approval, declaration or other communication under this Agreement delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if sent by mail, on the earlier of the date of actual receipt or the fifth (5th) Business Day (as defined herein) after deposit in the United States mail, if delivered personally, on the date of such delivery, or, if sent via facsimile, on the date of the transmission of the facsimile, provided that the sender thereof receives confirmation that the facsimile was successfully delivered to the intended recipient. As used herein, the term "**Business Day**" means a day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

5.7 Amendment.

Except as otherwise specifically provided in this Agreement, no amendment, modification, rescission, waiver or release of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Canadian Debtors and U.S. Debtors. To the

extent any such amendment affects any other Party to this Agreement, the Canadian Debtors and U.S. Debtors shall obtain that Party's written consent to such amendment.

5.8 Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflict of law principles.

5.9 Assignment.

No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other Parties hereto, and any attempted assignment without such prior consent shall be null and void. No assignment of any obligations hereunder shall relieve any of the Parties hereto liable therefore of any such obligations.

5.10 Waiver.

Except as otherwise specifically provided in this Agreement, any provision of this Agreement may be waived only by a written instrument signed by the Party against whom enforcement of such waiver is sought.

5.11 Headings.

The descriptive headings of the sections of this Agreement are included for convenience of reference only and do not constitute a part of this Agreement.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

CALPINE CORPORATION, on behalf of itself and on behalf of each of its U.S. subsidiaries

Per: _____

Name:
Title:

CALPINE CANADA ENERGY LTD.

Per: _____

Name:
Title:

CALPINE CANADA POWER LTD.

Per: _____

Name:
Title:

CALPINE CANADA ENERGY FINANCE ULC

Per: _____

Name:
Title:

CALPINE ENERGY SERVICES CANADA LTD.

Per: _____

Name:
Title:

CALPINE CANADA RESOURCES COMPANY

Per: _____

Name:
Title:

CALPINE CANADA POWER SERVICES LTD.

Per: _____

Name:
Title:

CALPINE CANADA ENERGY FINANCE II ULC

Per: _____

Name:
Title:

CALPINE NATURAL GAS SERVICES LIMITED

Per: _____

Name:
Title:

3094479 NOVA SCOTIA COMPANY

Per: _____

Name:
Title:

CALPINE ENERGY SERVICES CANADA PARTNERSHIP

Per: _____

Name:
Title:

CALPINE CANADA NATURAL GAS PARTNERSHIP

Per: _____

Name:
Title:

CALPINE CANADIAN SALTEND LIMITED PARTNERSHIP

Per: _____

Name:
Title:

HSBC BANK USA, N.A., solely in its capacity as ULC1 Indenture Trustee.

Per: _____

Name:
Title:

SCHEDULE I

List of Addresses and Facsimile Numbers for Purposes of Notice

If to Calpine Corporation:

50 West San Fernando Street
San Jose, California 95113
Fax: (408) 995-0505
Attn: Gregory J. Doody

With a copy to:

Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601-6636
Attn: David R. Seligman
Fax: 312-861-2200

If to CCEL and the Canadian Debtors:

Calpine Canada Energy Ltd.
c/o Ernst & Young Inc.
1000, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9
Attention: Toby Austin
Fax: (403) 206-5075

With a copy to:

Goodmans LLP
250 Yonge Street, Suite 2400
Toronto ON M5B 2M6
Canada
Attn: Jay A. Carfagnini
Fax: (416) 979-1234

If to the Monitor:

Ernst & Young Inc.
1000, 440 2nd Avenue S.W.
Calgary, Alberta T2P 5E9
Attention: Neil Narfason
Fax: (403) 206-5075

With a copy to:

Borden Ladner Gervais LLP
1000 Canterra Tower
400 Third Avenue S.W.
Calgary, Alberta, Canada
T2P 4H2
Attention: Pat McCarthy
Fax: (403) 266-1395

If to HSBC Bank USA, N.A.:

With a copy to:

Kelley Drye & Warren LLP
200 Kimball Drive
Parsippany, New Jersey 07054
Attn: Geoffrey W. Castello
Fax: (973) 503-5950

and

Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway
New York, New York 10019
Attn: Richard F. Casher
Fax: 212-500-3413

SCHEDULE II

Canadian Order

SCHEDULE III

U.S. Order

SCHEDULE IV

Canadian ULC1 Notes Sale Order

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A

CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount ($US)**	**Debtor**	**Basis for Claim**	**Type**
I.	**Intercompany Claims**							
1.	7/27/2006	4489	Calpine Canada Natural Gas Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$591,005.28	CPN Energy Services G.P., Inc. 05-60209	Money loaned	Unsecured
2.	7/27/2006	4445	Calpine Energy Services Canada Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$495,405.98	Calpine Corporation 05-60200	Money loaned	Unsecured
3.	8/1/2006	5413	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$11,622,456.59	Calpine Corporation 05-60200	Money loaned; contributions to employee benefit plan [amends by claim #4486]	Unknown
4.	7/27/2006	4446	Calpine Energy Services Canada Partnership	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$70,873,420.62	CPN Energy Services G.P., Inc. 05-60209	Goods sold	Unsecured
5.	7/27/2006	4421	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,571,674.66	Quintana Canada Holdings, LLC 05-60400	Subsidiary's deficiency	Unsecured
6.	7/27/2006	4420	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,174,058.41	Calpine ULC1 Holdings, LLC	Subsidiary's deficiency	Unsecured

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CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount ($US)	Debtor	Basis for Claim	Type
I.	**Intercompany Claims**							
7.	7/27/2006	4419	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street, Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,174,058.41	Quintana Canada Holdings, LLC	Subsidiary's deficiency	Unsecured
Total Amount of Intercompany Claims:					$90,502,079.95			

CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount**	**Debtor**	**Basis for Claim**	**Type**
II.	**Oppression Marker Claims**							
6.	7/27/2006	MASTER CLAIM #4418 (also #14344 - 17879 and #18424 - 18435)	Calpine Canada Energy Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Investigation of intercompany and third party transactions between CCEL and CORPX	Unknown
7.	4/30/2007	6283	Calpine Canada Energy Ltd. and each of its affiliates	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation and each of the other Debtor entities	Investigation of intercompany and third party transactions between CCEL and CORPX	Unknown
III.	**Hybrid Note Structure Claims**							
8.	7/27/2006	3730	Calpine Canada Energy Ltd. (“CCEL”)	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Quintana Canada Holdings, LLC 05-60400	Subscription agreements	Unsecured
9.	7/27/2006	4513	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Quintana Canada Holdings, LLC 05-60400	Subscription agreements	Unsecured

CLAIMS BY CANADIAN DEBTORS AGAINST U.S. DEBTORS SUBJECT TO SECTION 2.2								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount**	**Debtor**	**Basis for Claim**	**Type**
10.	7/27/2006	4512	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Calpine Corporation 05-60200	Guarantee (subscription agreements)	Unsecured
11.	7/27/2006	4515	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	$2,562,948,302.00	Calpine Corporation 05-60200	Guarantee (subscription agreements)	Unsecured
12.	7/27/2006	4511	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Guarantee (share purchase agreements)	Unsecured
13.	7/27/2006	4514	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Share purchase agreements	Unsecured
14.	N/A	N/A	Calpine Canada Energy Finance ULC		Unknown	Quintana Canada Holdings, LLC	All Claims arising pursuant to the ISDA Master Agreement dated April 25, 2001	Unsecured

EXHIBIT B

Claims by U.S. Debtors against Canadian Debtors Subject to Section 2.2

	Claim No.	Creditor	Debtor	Amount	Matter
1.		U.S. Calpine Group entities (Master Proof of Claim)	CCAA Debtors	USD$TBD	The U.S. Calpine Group entities claim against the CCAA Debtors for any and all obligations that the CCAA Debtors owe, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
2.	2-005	U.S. Calpine Group entities (Master Proof of Claim)	CCEL	USD$TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Limited for any and all obligations that Calpine Canada Energy Limited owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code. This Claim is made for all cash and non cash transfers pursuant to all applicable bankruptcy and insolvency legislation in the U.S. and Canada, for transfers from any of the U.S. Calpine Group to Calpine Canada Energy Limited in the relevant period prior to the filing.
3.	12-030	U.S. Calpine Group entities (Master Proof of Claim)	CCNG	TBD	The U.S. Calpine Group entities claim against Calpine Canada Natural Gas Partnership for any and all obligations that Calpine Canada Natural Gas Partnership owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.

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	Claim No.	Creditor	Debtor	Amount	Matter
4.	3-015	U.S. Calpine Group entities (Master Proof of Claim)	CCPL	TBD	The U.S. Calpine Group entities claim against Calpine Canada Power Ltd. for any and all obligations that Calpine Canada Power Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
5.	5-030	U.S. Calpine Group entities (Master Proof of Claim)	CCRC	(1) TBD (2) TBD (3) TBD (4) USD$2,199,917.20	(1) The U.S. Calpine Group entities claim against Calpine Canada Resources Company for any and all obligations that Calpine Canada Resources Company owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code. (2) The U.S. Calpine Group entities also claim in respect of claims for avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code in respect of the proceeds of the sale of Saltend. Pursuant to agreement with the Canadian Applicants, these claims may also relate to transfers, including claims for avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code, involving entities in the Saltend chain but are asserted against CCRC. (3) This Claim is made for all cash and non cash transfers pursuant to all applicable bankruptcy and insolvency legislation in the U.S. and Canada, for transfers from any of the U.S. Debtors to CCRC in the relevant period prior to the filing. (4) Calpine Corporation claims amounts pursuant to letter of credit 0117/04. Contingent exposure relating to CCRC

	Claim No.	Creditor	Debtor	Amount	Matter
					on the remaining credit is $2,199,917.20.
6.	4-003	U.S. Debtors	CCPS	TBD	The U.S. Calpine Group entities claim against Calpine Canada Power Services Ltd. for any and all obligations that Calpine Canada Power Services Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
7.	7-006	Calpine Corporation	CESCL	(1) USD$371 (2) $2,199,917.20	(1) This Claim relates to the practice of allocating costs of corporate overhead on an intercompany basis. (2) Calpine Corporation claims amounts pursuant to letter of credit 0117/04. Contingent exposure relating to CESCL on the remaining credit is $2,199,917.20.
8.	7-007	U.S. Calpine Group entities (Master Proof of Claim)	CESCL	TBD	The U.S. Calpine Group entities claim against Calpine Energy Services Canada Ltd. for any and all obligations that Calpine Energy Services Canada Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
9.	8-007	Calpine Corporation	CESCP	USD$22,911,000	Calpine Corporation claims amounts pursuant to letters of credit issued to third parties. Currently outstanding drawdowns total $18,361,082.80 and contingent exposure on remaining credit totals $4,549,917.20.
10.	8-008	Calpine Energy Management L.P.	CESCP	USD$16,745,830	This Claim represents intercompany accounts receivable owing relating to gas purchases and sales between Calpine Energy Management L.P. and CESCP as of the date of filing.

	Claim No.	Creditor	Debtor	Amount	Matter
11.	8-009 (not including Restruct-uring Claims)	Calpine Energy Services L.P.	CESCP	USD $2,934,650	This is a claim for services provided by Calpine Energy Services L.P. to CESCP which have not been billed.
12.	8-010	U.S. Calpine Group entities (Master Proof of Claim)	CESCP	TBD	The U.S. Calpine Group entities claim against Calpine Energy Services Canada Partnership for any and all obligations that Calpine Energy Services Canada Partnership owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
13.	11-003	U.S. Calpine Group entities (Master Proof of Claim)	CNGSL	TBD	The U.S. Calpine Group entities claim against Calpine Natural Gas Services Ltd. for any and all obligations that Calpine Natural Gas Services Ltd. owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.
14.	1-007	U.S. Calpine Group entities (Master Proof of Claim)	ULC1	TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Finance ULC for any and all obligations that Calpine Canada Energy Finance ULC owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy Code.

	Claim No.	Creditor	Debtor	Amount	Matter
15.	6-002	Calpine Corporation	ULC2	£315,375,000 €226,296,875	ULC2 issued £200,000,000 of 8.875% Senior Notes due October 15, 20011 and €175,000,000 of 8.375% Senior Notes due October 15, 2008 (the "ULC2 Senior Notes") pursuant to an Indenture dated October 18, 2001 between ULC and Wilmington Trust supplemented by the First Supplemental Indenture dated October 18, 2001. The ULC2 Senior Notes have been guaranteed by Calpine Corporation pursuant to a Guarantee Agreement dated October 18, 2001 as amended by the First Amendment dated October 18, 2001. The Applicants and the Monitor are in possession of copies of the Indenture and the Guarantee. If additional copies are required, please advise. Calpine Corporation claims as against ULC2 for any claims made against Calpine Corporation on the guarantee. Calpine Corporation specifically reserves its right to dispute, deny or other otherwise challenge the guarantees on any basis, including without limitation, avoidance of preferential and fraudulent transfers. The amount of the claim is the face of amount of the notes £200,000,000 at 8.875% to October 15, 20011 being £115,375,000 (approximate present value of interest £83,418,174) and €175,000,000 at 8.375% to October 15, 2008 being €51,296,875 (approximate present value of interest €42,418,639) plus interest on any outstanding amounts to the date of distribution plus any costs payable or other amounts due or other liabilities under the Indenture.
16.	6-003	U.S. Calpine Group entities (Master Proof of Claim)	ULC2	TBD	The U.S. Calpine Group entities claim against Calpine Canada Energy Finance II ULC for any and all obligations that Calpine Canada Energy Finance II ULC owes, may have owed or may owe to the U.S. Calpine Group entities as a result of any action, omission, cause, matter, debt, accounts, bonds, guarantees, covenants, contracts, claims, demands or other matter whatsoever including, without limitation, avoidance of preferential and fraudulent transfers, and for any other avoidance action under the U.S. Bankruptcy

	Claim No.	Creditor	Debtor	Amount	Matter
					Code.
17.	(Letter of April 30, 2007)	U.S. Calpine Group Entities	CCAA Debtors	MISC.	Particularization of Marker Claims 1. King City Cogen LLC claims against CCPL, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee provided by King City Cogen LLC under a Guaranty and Security Agreement dated May 19, 2004. 2. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 provided by Calpine Corporation under a Tolling Agreement dated August 29, 2002. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 5390 filed in the U.S. Proceedings by Calpine Power L.P. with respect to the August 29, 2002 guarantee. 3. Calpine Corporation claims against ULC1, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee of share purchase agreements dated April 25, August 14 and August 23, 2001 and amendments dated March 8, 2002. 4. Calpine Corporation claims against CCEL, based on rights of subrogation, reimbursement or other equitable rights related to a guarantee of subscription agreements dated April 25, August 14 and August 23, 2001 and amendments dated March 8, 2002. 5. Calpine Corporation claims against CCPL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 in respect of an Electricity Purchase Agreement dated September 29, 1998 and an Island Contribution Agreement dated August 29, 2002 (the “Heat Rate Guarantee”). Calpine Corporation claims against CCPL for any and all liability of Calpine Corporation in respect of claim number 5390 filed in the U.S. Proceedings by

Claim No.	Creditor	Debtor	Amount	Matter
				Calpine Power L.P. with respect to the August 29, 2002 guarantee. 6. Calpine Corporation claims against CCPL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated August 29, 2002 in respect of an Electricity Purchase Agreement dated September 29, 1998, an Amended and Restated EPA Fee Agreement dated April 10, 2002 and an Island Contribution Agreement dated August 29, 2002 (the "EPA Fee Guarantee"). Calpine Corporation claims against CCPL for any and all liability of Calpine Corporation in respect of claim number 5389 filed in the U.S. Proceedings by Calpine Power L.P. with respect to the August 29, 2002 guarantee. 7. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated June 1, 2002 in respect of a Transportation Agreement dated March 4, 1999. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 6215 filed in the U.S. Proceedings by Alliance Pipeline L.P. with respect to the June 1, 2002 guarantee. 8. Calpine Corporation claims against CESCA based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated June 1, 2002 in respect of a Transportation Agreement dated March 4, 1999. Calpine Corporation claims against CESCA for any and all liability of Calpine Corporation in respect of claim number 2507 filed in the U.S. Proceedings by Alliance Pipeline Limited Partnership with respect to the June 1, 2002 guarantee. 9. Calpine Corporation claims against CCRC, CESCP and CESCL based on rights of subrogation, reimbursement or other equitable rights related to a guarantee dated October 23, 2001 in respect of TransCanada PipeLine Ltd and NOVA Gas Transmission Ltd.

	Claim No.	Creditor	Debtor	Amount	Matter
					Agreements. Calpine Corporation claims against CCRC, CESCP and CESCL in respect of claim numbers 5192, 5325, 5553, 5605, and 5641 filed in the U.S. Proceedings. **US Claims with respect to CANAL Entity** 10. Calpine Corporation claims against CCNG, CCPL and/or CCRC arising from unpaid amounts relating to allocation of overhead expenses by the U.S. Debtors to the CANAL and CANAL2 business units. **Saltend** 11. The U.S. Calpine Group entities claim against CCRC in respect of preference claims over the proceeds of the sale of Saltend. Pursuant to agreement with the Canadian Applicants, these claims may also relate to transfers involving entities in the Saltend chain but are asserted against CCRC **Avoidance Actions** 12. The U.S. Debtors may bring avoidance actions on behalf of certain payor U.S. Debtor entities against certain corresponding payee Canadian Debtor entities, as shown on Exhibit A, attached hereto and incorporated herein, seeking the return of preferential payments made within 90 days of the filing of the U.S. Debtor's bankruptcy petition.
18.	(Letter of April 30, 2007)	U.S. Calpine Group Entities	CCAA Debtors	TBD	Particularization of BDCs – Four claims particularized by attachment to letter dated April 30, 2007.
19.	N/A	Quintana Canada Holdings, LLC	Calpine Canada Energy Finance ULC	TBD	All Claims arising pursuant to the ISDA Master Agreement dated April 25, 2001.

EXHIBIT C

[There is no Exhibit C to this Settlement Agreement]

EXHIBIT D

Intercompany Claims (in US Dollars)

CCAA Claim No.	US Bankruptcy Claim No.	US Entity	Canadian Entity	Due From (T) CCAA Debtors
3-008		C*Power Inc.	Calpine Canada Power Ltd.	6,430
3-009		Calpine Central L.P.	Calpine Canada Power Ltd.	48,178
	4444	Calpine Construction Mgmt Co, Inc.	Calpine Energy Services Canada Ltd.	(767,443)
1-006	4443	Calpine Corporation	Calpine Canada Energy Finance ULC	181,150,425 *
2-004		Calpine Corporation	Calpine Canada Energy Ltd.	121,343
12-028	4488	Calpine Corporation	Calpine Canada Natural Gas Partnership	1,501,965
3-014	4486	Calpine Corporation	Calpine Canada Power Ltd.	(9,555,629)
12-029	4490	Calpine Energy Services L.P.	Calpine Canada Natural Gas Partnership	1,656,545
	4491	Calpine International Holdings, Inc.	Calpine Canada Natural Gas Partnership	(1,250)
	4487	Calpine International Holdings, Inc.	Calpine Canada Power Ltd.	(1,066,149)
7-008		Calpine International LLC	Calpine Energy Services Canada Ltd.	43
	4492	Calpine International, LLC	Calpine Canada Energy Ltd.	(115,498)
	4485	Calpine International, LLC	Calpine Canada Power Ltd.	(392,954)

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CCAA Claim No.	US Bankruptcy Claim No.	US Entity	Canadian Entity	Due From (T) CCAA Debtors
	4440	Calpine Power Services, Inc.	Calpine Canada Energy Ltd.	(1,606)
	4447	Calpine Energy Services, LP	Calpine Energy Services Canada Partnership	(70,873,421)
1-011*	4442	Quintana Canada Holdings LLC	Calpine Canada Energy Finance ULC	(337,947,146)
	4441	Quintana Canada Holdings, LLC	Calpine Canada Energy Finance II ULC	(11,626)
	4493	Quintana Canada Holdings, LLC	Calpine Canada Energy Ltd.	(494,746,367)*
	4448	Quintana Canada Holdings, LLC	Calpine Canada Resources Company	(155,569,695)
	4447	Calpine Energy Services, LP	Calpine Energy Services Canada Partnership	(23,584,600)**

* Claims subject to the ULC1 Settlement.

** Represents an estimated contribution claim based on certain non-resident withholding tax liability, contingent on (i) it becoming an allowed claim in the CCAA Proceedings, (ii) it not being satisfied by distributions in the U.S. Proceedings, and (iii) there being insufficient funds to satisfy it from CESCA. Amount is converted at current rate of exchange (US$1 = C$1.1024).

EXHIBIT E

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN								
	Date Filed	**Claim No.**	**Creditor Name**	**Address**	**Claim Amount**	**Debtor**	**Basis for Claim**	**Type**
I.	**Directors' and Officers' Indemnity Claims**							
1.	7/27/2006	4412	Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
2.	7/27/2006	4411	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
3.	7/27/2006	4415	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
4.	7/27/2006	4414	Toby Austin, in his capacity as director and officer of Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
5.	7/27/2006	4417	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
6.	7/27/2006	4416	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
7.	7/27/2006	4469	Calpine Energy Service Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
8.	7/27/2006	4413	Toby Austin, in his capacity as director and officer of Calpine Energy Service Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
9.	7/27/2006	4467	Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street	Unknown	Calpine Corporation 05-	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		60200	Indemnity	
10.	7/27/2006	4468	Toby Austin, in his capacity as director and officer of Calpine Canada Resources Company.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
11.	7/27/2006	4465	Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
12.	7/27/2006	4466	Toby Austin, in his capacity as director and officer of Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
13.	7/27/2006	4463	Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Attn: Jay Carfagnini				
14.	7/27/2006	4464	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
15.	7/27/2006	4510	Calpine Natural Gas Service Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
16.	7/27/2006	4462	Toby Austin, in his capacity as director and officer of Calpine Natural Gas Service Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
17.	7/27/2006	4508	3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
18.	7/27/2006	4509	Toby Austin, in his capacity as director and officer of 3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
19.	7/27/2006	4506	Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
20.	7/27/2006	4507	Toby Austin, in his capacity as director and officer of Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
21.	7/27/2006	4504	Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
22.	7/27/2006	4505	Toby Austin, in his capacity as director and officer of	c/o Goodmans LLP 250 Yonge Street	Unknown	Calpine Corporation 05-	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
			Calpine Canada Whitby Holdings Company	Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		60200	Indemnity	
23.	7/27/2006	4502	Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
24.	7/27/2006	4503	Toby Austin, in his capacity as director and officer of Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Calpine Corporation 05-60200	Directors' and Officers' Indemnity	Unsecured
25.	7/27/2006	4500	Calpine Canada Energy Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Quintana Canada Holdings, LLC 05-60400		
26.	7/27/2006	4501	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B	Unknown	Quintana Canada Holdings, LLC		

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				2M6 Attn: Jay Carfagnini		05-60400		
27.	7/27/2006	4498	Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		Unsecured
28.	7/27/2006	4499	Toby Austin, in his capacity as director and officer of Calpine Canada Power Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
29.	7/27/2006	4496	Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
30.	7/27/2006	4497	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
31.	7/27/2006	4438	Calpine Energy Services Canada Ltd	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400		
32.	7/27/2006	4439	Toby Austin, in his capacity as director and officer of Calpine Energy Services Canada Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
33.	7/27/2006	4436	Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
34.	7/27/2006	4437	Toby Austin, in his capacity as director and officer of Calpine Canada Resources Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
35.	7/27/2006	4434	Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street	Unknown	Quintana Canada	Directors' and Officers'	Unsecured

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Holdings, LLC 05-60400	Indemnity	
36.	7/27/2006	4435	Toby Austin, in his capacity as director and officer of Calpine Canada Power Services Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
37.	7/27/2006	4432	Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
38.	7/27/2006	4433	Toby Austin, in his capacity as director and officer of Calpine Canada Energy Finance II ULC	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
39.	7/27/2006	4429	Calpine Natural Gas Services Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
				Attn: Jay Carfagnini				
40.	7/27/2006	4431	Toby Austin, in his capacity as director and officer of Calpine Natural Gas Services Limited	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
41.	7/27/2006	4428	3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
42.	7/27/2006	4430	Toby Austin, in his capacity as director and officer of 3094479 Nova Scotia Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
43.	7/27/2006	4426	Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
44.	7/27/2006	4427	Toby Austin, in his capacity as director and officer of Calpine Island Cogeneration Project Inc.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
45.	7/27/2006	4424	Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
46.	7/27/2006	4425	Toby Austin, in his capacity as director and officer of Calpine Canada Whitby Holdings Company	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
47.	7/27/2006	4422	Calpine Greenfield Ltd.	c/o Goodmans LLP 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini	Unknown	Quintana Canada Holdings, LLC 05-60400	Directors' and Officers' Indemnity	Unsecured
48.	7/27/2006	4423	Toby Austin, in his capacity as director and officer of	c/o Goodmans LLP 250 Yonge Street	Unknown	Quintana Canada	Directors' and Officers'	Unsecured

CLAIMS WHICH ARE NOT RELEASED OR WITHDRAWN

	Date Filed	Claim No.	Creditor Name	Address	Claim Amount	Debtor	Basis for Claim	Type
I.	**Directors' and Officers' Indemnity Claims**							
			Calpine Greenfield Ltd.	Suite 2400 Toronto, Ontario M5B 2M6 Attn: Jay Carfagnini		Holdings, LLC 05-60400	Indemnity	

Total Amount of D&O Indemnity Claims: Unknown

EXHIBIT F

Claims Filed In CCAA Proceedings That Have Been Guaranteed By U.S. Debtors

Claim No.	Creditor	Debtor	Amount As Filed (in Cdn Dollars)
5-028	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Canada Resources Company	52,755,275.86
5-041	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Canada Resources Company	40,980,017.36
7-004	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Energy Services Canada Ltd.	40,980,017.36
7-005	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Energy Services Canada Ltd.	52,755,275.86
8-005	Alliance Pipeline L.P., by its managing general partner Alliance Pipeline Inc.	Calpine Energy Services Canada Partnership	40,980,017.36
8-006	Alliance Pipeline Limited Partnership, by its general partner Alliance Pipeline Ltd.	Calpine Energy Services Canada Partnership	52,755,275.86
2-007	NOVA Gas Transmission Ltd.	Calpine Canada Energy Limited	36,205,274.42
5-035	NOVA Gas Transmission Ltd.	Calpine Canada Resources Company	36,205,274.42
7-015	NOVA Gas Transmission Ltd.	Calpine Energy Services Canada Ltd.	36,205,274.42
8-012	NOVA Gas Transmission Ltd.	Calpine Energy Services Canada Partnership	36,205,274.42

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Claim No.	Creditor	Debtor	Amount As Filed (in Cdn Dollars)	
2-008	TransCanada Pipelines Limited	Calpine Canada Energy Limited	81,129,548.10	
5-039	TransCanada Pipelines Limited	Calpine Canada Resources Company	81,129,548.10	
7-016	TransCanada Pipelines Limited	Calpine Energy Services Canada Ltd.	81,129,548.10	
8-014	TransCanada Pipelines Limited	Calpine Energy Services Canada Partnership	81,129,548.10	
5-031	Calpine Power, L.P.	Calpine Canada Resources Company	769,064,345.51	Toll
7-009	Calpine Power, L.P.	Calpine Energy Services Canada Ltd.	769,064,345.51	Toll
8-011	Calpine Power, L.P.	Calpine Energy Services Canada Partnership	769,064,345.51	Toll
3-012	Calpine Power, L.P. and Calpine Power Income Fund	Calpine Canada Power Ltd.	TBD	Trans Fee
3-013	Calpine Power, L.P.	Calpine Canada Power Ltd.	TBD	Heat Rate

EXHIBIT G

Third Party Claims To Be Withdrawn Or Dismissed On A With Prejudice Basis

Claim No	Creditor	Debtor	Amount As Filed	
2-006	HSBC Bank USA, National Association	Calpine Canada Energy Ltd.	TBD	ULC1
3-018	HSBC Bank USA, National Association	Calpine Canada Power Ltd.	TBD	ULC1
4-004	HSBC Bank USA, National Association	Calpine Canada Power Services Ltd.	TBD	ULC1
5-032	HSBC Bank USA, National Association	Calpine Canada Resources Company	TBD	ULC1
6-004	HSBC Bank USA, National Association	Calpine Canada Energy Finance II ULC	TBD	ULC1
7-012	HSBC Bank USA, National Association	Calpine Energy Services Canada Ltd.	TBD	ULC1
8-004	HSBC Bank USA, National Association	Calpine Energy Services Canada Partnership	TBD	ULC1
9-002	HSBC Bank USA, National Association	3094479 Nova Scotia Company	TBD	ULC1
10-002	HSBC Bank USA, National Association	Calpine Canadian Saltend Limited Partnership	TBD	ULC1
11-004	HSBC Bank USA, National Association	Calpine Natural Gas Services Ltd.	TBD	ULC1
12-031	HSBC Bank USA, National Association	Calpine Canada Natural Gas Partnership	TBD	ULC1
1-012	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Finance ULC	TBD	2nd Lien
2-009	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Ltd.	US $ 3,025,758,604.24 plus TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
2-010	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Ltd.	TBD	2nd Lien
3-019	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Power Ltd.	TBD	2nd Lien
4-005	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Power Services Ltd.	TBD	2nd Lien
5-040	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Resources Company	TBD	2nd Lien
6-006	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Energy Finance II ULC	TBD	2nd Lien
7-017	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Energy Services Canada Ltd.	TBD	2nd Lien
8-015	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Energy Services Canada Partnership	TBD	2nd Lien
9-003	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	3094479 Nova Scotia Company	TBD	2nd Lien
10-003	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canadian Saltend Limited Partnership	TBD	2nd Lien
11-005	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Natural Gas Services Ltd.	TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
12-034	Wilmington Trust Company, as Indenture Trustee for the Second Priority Senior Secured Notes issued by Calpine Corporation	Calpine Canada Natural Gas Partnership	TBD	2nd Lien
7-011	Greenfield Energy LP	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-013	MIT Power Canada LP Inc.	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-014	MIT Power Canada Investments Inc.	Calpine Energy Services Canada Ltd.	TBD	Greenfield
7-018	CM Greenfield Power Corp	Calpine Energy Services Canada Ltd.	TBD	Greenfield
5-033	Manufacturers and Traders Trust Company, as Indenture Trustee for the 8 7/8% Senior Notes due 2011 and the 8 3/8% Senior Notes due 2008, and on behalf of Calpine Canada Energy Finance II ULC.	Calpine Canada Resources Company	C$ 639,044,000	ULCII
4056	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 8.75% Second Priority Senior Secured Notes Due 2013	Quintana Canada Holdings LLC	US $933,958,967.18	2nd Lien
4057	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 9.875% Second Priority Senior Secured Notes Due 2011	Quintana Canada Holdings LLC	US $402,137,369.40	2nd Lien
4059	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation 8.5% Second Priority Senior Secured Notes Due 2010	Quintana Canada Holdings LLC	US $1,192,139,522.73	2nd Lien
4061	Wilmington Trust Company, as Indenture Trustee for Calpine Corporation Second Priority Senior Secured Floating Rate Notes Due 2007	Quintana Canada Holdings LLC	US $497,539,218.43	2nd Lien
4388	Wilmington Trust Company, as Indenture Trustee for the Holders of Calpine Corporation's Second Priority Senior Secured Notes for	Quintana Canada Holdings LLC	TBD	2nd Lien

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Claim No	Creditor	Debtor	Amount As Filed	
	certain Unliquidated Claims			
3793	Wilmington Trust Company, as Indenture Trustee for the Holders of Calpine Corporation's Second Priority Senior Secured Notes for certain Unliquidated Claims	Calpine ULC I Holding, LLC	TBD	2nd Lien
5740	HSBC Bank USA, National Association, solely in its capacity as the Successor Indenture Trustee under the Indenture and the Senior Notes (as such terms are defined in the attachment to the Proof of Claim (the "Attachment")) issued by Calpine Canada Energy Finance ULC ("ULC 1"), on behalf of (a) the Indenture Trustee and holders of Senior Notes, and (b) ULC 1	Calpine Corporation and each of its affiliate Debtors (as defined in the Attachment to the proof of claim)	TBD	ULC1
5742	HSBC Bank USA, National Association, solely in its capacity as the Successor Indenture Trustee under the Indenture and the Senior Notes (as such terms are defined in the attachment to the Proof of Claim (the "Attachment")) issued by Calpine Canada Energy Finance ULC	Calpine Corporation	US $2,124,356,213.11	ULC1
4074	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation and on behalf of Calpine Canada Energy Finance II ULC	Calpine Corporation	US $549,362, 988.80	ULC2
4221	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation and on behalf of Calpine Canada Energy Finance II ULC	Quintana Canada Holdings LLC	US $549,362,988.80	ULC2

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Claim No	Creditor	Debtor	Amount As Filed	
4222	Manufacturers and Traders Trust Company, as Indenture Trustee, for the Holders of the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation	Calpine Corporation	US $213,421,508.67	ULC2
4223	Manufacturers and Traders Trust Company, as Indenture Trustee, for the Holders of 8 7/8% Senior Notes Due 2011 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation	Calpine Corporation	US $357,995,076.25	ULC2
4224	Manufacturers and Traders Trust Company, as Indenture Trustee, for the 8 7/8% Senior Notes Due 2011 and the 8 3/8% Senior Notes Due 2008 issued by Calpine Canada Energy Finance II ULC and guaranteed by Calpine Corporation, for its own fees, costs, and expenses	Calpine Corporation	US $838,637.41	ULC2

EXHIBIT C

UNITED STATES BANKRUPTCY COURT **SOUTHERN DISTRICT OF NEW YORK**		
In re:	:	**Chapter 11** **Case No. 05-60200 (BRL)**
CALPINE CORPORATION, et al.,	:	**(Jointly Administered)**
Debtors.	:	

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

TO ALL HOLDERS OF CALPINE CANADA ENERGY FINANCE ULC SENIOR NOTES (collectively, the "Bonds")**:**

Interest Rate	Maturity Date	CUSIP No.
8.500%	5/1/2008	13134VAA1
8.750%	10/15/2007	13134VAB9

SETTLEMENT

PLEASE TAKE NOTICE that Calpine Corporation ("Calpine") and certain of its U.S. subsidiaries and affiliates filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on December 20, 2005 (the "Chapter 11 Cases"). On the same date, certain of Calpine's Canadian subsidiaries and affiliates (the "Canadian Debtors") filed applications under the *Companies' Creditors Arrangement Act* in the Court of Queen's Bench in Calgary, Alberta (the "CCAA Cases"). On June 28, 2007 Calpine filed a motion in the Chapter 11 Cases (the "U.S. Settlement Motion"), and the Canadian Debtors filed a motion in the CCAA Cases (the "Canadian Settlement Motion"), to approve a settlement relating to, among other things, the Bonds (the "Settlement"). If approved, the Settlement will resolve all claims the indenture trustee for the Bonds (the "Trustee") and/or holders of the Bonds ("Bondholders") may have against Calpine and/or Calpine Canada Energy Finance ULC ("ULC1," one of the Canadian Debtors) in connection with the Bonds.

HOW TO OBTAIN INFORMATION CONCERNING THE SETTLEMENT

Copies of the U.S. Settlement Motion, the related proposed order, and the formal documents evidencing the terms and conditions of the Settlement (the "Settlement Agreement") are posted at http://www.kccllc.net/calpine/canadasettlement. The Canadian Settlement Motion, the related proposed order and the Settlement Agreement are available at the web site of the Canadian Monitor, http://www.ey.com/global/content.nsf/Canada/Insolvencies_-_2005_-_Calpine_Canada. Bondholders may also obtain copies of the settlement documents and copies of information about procedures concerning the Settlement Motion and the hearing thereon at no charge by contacting Kirkland & Ellis LLP, Attention: Jeffrey W. Gettleman, 200 East Randolph Drive, Chicago, Illinois 60601, (312) 861-3289.

On or about July 9, 2007 Calpine served a copy of the Settlement Motion and related proposed order on the record holders of the Bonds. Calpine expects that, in accordance with industry practice and SEC rules, the record holders will cause these documents to be mailed to the respective beneficial holders of the Bonds on whose behalf such record holders are acting as custodians of the Bonds.

OBJECTION DEADLINE, HEARING

A hearing on the Settlement Motion has been scheduled for **July 24, 2007**. The hearing will take place at **2:00 p.m.** prevailing Eastern Time before the Honorable Burton R. Lifland in the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004-1408 (the "Bankruptcy Court"), and will be a joint hearing taking place at **Noon** prevailing Mountain Time before the Honourable Madam Justice B.E.C. Romaine, presiding in the Court of Queen's Bench, Court House, 611 - 4th St. S.W., Calgary, Alberta, Canada.

Objections, if any, to the Settlement Motion and the relief sought therein must be made in writing and filed and served so as to be actually received no later than **4:00 p.m. on July 16, 2007** prevailing Eastern Time. **Bondholders should refer to the Settlement Motions for specific requirements relating to the form, filing and service of such a response. UNLESS A TIMELY OBJECTION IS FILED WITH THE APPLICABLE COURT AND SERVED IN ACCORDANCE WITH THESE REQUIREMENTS, IT MAY NOT BE CONSIDERED BY THE APPLICABLE COURT.**

EXHIBIT 5

In re Calpine Corp., Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

ORDER PURSUANT TO 11 U.S.C. § 105(a)
APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the motion (the "Motion"), dated April 5, 2007, of the Canadian Debtors[1] for entry of an Order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq*. (the "Bankruptcy Code") approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"); and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and upon the record of a hearing held before this Court on April 12, 2007; and it appearing that the relief sought is in the best interests of the U.S. Debtors and the Canadian Debtors, their respective estates and creditors; and the Court-to-Court Protocol having been approved by the Canadian Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Court-to-Court Protocol is approved in all respects; and it is further

[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

ORDERED that the requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a separate memorandum of law is hereby waived.

Dated: New York, New York
April 12, 2007

/s/Burton R. Lifland
Burton R. Lifland
United States Bankruptcy Judge

EXHIBIT 6

In re Calpine Corp., Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3]

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

MOTION OF CANADIAN DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 105(a) APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

TO: THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

The Canadian Debtors (defined below), by and through their undersigned attorneys, hereby submit this motion (the "Motion") for entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"), which has been approved by the Canadian Court (defined below) subject in its entirety to this Court's further approval.[1] In support thereof, the Canadian Debtors state as follows:

PRELIMINARY STATEMENT

1. Both this Court and the Canadian Court (defined below) have recognized that these proceedings and the Canadian Proceedings (defined below) may benefit from a "protocol" that establishes procedures, and provides clarity and structure, for coordinating the administration of cross-border matters arising between the U.S. Debtors and the Canadian Debtors and their respective insolvency proceedings. The parties have taken those views to heart and have negotiated and developed a Court-to-Court Protocol. Upon the Canadian Debtors' motion, and with the support of the Monitor (as defined below), the Canadian Court has approved the Court-to-Court Protocol (subject to this Court's approval) and has ordered the Canadian Debtors to seek this Court's approval. The Canadian Debtors thus request that this Court join the Canadian Court in approving the Court-to-Court Protocol.

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[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Court-to-Court Protocol.

JURISDICTION

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core matter pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code.

BACKGROUND

3. On December 20, 2005, Calpine Corp. ("Calpine") and certain of its direct and indirect subsidiaries (collectively, the "U.S. Debtors") filed voluntary petitions for relief in this Court pursuant to chapter 11 of the Bankruptcy Code (the "Chapter 11 Proceedings"). The U.S. Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On the same date, twelve Canadian Calpine entities (collectively, the "Canadian Debtors") applied for and obtained protection from their creditors under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended, pursuant to an order of the Honourable Madam Justice B.E.C. Romaine of the Alberta Court of Queen's Bench (the "Canadian Court") dated December 20, 2005 (the "Canadian Proceedings" and together with the Chapter 11 Proceedings, the "Proceedings"). Pursuant to that order, Ernst & Young Inc. was appointed as monitor of the Canadian Debtors during the Canadian Proceedings (the "Monitor").

5. The Chapter 11 Proceedings and the Canadian Proceedings function as separate and distinct proceedings. Neither the Canadian Debtors nor the U.S. Debtors have sought to have their proceedings recognized in the other's jurisdiction. Each, however, has appeared in court in the other's jurisdiction and each has filed claims in the other's proceedings.

THE NEED FOR CROSS-BORDER RELIEF

6. The Canadian Debtors, on the one hand, and the U.S. Debtors, on the other, have several significant, complex, and, in many instances, disputed matters between them that must be considered and adequately addressed before either group of debtors can successfully resolve its respective insolvency proceedings. In many instances, questions of jurisdiction, venue and choice of law suggest that both Courts may need to play a role in the adjudication and attendant resolution of the underlying issues.

7. Given the foregoing set of circumstances, at various times, both this Court and the Canadian Court have suggested that the collective Proceedings may benefit from the approval of and adherence to a "protocol" that establishes procedures for coordinating the administration of cross-border matters arising in the Proceedings. In light of the cross-border issues and claims that are coming to the forefront in the Proceedings, the Canadian Debtors (with the approval of the Monitor) submit that it is now appropriate for a protocol to be put in place. Thus, the Canadian Debtors, in consultation with the major stakeholders and the U.S. Debtors, have negotiated and developed the form of Court-to-Court Protocol attached hereto as Exhibit A.

8. The Court-to-Court Protocol seeks to (i) establish general administrative procedures and protocols to govern and facilitate the overall administration of cross-border matters between or among the Canadian Debtors and the U.S. Debtors and likewise between the Canadian Proceedings and the Chapter 11 Proceedings; (ii) ensure the maintenance of the two Courts' respective independent jurisdiction, where appropriate; and (iii) give due effect to any applicable principles, including without limitation, comity, where appropriate.

9. On March 29, 2007, the Canadian Debtors filed a motion with the Canadian Court seeking its approval of the Court-to-Court Protocol. A copy of the "Notice of Motion" filed by the Canadian Debtors with the Canadian Court is attached hereto as Exhibit B. On April 4, 2007,

the Canadian Court held a hearing on the Canadian Debtors' motion where it approved the Court-to-Court Protocol (without modification), finding that it was "fair" and "even handed." It also ordered the Canadian Debtors to seek the Court's approval of the Court-to-Court Protocol. (*See* Order of the Canadian Court, dated April 5, 2007, attached hereto as Exhibit C.)

10. The Court-to-Court Protocol contemplates the development and approval of a subsequent "Canada-U.S. Claims-Specific Protocol" intended to address timing, venue, and choice of law with respect to several significant and specific, disputed claims among the two groups of debtors and others. The Canadian Debtors and the U.S. Debtors continue to negotiate the specifics of that protocol. To date, the Canadian Debtors and the U.S. Debtors have not been able to reach agreement on the Canada-U.S. Claims-Specific Protocol and, indeed, significant disagreement exists. However, if and when those negotiations result in an agreed Canada-U.S. Claims-Specific Protocol, the Canadian Debtors contemplate that the Canada-U.S. Claims-Specific Protocol would be presented to this Court and the Canadian Court for simultaneous approval at a joint hearing to be scheduled and conducted pursuant to the provisions of the Court-to-Court Protocol establishing such hearings (once the Court-to-Court Protocol is approved). And if those ongoing negotiations do not bear fruit, the Court-to-Court Protocol can also provide the framework necessary for this Court and the Canadian Court to hold a joint hearing to resolve any open issues on the terms of a Canada-U.S. Claims-Specific Protocol, as necessary. The Canadian Court has suggested that it will contact this Court to schedule a joint hearing so that this matter does not languish.

THE COURT-TO-COURT PROTOCOL

11. The following is an overview of the provisions of the proposed Court-to-Court

Protocol:[2]

12. Purpose and Goals. The Court-to-Court Protocol seeks to promote the following mutually desirable goals and objectives in both Proceedings:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Proceedings before this Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Proceedings to, among other things, maximize the efficiency of the Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the U.S. Debtors, the Canadian Debtors, their creditors, the various committees, the U.S. Trustee, and the Monitor;

v. facilitate the fair, open and efficient administration of the Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Proceedings.

13. Comity and Independence of the Courts. This Court shall have sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Proceedings and the hearing and determination of matters arising therein. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising therein. By approving and implementing the Court-to-Court Protocol, neither this Court, the Canadian Court, the U.S. Debtors, the Canadian Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

[2] This overview is merely intended to provide a short summary of some of the provisions of the Court-to-Court Protocol. If any conflict arises between this overview and the Court-to-Court Protocol, the terms of the Court-to-Court Protocol shall control.

14. Cooperation. To harmonize and coordinate the administration of the Proceedings, this Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other court.

i. This Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Proceedings.

ii. Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party in interest in either of the Proceedings with respect to a motion or an application filed in either Court, the Court before which such motion or application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the U.S. Debtors, the Canadian Debtors, the U.S. Trustee, the Monitor, and any party in interest prior to any determination on the issue of jurisdiction being made by either Court.

iii. This Court and the Canadian Court may coordinate activities in the Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one tribunal.

iv. This Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of either of the Proceedings if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Proceedings or the resolution of any particular issue arising in the Proceedings.

15. Other Provisions. The Court-to-Court Protocol also contains other provisions that, among other things, concern (i) access to information, (ii) intercompany claims, (iii) recognition of claims protocol, and (iv) retention and compensation of estate representatives and professionals.

RELIEF REQUESTED

16. To facilitate the administration of these Chapter 11 Proceedings and the Canadian Proceedings, and as ordered by the Canadian Court, the Canadian Debtors request that the Court enter an order approving the Court-to-Court Protocol.

BASIS FOR RELIEF

17. Section 105(a) of the Bankruptcy Code provides in pertinent part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A number of courts, in this district and elsewhere, have authorized similar protocols for managing cross-border insolvency proceedings. *See In re Systech Retail Sys. (U.S.A.), Inc.*, Case No. 03-00142-5-ATS (Bankr. E.D.N.C. 2003); *In re Federal Mogul Global, Inc.*, Case No. 01-10578 (Bankr. D. Del. 2002); *In re Fin. Asset Mgmt. Found.*, Case No. 01-03640-304 (Bankr. S.D. Cal. 2001); *In re PSINet Inc.*, Case No. 01-13213 (Bankr. S.D.N.Y. 2001); *In re Laidlaw USA, Inc.*, Case No. 01-14099 (Bankr. W.D.N.Y. 2001); *In re Matlack Sys., Inc.*, Case No. 01-01114 (Bankr. D. Del. 2001); *In re Manhattan Inv. Fund Ltd.*, Case Nos. 00-10922 (BRL), 00-10921 (BRL) (Bankr. S.D.N.Y. 2000); *In re Inverworld, Inc.*, Case No. SA99-C0822FB (Bankr. W.D. Tex. 1999); *In re Loewen Group Int'l, Inc.*, Case No. 99-1244 (Bankr. D. Del. 1999); *In re Philip Servs. Corp.*, Case No. 99-B-02385 (Bankr. D. Del. 1999); *In re Livent (U.S.) Inc.*, Case No. 98 B 48312 (Bankr. S.D.N.Y. 1998); *In re Solvex Canada Ltd.*, 11-97-14362-MA (Bankr. N.M. 1997); *In re AIOC Corp.*, 96 B 41895 (Bankr. S.D.N.Y. 1996); *In re Everfresh Beverages, Inc.*, 95 B 45305 (Bankr. S.D.N.Y. 1995); *In re Nakash*, 94 B 44840 (Bankr. S.D.N.Y. 1994); *In re Olympia & York*, 92 B 42698 (Bankr. S.D.N.Y. 1992); *In re Maxwell Commc'n Corp.*, 91 B 15741 (Bankr. S.D.N.Y. 1991).

18. The Court-to-Court Protocol provides a necessary and appropriate means for communication between the two Courts. That communication will provide coordination of cross-border matters arising in the Proceedings. The Canadian Debtors thus submit that approval of the Court-to-Court Protocol by this Court will prove beneficial to the administration of both the Chapter 11 Proceedings and the Canadian Proceedings.

NOTICE

19. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to the administrative agents for the U.S. Debtors' prepetition secured lenders; (d) counsel to the *ad hoc* committees; (e) the indenture trustees pursuant to the U.S. Debtors' and Canadian Debtors' secured indentures; (f) counsel to the postpetition lenders: (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the United States Department of Justice; (j) counsel to the Official Committee of Equity Security Holders; (k) counsel to the U.S. Debtors; and (l) all parties that have requested special notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested herein, the Canadian Debtors submit that no other or further notice is required.

WAIVER OF MEMORANDUM OF LAW

20. Because this Motion presents no novel issues of law, the Canadian Debtors request that the Court waive the requirement of Local Bankruptcy Rule 9013-1(b) that a memorandum of law be submitted herewith.

WHEREFORE, the Canadian Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, (a) approving the Court-to-Court Protocol and (b) granting to the Canadian Debtors such other and further relief that this Court deems just and proper.

Dated: April 5, 2007

Respectfully submitted,

WILMER CUTLER PICKERING
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/s/ James H. Millar

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ATTORNEYS FOR
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EXHIBIT A

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule C hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 26 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 26 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 26 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

EXHIBIT B

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

NOTICE OF MOTION

(Approval of Court-to-Court Protocol returnable April 4, 2007)

TAKE NOTICE that an application will be made on behalf of the Applicants before the Honourable Madam Justice B.E.C. Romaine, at the Courthouse, 611 – 4th St. S.W., in the City of Calgary, in the Province of Alberta, on Wednesday, April 4, 2007, at 12:00 p.m. or as soon thereafter as counsel may be heard for the following relief:

1. An Order abridging the time for, and validating service of, this Notice of Motion and the materials filed in support of this application.

2. An Order approving a "Court-to-Court Protocol" substantially in the form attached at Schedule A.

3. Any other relief this Honourable Court may deem just.

AND TAKE NOTICE THAT the grounds of this application are that:

(a) On December 20, 2005, the Applicants and the CCAA Parties (as defined in the Initial CCAA Order and collectively, the "CCAA Debtors") applied for and were granted protection under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended (the "CCAA") pursuant to the Order of the Honourable Madam Justice B.E.C. Romaine dated December 20, 2005 (as thereafter amended and restated, the "Initial CCAA Order") (the "CCAA Proceedings");

(b) On December 20, 2005, Calpine Corporation and approximately 270 of its direct and indirect U.S. subsidiaries (collectively, and together with other subsidiaries that filed later, the "U.S. Debtors") filed petitions with the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") for relief under chapter 11 of Title 11 of the United States Code (the "U.S. Proceedings");

(c) The CCAA Proceedings and the U.S. Proceedings are separate and distinct proceedings and neither the Canadian Debtors nor the U.S. Debtors have sought to have their proceedings recognized in the other jurisdiction;

(d) Despite the separate and distinct nature of the Proceedings, Calpine's business operations in Canada and the United States were inter-related and as a result the CCAA Debtors and the U.S. Debtors have filed significant claims against each other and become interested parties in each other's Proceedings;

(e) Given the foregoing set of circumstances, it has been suggested at various times during the CCAA Proceedings and the U.S. Proceedings, including by the U.S. Bankruptcy Court and this Honourable Court at the last hearing, that it may be beneficial for the CCAA Debtors and the U.S. Debtors to, at the appropriate time, develop and seek Court approval of a "protocol" to establish procedures for coordinating the administration of cross-border matters arising in the Proceedings;

(f) In view of the cross-border issues and claims that have recently arisen in the Proceedings, the CCAA Debtors are of the view that it is now appropriate for such a protocol to be entered into and have, in consultation with the major

stakeholders, developed the form of "Court-to-Court Protocol" attached at Schedule A;

(g) The Court-to-Court Protocol is intended to: establish general administrative procedures and protocols to govern and facilitate the overall administration of cross-border matters between or among the CCAA Debtors and the U.S. Debtors and the CCAA Proceedings and the U.S. Proceedings; to ensure the maintenance of the Courts' independent jurisdiction, where appropriate; and to give due effect to any applicable principles, including without limitation, comity, where appropriate;

(h) If the Court-to-Court Protocol is approved by this Honourable Court, the CCAA Debtors intend to file a motion, either on their own or with the U.S. Debtors, with the U.S. Bankruptcy Court seeking approval of the Court-to-Court Protocol, in the form approved by this Honourable Court;

(i) The Court-to-Court Protocol shall only become effective upon approval by both this Honourable Court and the U.S. Bankruptcy Court, in form and substance acceptable to each Court; and

(j) such further and other grounds as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that in support of such application will be read (a) the Affidavit of Toby Austin sworn March 29, 2007, filed (b) a Report of the Monitor (to be filed separately), and (c) such further and other material as counsel may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 29th day of March, 2007, **AND DELIVERED** by **McCARTHY TÉTRAULT LLP**, Barristers and Solicitors, co-Counsel for the Applicants whose address for service is in care of the said Solicitors at 3300, 421-7th Ave. S.W., Calgary, Alberta, T2P 4K9.

McCARTHY TÉTRAULT LLP

Per: _____
Larry B. Robinson, Q.C.
Co-Counsel for the Applicants

GOODMANS LLP

Per: _____
Jay A. Carfagnini
Co-Counsel for the Applicants

TO: Clerk of the Court

AND TO: Service List

Schedule A

(Order approving Court-to-Court Protocol)

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF

CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

BEFORE THE HONOURABLE	)	AT THE COURTHOUSE, IN THE CITY
MADAM JUSTICE B.E.C. ROMAINE	)	OF CALGARY, IN THE PROVINCE OF
	)	ALBERTA, ON WEDNESDAY, THE 4TH
	)	DAY OF APRIL, 2007

ORDER
(Approval of Court-to-Court Protocol)

UPON THE APPLICATION of the Applicants; **AND UPON** having read (i) the Affidavit of Toby Austin sworn March 29, 2007 and (ii) the ● Report of the Monitor, Ernst & Young Inc., dated ●, 2007, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present; **AND UPON** being satisfied that circumstances exist that make this Order appropriate; **IT IS HEREBY ORDERED THAT**:

1. The time for service of the Notice of Motion is hereby abridged so that the application is properly returnable today, and, further, that any requirement for service of the Notice of Motion upon any party not served is hereby dispensed with.

2. The Court-to-Court Protocol attached as Schedule A is approved by this Court.

3. The Court-to-Court Protocol shall not become effective unless and until approved by the U.S. Bankruptcy Court, in form and substance acceptable to this Court.

_____

J.C.Q.B.A.

ENTERED this _____ day of April, 2007.

_____

Clerk of the Court

Schedule A

(Court-to-Court Protocol)

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule C hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 26 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 26 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 26 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

Schedule B

(Memorandum of Understanding)

Memorandum of Understanding re: Proofs of Claim

The purpose of this memorandum is to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States according to the following parameters:

1. It shall be sufficient if any Proof of Claim is signed by an authorized representative of the creditor and unless expressly prohibited by the claims procedure (bar) order or applicable bankruptcy or insolvency provisions in either jurisdiction, fax copies or photocopies shall be accepted if timing issues prevent delivery of originals by the bar date, with originals to be filed as soon as reasonably possible thereafter.

2. Intercompany creditors may file one or more placeholder claims against one or more entities in the other jurisdiction and such claims shall be marked as a "Master Proof of Claim" and be accepted as having been filed as against all debtors in the other jurisdiction.

3. Pending the parties' good faith efforts to negotiate a protocol referenced in paragraph 5 below and the completion of the procedures outlined therein and the completion of the procedures referenced in paragraphs 4 and 5 below, no claim shall be rejected or objected to on the basis:

A) that the claim ought to have been more appropriately asserted against another intercompany entity, and particulars may be provided subsequent to filing any claim as to which entity the claim properly lies against;

B) that the creditor is unable to express an exact dollar amount of its claim whether or not it is contingent or unliquidated;

C) that the amount claimed has been, on the books and records of either or both of the creditor or the debtor, mischaracterized or misclassified (including, for example related /non related party debt); or

D) of a lack of particularity,

4,. Intercompany creditors in both jurisdictions shall use best efforts to locate and file with their Proofs of Claim or thereafter further particulars and/or back up documentation to facilitate the fair and equitable evaluation ofthe claims.

5. Intercompany creditors shall continue their ongoing dialogue and cooperation in an effort to resolve discrepancies and issues relating to their claims, and following the claims bar date and the filing of claims, the intercompany creditors and their representatives shall meet in an effort to agree upon a protocol for the resolution/adjudication of all intercompany claims where possible.

6. The Monitor in the Canadian proceedings consents to this MOD.

Schedule C

(Cross-Border Service List)

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No. 0501-17864 A.D. 2005

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

Applicants

ORDER

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No. 0501-17864 A.D. 2005

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

Applicants

NOTICE OF MOTION

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EXHIBIT C

Action No. 0501-17864

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF

CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

APPLICANTS

BEFORE THE HONOURABLE	)	AT THE COURTHOUSE, IN THE CITY
MADAM JUSTICE B.E.C. ROMAINE	)	OF CALGARY, IN THE PROVINCE OF
	)	ALBERTA, ON WEDNESDAY, THE 4TH
	)	DAY OF APRIL, 2007

I hereby certify this to be a true copy of
the original Order
Dated this 5 day of April, 2007
Dueland
for Clerk of the Court

ORDER
(Approval of Court-to-Court Protocol)

UPON THE APPLICATION of the Applicants; **AND UPON** having read (i) the Affidavit of Toby Austin sworn March 29, 2007 and (ii) the Twenty-Second Report of the Monitor, Ernst & Young Inc., dated April 3, 2007, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, the Monitor, and such other counsel as were present; **AND UPON** being satisfied that circumstances exist that make this Order appropriate; **IT IS HEREBY ORDERED THAT**:

1. The time for service of the Notice of Motion is hereby abridged so that the application is properly returnable today, and, further, that any requirement for service of the Notice of Motion upon any party not served is hereby dispensed with.

2. The Court-to-Court Protocol attached as Schedule A is approved by this Court.

3. The Court-to-Court Protocol shall not become effective unless and until approved by the U.S. Bankruptcy Court, in form and substance acceptable to this Court.

J.C.Q.B.A.

ENTERED this 5 day of April, 2007.

COURT SEAL

Clerk of the Court

Schedule A

(Court-to-Court Protocol)

CROSS-BORDER INSOLVENCY PROTOCOL
FOR CALPINE CORPORATION AND ITS AFFILIATES

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined below).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border cases (the "**Guidelines**"), attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Calpine Corporation, a Delaware corporation ("**Calpine**"), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries (the "**Calpine Businesses**").

2. Calpine and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**U.S. Debtors**") have commenced reorganization cases (collectively, the "**U.S. Cases**") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**"), and such cases have been consolidated (for procedural purposes only) under Case No. 05-60200. The U.S. Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The office of the United States Trustee (the "**U.S. Trustee**") has appointed official committees of unsecured creditors (the "**Creditors Committee**") and equity holders (the "**Equity Committee**", and collectively with the Creditors Committee, the "**Committees**") in the U.S. Cases.

3. Calpine Canada Energy Ltd. (an indirect Canadian subsidiary of Calpine) and certain of its direct and indirect subsidiaries and affiliates (collectively, the "**Canadian Debtors**") have commenced reorganization proceedings (collectively, the "**Canadian Cases**") by filing an application under the Canadian *Companies' Creditors Arrangement Act* (the "**CCAA**") with the Alberta Court of Queen's Bench in Calgary, Alberta (the "**Canadian Court**"), and Orders have been granted (collectively, the "**CCAA Order**") under which (a) the Canadian Debtors have been determined to be entitled to relief under the CCAA, (b) Ernst & Young Inc. ("**EYI**") was appointed as monitor (the "**Monitor**") of the Canadian Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the CCAA Order.

4. The U.S. Cases and the Canadian Cases are separate and distinct and neither the U.S. Debtors nor the Canadian Debtors have sought to have their proceedings recognized in the other jurisdiction. The Canadian Debtors are not debtors in the U.S. Debtors' Chapter 11 restructuring, although they have appeared before and filed claims as creditors of the U.S. Debtors in the U.S. proceedings. Similarly, the U.S. Debtors are not Applicants in the Canadian Debtors' CCAA restructuring, although they have appeared before and filed claims as creditors of the Canadian Debtors in the Canadian proceedings.

5. The claims bar date in both the U.S. Cases and Canadian Cases was August 1, 2006. The U.S. Debtors and Canadian Debtors entered into a Memorandum of Understanding ("**MOU**") in order to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States. A copy of the MOU is attached hereto as Schedule "B" and incorporated herein.

6. The U.S. Debtors and the Canadian Debtors filed claims, including placeholder claims, against entities in the other jurisdiction (the "**Intercompany Claims**").

7. For convenience, (a) the U.S. Debtors and the Canadian Debtors shall be referred to herein collectively as the "**Debtors**", (b) the U.S. Cases and the Canadian Cases shall be referred to herein collectively as the "**Restructuring Proceedings**" and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "**Courts**".

B. Purpose and Goals

8. While separate proceedings are pending in the United States and Canada in respect of the Debtors, the implementation of basic administrative procedures will assist in coordinating certain activities in the Restructuring Proceedings, to ensure maintenance of the Courts' independent jurisdiction and to give due effect to any applicable doctrines, including without limitation comity, *res judicata*, issue estoppel and/or collateral estoppel. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Cases:

i. harmonize, coordinate and minimize and avoid duplication of activities in the Restructuring Proceedings before the U.S. Court and the Canadian Court;

ii. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

iii. honour the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;

iv. promote international cooperation and respect for comity among the Courts, the Debtors, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor and the Debtors' creditors;

v. facilitate the fair, open and efficient administration of the Restructuring Proceedings; and

vi. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

C. Comity and Independence of the Courts

9. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

10. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Cases and the hearing and determination of matters arising in the U.S. Cases. The Canadian Courts shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Cases and the hearing and determination of matters arising in the Canadian Cases.

11. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

i. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

ii. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

iii. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

iv. require the Debtors, the Committees, the U.S. Trustee or the Monitor to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

v. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

vi. preclude the Debtors, the Committees, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

D. Cooperation

12. To assist in the efficient administration of the Restructuring Proceedings and recognizing that both the U.S. Debtors and Canadian Debtors may be creditors of the others' estates, the U.S. Debtors and the Canadian Debtors shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Cases for the benefit of the Debtors' respective estates.

13. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court.

(a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any matter relating to the Restructuring Proceedings.

(b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by any party-in-interest in either of the Restructuring Proceedings with respect to a Motion

or an Application filed in either Court, the Court before which such Motion or Application was initially filed will contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined, and which process shall be subject to submissions by the Debtors, U.S. Trustee, Monitor and any party-in-interest prior to any determination on the issue of jurisdiction being made by either Court

(c) The Courts may coordinate activities in the Restructuring Proceedings so that the subject matter of any particular action, suit, request, application, contested matter or other proceedings is determined in one Court.

(d) The U.S. Court and the Canadian Court may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases or the Canadian Cases if both Courts determine and agree that such joint hearings are necessary or advisable to facilitate the proper and efficient conduct of the Restructuring Proceedings or the resolution of any particular issue arising in the Restructuring Proceedings. With respect to any such joint hearings, unless otherwise ordered by both Courts, the following procedures shall be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "**Pleadings**") shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any joint hearing, the party submitting such pleadings to one Court shall file copies with the other Court. In any event, Pleadings seeking relief from both Courts must be filed with both Courts.

iii. Any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any joint hearing (collectively, "**Evidentiary Materials**") shall file such

Evidentiary Materials in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or otherwise attorned to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without being deemed to have attorned to the jurisdiction of the Court by virtue of filing such Pleadings or Evidentiary Materials, provided that the party does not request any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to (i) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and the rendering of decisions by the U.S. Court and the Canadian Court and (ii) address any related procedural or administrative matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court shall be entitled to communicate with each other after any joint hearing, with or without counsel present, for the purposes of (i) determining whether consistent rulings can be made by both Courts, (ii) coordinating the terms of the Courts' respective rulings and (iii) addressing any other procedural or administrative matter.

14. Notwithstanding the terms of paragraph 13 above, the Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to (a) matters presented to and properly before such Court and (b) the conduct of the parties appearing in such matters.

15. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 34 herein.

E. Access to Information

16. Information publicly available in any forum shall be publicly available in both fora.

F. Development of Plan of Restructuring or Plan of Reorganization

17. Nothing herein shall otherwise restrict or limit the U.S. Debtors or Canadian Debtors from participating as creditors in the others' estates, or having access to information and the ability to comment on or vote on any Plan of Arrangement or Plan of Reorganization proposed in respect of the others' estates, or any of them.

G. Intercompany Claims

18. Intercompany Claims filed in each of the Canadian Cases and U.S. Cases shall be resolved in accordance with existing or normal procedures for the resolution of claims and in accordance with the MOU, to the extent applicable.

H. Claims Protocol

19. In addition to this Protocol the Canadian Debtors and the U.S. Debtors shall attempt to negotiate a specific claims protocol to address, among other things, the timing, process, jurisdiction and applicable governing law to be applied to claims filed by each other (and their respective creditors) in the other's Cases. Such specific claims protocol shall, to the extent applicable, respect and adhere to the terms of the MOU.

I. Retention and Compensation of Estate Representatives and Professionals

20. The Monitor Parties (as such term is defined below) and any other estate representatives appointed in the Canadian Cases (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Cases under the CCAA or other applicable Canadian law. The Canadian Representatives and their Canadian counsel and any other Canadian professionals shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives and their Canadian counsel and other Canadian professionals (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court and (b) shall not be required to seek approval of their compensation in the U.S. Court.[1]

21. The Monitor and its respective officers, directors, employees, counsel and agents, wherever located (collectively, the "**Monitor Parties**"), shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Cases, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of

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[1] The Canadian Representatives and the U.S. Representatives (defined below) shall collectively be referred to herein as the "Estate Representatives".

the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or wilful misconduct.

22. Any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, "**U.S. Representatives**)" shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the U.S. Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their compensation in the Canadian Court.

23. Any professionals retained by the Canadian Debtors, the Monitor Parties or by creditors of the Canadian Debtors to the extent such professionals for creditors of the Canadian Debtors are performing activities in Canada or in connection with the Canadian Cases (collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the

Canadian Court and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

24. Any professionals retained by the U.S. Debtors or by creditors of the U.S. Debtors (including the Committees, and any other Official Committees that may be appointed by the Office of the United States Trustee) for activities performed in the United States or in connection with the U.S. Cases (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

J. Notice

25. Notice of any motion, application or other pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (a) all creditors and other interested parties, including the Committees, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under subpart (a) of this sentence, counsel to the Debtors, the U.S. Trustee, the Monitor, the parties named in the Cross-Border Service List attached as Schedule "C" hereto, (the "**Cross-Border Service List**") and such other parties as may be designated by either of the Courts from time to time. When any document is filed by either the U.S. Debtors or the Canadian Debtors in their

respective Cases that has any cross-border effect, the filing Debtors shall serve such documents promptly on counsel for the non-filing Debtors, the U.S. Trustee, the Monitor, and the parties named in the Cross-Border Service List. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

26. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to in paragraph 25 above.

K. Recognition of Stays of Proceedings

27. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay and (b) the enforcement of the U.S. Stay in Canada.

28. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtors and their property under the CCAA and the CCAA Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding (a) the interpretation and applicability of the

Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay and (b) the enforcement of the Canadian Stay in the United States.

29. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

30. Nothing contained herein shall affect or limit the ability of either Court to direct that any stay of proceedings affecting the parties before it shall not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate.

L. Effectiveness; Modification

31. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

32. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 25 above.

M. Procedure for Resolving Disputes Under the Protocol

33. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 25 above. In rendering a determination in any such dispute,

the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts in accordance with paragraph 13 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

34. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

(a) The U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

(b) The Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

(c) Copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 25 hereof; and

(d) The Courts may jointly decide to invite the Debtors, the Committees, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

(e) For clarity, the provisions of this paragraph 34 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 13 above whenever they deem it appropriate to do so.

N. Preservation of Rights

35. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Committees, the Estate Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA and the Orders of the Courts or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Schedule A

(Guidelines)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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BY

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At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines,* however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines.*

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
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Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
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Hon. George Paine II
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Court of Appeal
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Mr. Justice Wisit Wisitsora – At
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Supreme Court of Korea
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Hon. Shinjiro Takagi
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Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

Schedule B

(Memorandum of Understanding)

Memorandum of Understanding re: Proofs of Claim

The purpose of this memorandum is to facilitate the efficient and timely filing, treatment and resolution of intercompany claims in Canada and the United States according to the following parameters:

1. It shall be sufficient if any Proof of Claim is signed by an authorized representative of the creditor and unless expressly prohibited by the claims procedure (bar) order or applicable bankruptcy or insolvency provisions in either jurisdiction, fax copies or photocopies shall be accepted if timing issues prevent delivery of originals by the bar date, with originals to be filed as soon as reasonably possible thereafter.

2. Intercompany creditors may file one or more placeholder claims against one or more entities in the other jurisdiction and such claims shall be marked as a "Master Proof of Claim" and be accepted as having been filed as against all debtors in the other jurisdiction.

3. Pending the parties' good faith efforts to negotiate a protocol referenced in paragraph 5 below and the completion of the procedures outlined therein and the completion of the procedures referenced in paragraphs 4 and 5 below, no claim shall be rejected or objected to on the basis:

A) that the claim ought to have been more appropriately asserted against another intercompany entity, and particulars may be provided subsequent to filing any claim as to which entity the claim properly lies against;

B) that the creditor is unable to express an exact dollar amount of its claim whether or not it is contingent or unliquidated;

C) that the amount claimed has been, on the books and records of either or both of the creditor or the debtor, mischaracterized or misclassified (including, for example related /non related party debt); or

D) of a lack of particularity,

4,. Intercompany creditors in both jurisdictions shall use best efforts to locate and file with their Proofs of Claim or thereafter further particulars and/or back up documentation to facilitate the fair and equitable evaluation ofthe claims.

5. Intercompany creditors shall continue their ongoing dialogue and cooperation in an effort to resolve discrepancies and issues relating to their claims, and following the claims bar date and the filing of claims, the intercompany creditors and their representatives shall meet in an effort to agree upon a protocol for the resolution/adjudication of all intercompany claims where possible.

6. The Monitor in the Canadian proceedings consents to this MOD.

Schedule C

(Cross-Border Service List)

[*intentionally blank*]

No. 0501-17864 A.D. 2005

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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

AND IN THE MATTER OF CALPINE CANADA ENERGY LIMITED, CALPINE CANADA POWER LTD., CALPINE CANADA ENERGY FINANCE ULC, CALPINE ENERGY SERVICES CANADA LTD., CALPINE CANADA RESOURCES COMPANY, CALPINE CANADA POWER SERVICES LTD., CALPINE CANADA ENERGY FINANCE II ULC, CALPINE NATURAL GAS SERVICES LIMITED, AND 3094479 NOVA SCOTIA COMPANY

Applicants

ORDER

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199472-371537
CAL_DOCS #1572857 v. 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CALPINE CORPORATION., *et al.*,	Case No. 05-60200 (BRL)
Debtors.	(Jointly Administered)

ORDER PURSUANT TO 11 U.S.C. § 105(a)
APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL

Upon consideration of the motion (the "Motion"), dated April 5, 2007, of the Canadian Debtors[1] for entry of an Order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") approving that certain cross-border court-to-court protocol attached hereto as Exhibit A (the "Court-to-Court Protocol"); and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and upon the record of a hearing held before this Court on April 12, 2007; and it appearing that the relief sought is in the best interests of the U.S. Debtors and the Canadian Debtors, their respective estates and creditors; and the Court-to-Court Protocol having been approved by the Canadian Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Court-to-Court Protocol is approved in all respects; and it is further

[1] All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

ORDERED that the requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a separate memorandum of law is hereby waived.

Dated: New York, New York
April ___, 2007

Burton R. Lifland
United States Bankruptcy Judge

EXHIBIT 7

In re Calpine Corp., Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
In the Matter of

Case No.
CALPINE CORPORATION, et al., 05-60200
Debtors.
----------x

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY
----------x
In the Matter of
THE COMPANIES' CREDITORS ARRANGEMENT ACT, Action No.
R.S.C. 1985, c. C-36, AS AMENDED 0501-17864
AND IN THE MATTER OF
CALPINE CANADA ENERGY LIMITED, et al.,

Applicants.
----------x
July 24, 2007
United States Custom House
One Bowling Green
New York, New York 10004

Joint Hearing with Canadian Judge in re: Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and Other Relief; Approval of Bond Sale; Debtors' Emergency Motion with Respect to CCAA Proceedings; Debtors' Partial Objection to Proof of Claim.

B E F O R E:
HON. BURTON R. LIFLAND,
U.S. Bankruptcy Judge
- and -
HON. B.E.C. ROMAINE,
Queen's Bench Justice

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NATHAN LANCE - for the ULC1 indentured trustee

DAVID JOHNSTON - Alix Partners

P R O C E E D I N G S:

JUDGE LIFLAND: Please be seated.

THE CLERK: It's the clerk from Calgary we are ready to commence.

JUDGE LIFLAND: Good afternoon.

MR. SELIGMAN: Good afternoon, your Honor.

JUDGE LIFLAND: This is the joint hearing before The Court of Queen's Bench of Alberta and the U.S. Bankruptcy Court for the Southern District of New York.

While not the first of such joint hearings, it is the latest to recognize that debtors with assets and creditors and insolvency proceedings in more than one state have an urgent need for cross-border cooperation and coordination, and the supervision and administration of their assets and affairs.

At the very least, these joint proceedings contemplated by court approved protocols, provide the forum for cross-border access and recognition for the stake holders on both sides of the border. And I, for the New York court, welcome all the stakeholders in Canada as well as recognizing those here in the US.

It's my understanding that the parties have agreed on a scheduling of the presentation; is that correct?

MR. SELIGMAN: David Seligman for the US

debtors, your Honor, that is correct.

JUDGE LIFLAND: Do you want to be heard on that, Mr. Seligman?

MR. SELIGMAN: Yes, your Honor.

Your Honor, Seligman on behalf of the United States debtors in the Chapter 11 cases of Calpine Corporation, case number 05-60200 --

JUDGE LIFLAND: Can Mr. Seligman be heard?

JUSTICE ROMAINE: Yes, we can hear Mr. Seligman. Thank you.

MR. SELIGMAN: Thank you, your Honor.

We are here this afternoon on a motion for a global settlement between the United States and Canadian debtors and certain other parties. We are also here pursuant to that cross-border insolvency protocol for Calpine Corporation and its affiliates approved by the United States court an April 12, 2007, and by the Canadian court on April 4, 2007.

Your Honor, I was going to turn to some of the logistical matters, including the order that the parties have agreed to, if I can proceed?

JUDGE LIFLAND: Certainly.

MR. SELIGMAN: Your Honor, just as a logistical matter for the people in the courtroom, the clerk admonished us previously, just to make sure that

there is --

JUDGE LIFLAND: May I just interrupt a moment?

MR. SELIGMAN: Sure.

JUDGE LIFLAND: There seems to be some background speaking that's coming across the loudspeakers.

JUSTICE ROMAINE: Okay. Judge Lifland, I don't think there's any noise from this court that I can detect. I do want to tell you, though, that your voice is not coming across as clearly, perhaps, as we would like it. We can hear Mr. Seligman clearly, but not you.

JUDGE LIFLAND: Well, I'll try to swallow the microphone.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: Your Honor, just for everyone here in the courtroom, the check admonish to admonished the people here to please keep background noise to a minimum because the microphones are very sensitive. I will do my best, and I would everyone else who is speaking here today to make sure that they are speaking slowly and clearly, and also being cognizant of the proceedings in the Canadian court, to the extent that there needs to be an interruption or a pause in the proceedings.

I would also ask that people make sure to state their names clearly every time they speak for the

benefit of the court reporters.

Your Honor, in the spirit of comedy and cooperation, the US debtors and the Canadian debtors had met with each other and discussed the orders of proceedings for this morning, particularly in light of the objections that had come in. And we had prepared a suggested schedule that had been previously provided to both the US court as well as the Canadian court, and I would like to outline that process for this morning.

JUDGE LIFLAND: I'm going to interrupt for a moment. There may be no conversation in each of the courtrooms, but if there are open telephone lines, that may be the source of the conversations.

JUSTICE ROMAINE: Okay. Mr. Robinson?

MR. ROBINSON: My Lady, I don't have any technical knowledge at all, but perhaps I could suggest, with the indulgence of the folks on our line, that we put this telephone on mute.

JUSTICE ROMAINE: Let's do that.

MR. ROBINSON: Let's see if that solves the problem.

JUSTICE ROMAINE: Okay, we'll try that, Judge Lifland, and hopefully that will help.

JUDGE LIFLAND: Thank you.

JUSTICE ROMAINE: It is muted already.

MR. ROBINSON: Mr. Seligman, does that make a difference in your courtroom?

MR. SELIGMAN: Well, I guess we'll see. Is that better, Judge Lifland?

A VOICE: The fact that no one on the line will be able to hear this proceeding --

MR. ROBINSON: We went the wrong way. I guess we could ask the folks --

JUSTICE ROMAINE: But they won't hear you, Mr. Robinson.

MR. ROBINSON: I'm sorry, I've demonstrated my ignorance already. But perhaps we could ask the people that are listening in to our proceedings by telephone to mute their lines, unless they need to speak, and see if that solves the problem of interference in Judge Lifland's courtroom.

JUSTICE ROMAINE: Thank you. And unfortunately none of these people are able to respond to that request because of the way we've set it up, but, Judge Lifland, if you can see if that will make a difference.

JUDGE LIFLAND: It sounds already as if they've got the message.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: Your Honor, the way that we had suggested to proceed this morning was for the US

debtors to make some introductory remarks followed by the Canadian debtors making similar introductory remarks with respect to the motion. We will then come back to the US court for the US debtors to make their presentations, submissions and evidence, if necessary, with respect to the motion. And then refer it to the Canadian court to have the Canadian debtors make their submissions.

With each pair of submissions, we would also include statements in support or statements of non opposition to the settlement agreement before the courts this morning. We would then come back to the US court to consider objections to the settlement agreement there.

And just to pause on that for a moment, your Honor, there are basically four objections filed to the settlement. One filed by the ULC1 trustee, one filed by the ULC2 trustee, one filed by the Canadian income fund, and one filed by what we will refer to ass the CCRC committee.

The objection of the ULC21 indentured trustee is really the only substantive objection to the settlement on the US side, i.e. that there is perhaps a violation of US law. The other three objections really go to the aspect of the settlement that may be allegedly violative of Canadian law, and is really more appropriately directly, in our opinion, to the Canadian court. So we

envision that there will be argument with respect to the ULC1 indentured trustee followed by perhaps free statements by the other objectors, to the extent they want to make a statement here in this court understanding that perhaps the balance or the majority of their presentations will be made in the Canadian court.

Once we have done that, your Honor, then I think we will have then completed our submissions and the responses and the replies in both courts, and it will be up to the courts to entertain any questions or comments, and then we can proceed from there.

The one other point I did want to make was with respect to the ULC1 indentured trustee's objection. There has been some continuing dialogue right before the hearing and is going on right now. I think that, depending on where we are at that particular moment, we may ask that you put that objection off until after the Canadian objectors make their submissions to the Canadian court to give more opportunity to perhaps reach a resolution and to consider their objection, to the extent it still remains, at the end of the process.

If that's acceptable to your Honor and My Lady, that's how we would like to proceed this morning.

JUDGE LIFLAND: That's acceptable to this court.

Madam Justice.

JUSTICE ROMAINE: Thank you, Judge Lifland. And I want to say first thank you for your words of welcome and your words with respect to the importance of this cross-border proceeding, words that I certainly agree with. I would like to welcome you, the US debtors, and the US stake holders to these proceedings in the Court of Queen's Bench of Alberta.

Having said that, I will turn to Mr. Robinson and Mr. Meyers to respond to what Mr. Seligman has said with respect to the procedure before us this afternoon.

Mr. Robinson?

MR. ROBINSON: For the record, Larry Robinson of McCarthy Tetrault for the Canadian debtors.

My Lady, your Honor, we have received from Mr. Seligman the proposed outline of schedule of submissions on behalf of the Canadian applicants. That schedule, we think, is a logical approach and we are in agreement with that schedule and in fact have indicated to your Ladyship in the past of this hearing that that is the order that we would be recommending to this court as well.

The only addition I would make is that, as is customary in Canadian proceedings, given the existence of our monitor, at the conclusions of the applications by

the Canadian debtors and statement of support for the Canadian debtors, we would propose that the monitor make any submissions it wishes to make with respect to the applications before objections are commenced by folks.

JUSTICE ROMAINE: Thank you. Does anybody else wish to address procedure?

Thank you. Judge Lifland, we are back to you.

JUDGE LIFLAND: Thank you, Madame Justice.

Mr. Seligman, you may start your presentation.

MR. SELIGMAN: Thank you, your Honor.

Your Honor, just before I proceed this morning, if it's acceptable with your Honor, I would like to introduce just a couple of people in the courtroom before we proceeded, just for the benefit of the Canadian court.

JUDGE LIFLAND: Certainly.

MR. SELIGMAN: Your Honor, with me this afternoon from Kirkland and Ellis is Thomas Clare and Todd Maynes who are here. They may be speaking to your Honor this morning, hopefully not, if we can resolve everything, but we'll see where we go on that front. I also did want to introduce Monique Jilesen of the law firm of Lenczner Slaght. She is Canadian counsel to the US debtors, and I'm

sure is familiar to the Canadian court already.

I also would like to introduce David Johnston, managing debtor at Alix Partners. Mr. Johnson has been instrumental throughout this process of trying to reach a resolution with the Canadian debtors and had personally daily involvement from the business and from the financial side to try to bring this settlement to where it is today.

I would also like to just introduce Melissa Brown and Jim Mine from Calpine Corporation. Melissa Brown is treasurer and senior vice president of strategy and financial analyses, as well as Jim Mine, who is vice president of structuring, who have both been very involved and instrumental in the efforts to bring this settlement agreement to fruition.

I would also like just to mention, your Honor, that there is some other business pertaining to Calpine. There may be some people in the courtroom who may have to leave in a couple of hours, I just want to apologize in advance and ask for the court's indulgence in the event that people may have to leave the courtroom for other matters.

Let me step back and just ask that if there are other people in the courtroom sitting at counsel's table who will perhaps be presenting something to the court

this morning to make their appearances on the record.

MR. STABER: Your Honor, My Lady, David Staber of Akin Gump Straus Hauer and Feld, counsel to the unsecured creditors' committee.

MR. KAPLAN: Gary Kaplan from Fried, Frank, Harris, Shriver and Jacobson here on behalf of the official equity committee.

MS. McCOLM: Good afternoon, Elizabeth McColm from Paul, Weiss, Rifkind, Wharton and Garrison on behalf of the second lien committee.

MR. ECKSTEIN: Good afternoon, your Honor, My Lady, Kenneth Eckstein of Kramer Levin representing the ad hoc committee of CCRC creditors.

MR. ANKER: Good afternoon, Judge Lifland and My Lady. Philip Anker and James Millar of WilmerHale, and Brendan O'Neill of Goodmans, counsel appearing today in New York on behalf of the Canadian debtors.

MR. CASHER: Good afternoon, your Honor and My Lady. Richard Casher of Kasowitz, Benson, Torres and Friedman on behalf of the ad hoc committee of ULC1 note holders.

MR. CASTELLO: Good afternoon your Honor and My Lady, Geoffrey Castello of Kelley Drye and Warren for the ULC1 indentured trustee, HSBC.

MR. FREDERICKS: Good afternoon, your

Honor, My Lady. Ian Fredericks of Young Conaway Stargatt and Taylor, US counsel to Manufacturers and Traders Trust Company in its role as indentured trustee.

JUDGE LIFLAND: Hopefully you people will keep all your interventions as briefly as that.

MR. SELIGMAN: Your Honor, moving to the substance of the presentations this morning, your Honor a lot of the detailed background has been laid out in a variety of paper before your Honor and before My Lady. So I will briefly summarize the settlement motion and a little bit of background for the benefit of the court and the various people in the courtroom this morning.

I think what I want to talk about today, your Honor, are some of the key issues that the US debtors and the Canadian debtors, at least from our perspective, are struggling with since the conception of these insolvency cases, how they attempted to reconcile or address those issues, how they ultimately resolved those issues, and how, from at least the US debtors' perspective, and I'm sure the Canadian debtors would agree, how the ultimate resolution is in the best interest of the estates, their creditors, and the variety of stakeholders who have played significant roles in these proceedings.

This case truly has some unique and interesting aspects to them. If we go back to December

20th, 2005 the date that the US debtors filed their Chapter 11 petitions and the date that the CCAA applicants and CCAA parties commenced the proceedings in Calgary, you have a recently unique situation where you have, on the one side of the border, the US debtors which are in the process of reorganizing with significant assets. At the same time you have a number of Canadian subsidiaries that were in some senses operating but in some senses already not operating, but they also had, relative to their size, significant assets, mostly in the form of intangibles.

Stepping back even further, prior to toe time of filing Calpine Corporation viewed itself as a whole. So a lot of times there were joint bank accounts, there were employees, professionals, et cetera, who viewed the company as a whole and conducted a lot of business from the perspective of the company as a whole. And this is important, your Honor, because a lot of the work that has been done since the petition date has been to try to understand a lot of the intercompany accounting and intercompany reconciliations that were ultimately resolved and set forth in the settlement agreement. You also have a unique situation where you have most, not necessarily all, but most of the creditors of the Canadian debtors also having guarantees from Calpine Corporation.

So after the initial filing on December

20th, 2005, there was a period of stabilization of operations provided -- that were improved upon by the automatic stay here in the US proceeding and by the stay in the initial order in the Canadian proceedings, but soon thereafter the companies -- both sets of debtors began struggling with a variety of issues. We lay them out in the papers. I just wanted to highlight five issues, a very big issues for your Honor, because those are the critical big points that we see from our perspective.

Number one, ULC hybrid note structure. This was approximately 2 billion dollars of debt financing raised through the Canadian debtors, we've called the ULC1 bond debt, where there were approximately 12 billion dollars or more of claims filed against the US debtors by their bond holders, the trustee, the indentured trustee for the Canadian debtors. There was a significant issue about how the US debtors were going to obtain clarity so that they could move forward with their plan of reorganization. How were they going to address all of the variety of issues that came to light as a result of this complex, hybrid financing. How would the claims objection be handed? Would they be handled in this or the court, or how would the claims that were alleged against the Canadian debtors be handled, and what kind of joint proceeding, if any, could there be. That you issue number one.

Issue number two were the 360 million dollars approximately of ULC bonds that have been repurchased by the US debtors, and in a variety of transactions ended up in the name of the Canadian debtors prepetition. The Canadian debtors wanted to sell those bonds, and it's been the subject of a number of proceedings and motion practice before the Canadian court, to maximize value to their estate.

The US debtors had a number of issues with respect to the bond sale, principally they had concerns that that bond sale may be avoidable and subject to a 502(d) defense or another avoidance action under 550. That presented a variety of issues, not only on the substance but also an on procedure. How would those claims be handled? Would they be viewed as assets to be in handled in front of the Canadian court, or would they be viewed as claims objections to be handled in the US court? That was an issue that was very important to be reconciled, and the parties tried to work in a way to maximize value to both.

The third issue is the Greenfield project facility, which this court I'm sure is familiar with having approved a variety of motions with respect to the Greenfield facility. That is a very significant project for the US debtors. It's over a thousand megawatts, one of the biggest megawatt power facilities that the US debtors

have.

There were a number of issues associated with Greenfield. Number one, there was a small piece of the ownership interest held by the Canadian debtors.

Number two, there was an avoidance action commenced by the Canadian debtors against some non debtor subsidiaries of the US debtors alleging that a transfer of a portion of that interest prepetition was also an avoidable action in the Canadian court.

Third, this wasn't simply an action that could languish for a period of time because the project was in the process of every couple of months needing equity contributions both from the US debtors and their joint venturer, Mitsui.

Every time that an equity contribution was due, there was the issue of could Mitsui exercise certain of its buyout rights to buy out the United States debtors' interest at a discount. So that was an extra issue that we were facing that took a great issue of timing.

And finally, your Honor, there was the issue of at some point the project could not survive an equity contributions alone but needed third party financing, and who could we get as a lender to come in and loan money to this facility with all the cloud of the litigation, the partial interest held by the Canadian

debtors, and how could we resolve that in a way to maximize value, unlock the project, and let it be financed.

Next, your Honor, was the issue of literally hundreds of millions, if not billions of intercompany claims between the two estates. As I mentioned earlier, prior to the petition date Calpine was viewed as a whole and the accounting record were not necessarily the best. There needed to be a lot of work done to reconcile down to the penny a lot of these intercompany claims. People had to look back to original wire transfers and other documentation to recreate the books and to establish who made transfers to whom.

And as a result of that there was over a billion dollars of claims asserted by the Canadian debtors against the US debtors, and I believe over 200 million dollars of claims asserted by the US debtors against the Canadian debtors, and they couldn't be offset, because it was against a different debtor correspondingly. So that was another issue that had to be resolve.

And finally, your Honor, there was the issue of what I will refer to as the guaranteed claims, which are the claims asserted against the Canadian debtors, they are also guaranteed by the US debtors. Principally amongst these I put in this category; the ULC2 bonds, which was originally about a 550 million dollars or so issuance

of bonds. The third party bonds are now at about 350 million. That was a claim asserted against the Canadian debtors but also guaranteed by the US debtors, as well as there were also a number of trade claims, a number of contracted pipeline rejection claims asserted against the Canadian debtors that were also guaranteed by the US debtors.

The parties faced a difficult dilemma of how do we resolve those claims. There could be the Canadian court that would adjudicate the primary claims, but then how we would deal with the guaranteed claim that would be asserted against the US debtors? There is different rules in each jurisdiction about who has rights and standing to participate in claims objections.

So faced with these five primary issues, as well as a variety of other issues set forth and resolved in the settlement agreement, the parties started working very diligently as far back as around Thanksgiving of last year to try and see if we could move the process forward, resolve these issues, and, as we sometimes refer, unlock the estates and let them go on their merry way.

And the statement today is a product of approximately seven months of intense, hard work to unlock the estates. And it was simultaneously conducted with negotiations between the US debtors and the ULC1 ad hoc

committee of bond holders to try and resolve their issues about the ULC1 hybrid note. And it wasn't just the debtors talking, both sets of debtors talked to their various stake holders to try to get input from their various stake holders.

I had a lot of meetings with them and their creditors over the course of time. I can certainly speak from the US debtors' perspective, we had our official committees and our unofficial committee in the loop constantly as we were going through the process. And in addition there was the role of the court appointed monitor, Ernst and Young, who participated in a variety of these meetings to get something done.

So, your Honor, eventually we reached settlement on the global resolution that we were presenting to your Honor today. And it resolves virtually all issue between the two estates. And to the extent it doesn't resolve an issue, it creates a process for resolution of an issues. So we really do believe that it provides maximum value both substantively and from a process perspective for both the estates.

And I was going to highlight, your Honor, just for a moment, a couple of the benefits of the settlement agreement. But I did just want to mention to your Honor that this settlement agreement was the result of

months of back and forth, if you will, horse trading. There were a lot of different pieces. There was some give and take on one issue and give and take on another issue.

It should be viewed as a collective whole. We refer to in our motion that this is somewhat akin to a jigsaw puzzle, and if you take out one piece it's not a compete picture anymore. And that's very important, because some of the people here today may suggest that one issue should be tweaked or a that issue should be tweaked, when in reality it was a comprehensive whole, and if you change one piece you've to got to change the whole settlement agreement.

So what were the primary benefits for those five major issues that we were talking about? Well, as to the ULC hybrid note issues, we resolved the issue by basically allowing a claim by the ULC1 bond holders in the amount of nominally of 3 and a half billion dollars, with the understanding that they could never collect more than principal, pre and post petition accrued interest, plus some fees and expenses. This reduced the claims register from 12 billion down to three and a half, but in our modeling purposes we could use, as we set forth in the settlement agreement, approximately 2.3; so approximately a 10 billion dollar reduction in the claims register, and absolute clarity on this issue from our perspective of

allowing us, among other things, to move forward with the plan of reorganization process. And we filed a plan that may not have been able to be filed with this issue if we didn't have some clarity on this issue.

Secondly, we have issue of the repurchase bonds. There's been an agreement to let the Canadian debtors sell those bonds in the open market and fund distributions on account of claim in the Canadian proceedings.

As part of that, and this is number 3, the US debtors are resolving all of their various objections and avoidance action claims that they would have against the Canadian debtors in return for a 75 million dollar cash payment from the bond sale proceeds. And, your Honor, this is important, because from our perspective we don't just view this as a claim like every other Canadian creditor may have. There are rights as to these bonds, in our opinion we felt were as to a race, as to an escrow, so we had really superior structural priority rights that are being settled by the 75 million dollars.

We also, as we originally set forth in our 502(d) claim objection, we had rights as to the Salten proceeds, which were about 230 million dollars of money repatriated up through the Canadian process sitting at CCRC, which is one of the Canadian debtors.

The US debtors and the Canadian debtors had agreed a long time ago that to the extent the US debtors had any claims with respect to any of the proceeds of those claims, and we believe that our avoidance action was against one of those claims, that we would have structural priority that would be senior to any of the creditors of CCRC so that in a sense we would get paid first.

Number 4, as to Greenfield. The Greenfield issue is resolved. There is going to be a withdrawal of the avoidance action against the US debtors and their subsidiaries with respect to that; that will allow us to fully move forward with the facility unencumbered by any of the clouds that were existing before.

Number 5, all of the intercompany claims have been fixed and resolved. There is a schedule attached to the motion and the settlement agreement which lays out in detail all the various claims back and forth that are going to be allowed and how they are going to be allowed, so that issue is resolved.

And finally there is a process in place to resolve the so called guaranteed claims. We have agreed with respect to those guarantee claims that are going to be adjudicate, that they will be adjudicated in front of the Canadian courts, and that the US debtors and their official committees will have the opportunity to have standing and

to participate in that litigation. That gave us and our committees comfort that we could litigate that issue in Canada and not revisit the issue in this court.

In addition, with respect to the ULC2 bonds, as laid out in the pleadings, we have agreed that there's enough money and that they should be paid in full. There is some disagreement as to the exact amounts that are owed, but we've agreed to reserve some money set aside, to the extent that we can't pay what they say they are owed, and we will litigate those issues letter.

One issue that may come up, perhaps, are the ULC2's argument for make whole, and we have both agreed that that would be an issued to be dealt with by this court, given that it's an indenture governed by New York law, and given the state of the law in the US as far as make wholes and given your Honor's recent experience in this case regarding make wholes.

So we think that from the US debtors' perspective, it solves all of the major issues that we were grappling with, from our perspective it brings a significant amount of cash into the estate, assuming that all the Canadian creditors get paid in full, there will also be, perhaps, a significant return on equity to the US estate, which is additional funding money, there is the Greenfield issue resolved, there is the claims pool being

reduced by billions of dollars, and there is the unlocking of the estates and allowing the process to move forward.

Your Honor, let me pause here for a second, and I was going to move to just process for a second in terms of how we talk to our stakeholders about the settlement, but I wanted to pause here and just ask your Honor, we do have Mr. Johnston here who would be prepared to testify as to the benefits of the settlement and a little bit of the background of the settlement.

We have a proffer that we would be willing to put on for your Honor that would take 15 minutes to read. If your Honor would like, we are happy to go forward and introduce that proffer. If your Honor feels that based upon the record before you that that would be duplicative of the presentation this morning, we can move on.

JUDGE LIFLAND: Frankly I think it would be duplicative. I've got about two feet of papers in front of me, and I've had about 48 or more hours to plow through them. It might be redundant, unless somebody wants to have the proffer and go through that exercise. I do not find it necessary.

MR. SELIGMAN: Thank you, your Honor. We just wanted to give your Honor the opportunity.

With that, let me just briefly mention that as far as dialogue with our committees, and I think that

you'll hear the same thing from the Canadian debtors, there was a process in place to keep our committees at least updated on this process as it was developing and as we were having negotiations with the Canadian debtors. And even before, well in advance of filing of motion, we spoke to our various stakeholders to have them comfortable with what was going on.

One of the things between Alix Partners and the monitor was what we called a distribution model, which kind of laid out how we thought the funds would ultimately flow, and that was one of the things we used to talk to our creditors and stakeholders about the process.

Just to remind your Honor of some of the dates here. The term sheet between the US debtors and Canadian debtors was signed May 13, and May 17 a press release.

MR. ANKER: AK was filed with respect to the term sheet, so that was the first opportunity that people were on notice publically about this settlement. It wasn't until over a month later that the motion was filed, during which time we were talking to all of our various stakeholders; with the motion we attached a draft form of the settlement agreement.

As set forth in the motion, we would file and did file by July 9th, a final version of that global

settlement agreement. That was not only published in various newspapers across North America, it was also served on all of the bond holders for the ULC1 holders, it was also put on the depository trust lens system, and it was also put on the Calpine Corporation Chapter 11 website. And again, during this entire process there were continuing discussions going on.

Over the past several weeks there has been continuing dialogue, and there has been some minor modifications agreed to between the debtors and their US constituents with respect to the implementation of the settlement agreement. And just as housekeeping matter I just want to identify those briefly for your Honor, and this is reflected in a black line and settlement agreement and proposed order that was signed on Friday to put everyone on notice as to what those changes are.

These changes were, just the big picture, were essentially to ensure that as the US debtors were implementing a settlement agreement on their side of the border, that they were going to be constantly keeping their committees and the official and unofficial committees in the loop as to the process. And to the extent that they were going to be needing to give consent on various issues or sign-off on various issues, that they could talk with the committee's before doing so.

And so essentially we've agreed in general to consult with the committees, and when I say committees, I'm talking about the equity committee, the creditors' committee, and the ad hoc committee of second lien holders. The debtors have agreed to generally consult with the committees on matters related to the implementation of the settlement agreement, whenever the US debtors have to consent or give approval on any issues, the US debtors have agreed to give notice to the committees and to provide relevant documentation to the committees.

With respect to any settlement of the guaranteed claims that we spoke about before, the US debtors have agreed to gave reasonable notice to the committees and an opportunity to comment on any such settlement. And to the extent that the committees believe that it's inappropriate they can object, and then we can come before your Honor to determine whether that particular settlement, from only in the US debtors' perspective, would be in or not in the debtors' reasonable business judgment.

We have also agreed with the ad hoc committee that certain transfers of property under the settlement agreement would not be made unless there was a context of a confirmed plan of reorganization. We have also confirmed with the ad hoc committee that this transaction will not effect whatever lien rights they have

against the US debtors. And finally, because the ad hoc committee is not a participant in the guaranteed claims litigation, that we would basically continue to talk to them and provide them with relevant documentation as we are going through that process.

As a housekeeping matter, we just also recently agreement with the committees on an additional point about implementation of the settlement, and I just want to read this into the record for your Honor. If you'll bear with me, it will take about a minute.

The debtors would like to make a clarifying statement for the record with respect to the proposed settlement that reflects an understanding between the US debtors, the creditors' committee the equity committee, and the ad hoc committee of second lien holders. As your Honor may recall, last year the Canadian debtors decided to repatriate the proceeds from the sale of the Salten Energy Center in the UK which resided in a bank account of a UK subsidiary of CCRC, one of the Canadian debtors.

The repatriation required the proceeds to flow through entities in Luxembourg, the Channel Islands and the UK to ensure that intercompany obligations were paid off along the way. At the time the Canadian and US debtors cooperated in establishing a plan to structure the repatriation of the fund in such a way to honor the

original transaction thereby avoiding the incurrence of additional taxes not originally contemplated. This repatriation plan was successfully executed and the Salten proceeds now reside at CCRC and will be able to be used to fund distribution to the Canadian debtors' creditors to creditors as contemplated in the settlement before the court this afternoon.

The Canadian global settlement presents similar issues. The flow of funds in the global settlement will travel through several entities paying off intercompany obligations along the way. The most significant among these is Calpine Corporations' satisfaction of the claims of the bond holders through the ULC1 hybrid note structure described in the motion.

This fund should flow well, among other things, be structured to minimize any negative tax consequences to the CCAA and US estates and to assure compliance with US and Canadian tax laws. Your Honor, as you will note in section 2.6 of the settlement agreement obligates the parties to use commercially reasonable efforts to cooperatively implement, perform, and execute the terms of the agreement in a manner that is mutually beneficial for both the US debtors and Canadian debtors, while retaining the same economic benefits of the agreement.

Your Honor, the US debtors have been working with their tax advisors to develop a structuring plan for implementing a settlement agreement, particularly the satisfaction of the ULC1 obligations throughout the hybrid note structure that will honor Section 2.6 of the settlement agreement; and the final version of that structure was shared with the official committees and the ad hoc committees on July 23rd. The US debtors intend to implement that settlement agreement substantially in accordance with the structuring plan; however, any implementation actions are proposed to be taken under this agreement by any party that deviates materially from this July 23rd structuring plan.

The US debtors have agreed to provide ten business days prior written notice of any such proposed action to the official committees and the ad hoc committee of second lien holders, and shall consult with those three committees regarding such actions. If any of those three committees object to such proposed actions by the US debtors by providing written notification of such objection within ten business days from the date of the US debtors' providing written notice of such actions, then the US debtors have agreed to seek a determination from this court, that is the US court, on an expedited basis that such proposed actions by the US debtors are the product of

reasonable exercise of the US debtors business judgment, provided, however, that this expedited process will provide all parties in interest, including each of the three committees, with an opportunity to object to the proposed modifications to the structuring plan.

Your Honor, I apologize to the length of that, but that was agreed upon language with respect to the three committees.

Your Honor, in conclusion, for all the reasons that we've set forth in the motion, and based on the presentation this morning, we believe that at least from the US debtors' perspective, the settlement is in the best interest of the creditors, a sound exercise of the debtors' business judgment, clearly confers a substantial benefit on all concerned and should be approved.

With that, your Honor, unless your Honor has any questions, I would propose to turn it over to those individuals who wish to makes a statement or in support or a statement of non opposition to the motion, at which time we would turn it over to the Canadian court.

JUDGE LIFLAND: We'll turn it over to the Canadian court.

MR. SELIGMAN: Should we hear statements in support, or do you want us to --

JUDGE LIFLAND: Well, that's in violation

of your proposed order of presentation, but on an ad hoc basis it does make a lot of sense to hear your supporters at the same time.

MR. SELIGMAN: Thank you, your Honor.

JUDGE LIFLAND: Go ahead.

MR. STABER: Your Honor and My Lady, David Staber on behalf of the official committee of unsecured creditors of Calpine Corp. and its jointly administered US debtors.

Your Honor, recognizing the number of parties appearing here and your admonition, I have deleted by a third my comments, as brief as they were.

Early in this case the creditors' committee was very concerned that the cross-border issues between the US and Canada, particularly the hybrid note structure impediment to confirmation, we became involved early in the process, hiring Canadian counsel, studying the underlying documents, and working with the US debtors on these issues. Based on that background and our conversations with the debtor, we believe that the settlement is reasonable and appropriate and will help the parties move forward to completion for reorganization in these cases.

And with that, your Honor, and my promise to be brief, I'll be seated.

JUDGE LIFLAND: Thank you.

MR. KAPLAN: Your Honor and My Lady, Gary Kaplan from Fried Frank.

Your Honor, the equity it committee filed a brief statement in support of the debtors' motion. I too will be extraordinarily brief. For all the reasons that the debtors laid out in their motion papers and for the reasons that Mr. Seligman discussed on the record today, the equity committee is supportive of the settlement.

One other thing I would be remiss if I didn't say, I've often been very critical, your Honor, of the debtors. On this issue I do have to give credit to the debtors that they have been very good at keeping their constituents in the loop throughout, and we are very happy. Obviously we are supportive of the settlement, and we also appreciate the process that was run to get to this settlement.

MS. McCOLM: Your Honor and My Lady, Elizabeth McColm from Paul, Weiss, Rifkind, Wharton and Garrison on behalf of the second lien committee to Calpine Corporation.

Your Honor, similar to the official committee of unsecured creditors and the equity committee, the debtors have kept the second lien committee in the loop over the past few months throughout the negotiation process, and we are grateful to the debtors for that.

Your Honor, it's suffice to say that the second lien committee believes that the settlement presented here today is in the best interest the US debtors' estates and should be approved.

JUDGE LIFLAND: Does anyone else want to be heard in support of?

MR. ANKER: Your Honor and My Lady, Philip Anker, US counsel for the Canadian debtors. Your will obviously hear and My Lady will hear much more from the counsel for the Canadian debtors in Canada. But I did want to give one minute of a US perspective.

As I heard Mr. Seligman, I agreed with so much of what he said, and I yet I disagreed with a little, and what I disagreed about I think is significant. As he was describing if there had been litigation what the US's position would have been, I kept saying to myself, no, we would have argued this, no, we would have argued that.

It would have been an extraordinarily complicated and involved process. There would have been, as Mr. Seligman noted, major issues of jurisdiction, which court should decide what. There would have been, had the avoidance claims been brought, all sorts of issues about were the transfers, by way of example, made from one US debtor to another? Does an action have to be brought by one US debtor against another as a predicate? Would

separate counsel be needed? Can you avoid that through substantive consolidation? What issues would have that raised about whether substantive consolidation would or would not have been appropriate?

I think, one thing that everyone in this courtroom can agree upon is that that litigation would have taken enormous time. I would have been hopefully that I could have persuaded your Honor, if your Honor were to decide the issues as a matter of law that we would have been right on some issues, but I'm smart enough and I've been around the block long enough to know that there would have been issues that would have required discovery and a long complicated process. And at the end, while that might have personally benefited me and my law firm and benefited other professionals, who would it would not have benefited are the creditors of these two estates.

This process in the US, and from what I'm the told about the process in Canada, is, at its core, designed to maximize recoveries and lead to a fair and equitable distribution to creditors, and that is what this will do. Your Honor is well aware of what the US debtors' projections are and their plans for the recoveries. The Canadian debtors believe that this will lead to payment in full to the vast majority of their creditors.

This is, certainly from a US perspective, I

think a remarkable accomplishment, and I certainly can second and verify Mr. Seligman's comments that this required extraordinary numbers of meetings and hard work of a lot of professionals, and he's absolutely right when he says it's a jigsaw us puzzle. There was give and take an every element here.

So from a US perspective, the Canadian debtors support the motion of the US debtors here.

JUDGE LIFLAND: Thank you for those very brief remarks, counselor. But you also remind me that you've appeared before me, and some of the same colloquy took place and it became the bully pulpit for me to admonish everybody about the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a different perspective, with coordination and cooperation being the watch word which turned out to be -- well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit.

MR. CASHER: Your Honor and My Lady Richard Casher of Kasowitz Benson for the ad hoc committee of ULC1 note holders.

Just by way of a quick status report, we obviously filed very lengthy papers in support of the

motion today, your Honor. Our group, which had directed -- issued a written direction to the ULC1 indentured trustee, consists of 12 note holders. We've been negotiating with HSBC over their objection. We believe we've reached agreement with HSBC concerning their objection, which essentially has resulted in a revised form of a direction and indemnity letter having been agreed upon.

We are waiting for final sign-off by one of the 12 note holders, and we expect hopefully to receive that shortly. And when we do so, we will report that to both courts.

JUDGE LIFLAND: Thank you, sir.

MR. SELIGMAN: Your Honor, I just wanted to note on that. Obviously the US of debtors need to see the language, but hopefully we can resolve that issue.

And with that, your Honor, the US debtors have completed their submissions. And unless your Honor has questions, we would request that you turn it over to the Canadian court.

JUDGE LIFLAND: I'm sure My Lady is anxiously awaiting to hear from our constituency.

JUSTICE ROMAINE: Anxious but patiently, Judge Lifland. So we will now turn things over to you, Mr. Robinson, to make the opening statement and presentation on behalf of the Canadian debtors.

MR. ROBINSON: Thank you, My Lady and your Honor. For the record, Larry B. Robinson of McCarthy Tetrault co-counsel for the Canadian debtors.

Following Mr. Seligman's lead, given the significance of this application from Canadian debtors' review, I would like to take a moment to make some introductions with respect to the Canadian team that are in court today, starting with Mr. Tobey Austin.

Mr. Austin is the director of the Canadian debtors who has met the charge. He is the client that we often forget about that we have reported to and has been instrumental in the structure of this transaction for us. With me from McCarthy Tetrault, my partner, Sean Collins.

The settlement agreement was put together between Mr. Austin and the Goodman team, our co-counsel lead by Mr. Carfagnini, who is at the table with me, and Mr. Meyers, Fred Meyers of Goodman's, who will be making the application on behalf of the Canadian applicants, Mr. Brian Empey is in the courtroom, Mr. Joseph Pasquariello is in the courtroom, Brendan O'Neil, another member of that team of Goodmans is in the New York courtroom already.

This deal could not have come together without the assistance of the monitor's staff, Mr. Narfason and Mr. Fun, who are in the courtroom. They, working with Alix Partners, who I know were of great assistance to the

US debtors, were very instrumental in bringing us to today hopefully through today. Their counsel, Pat McCarthy and Josef Kruger are in the courtroom as well. In addition, and not the least is Mr. Jay Swartz from Davies Ward Phillips and Vineberg who represents Lehman Brothers, who had a key role to play in the bond sale, presumably debt, to that point.

We concur with the order of proceedings as set up earlier with the introductions. And the with these additions on our side, I will turn over to other parties in courtroom to introduce themselves. I don't know if they wish to mention numbers of their teams, but there are a number of parties here speaking for and against.

And following those introductions, Mr. Meyers will make the application on behalf of the Canadian debtors.

JUSTICE ROMAINE: Thank you.

Mr. Thornton, do you wish to lead the charge on the opposition introductions?

MR. THORNTON: Thornton, initial R, counsel for the informal CCRC committee, and assisted here today by Mr. Finnigan and Ms. Moncur.

JUSTICE ROMAINE: Mr. Dunphy?

MR. DUNPHY: Thank you, My Lady. Sean Dunphy here for the ULC trustee. Ms. Pillon is with us as

well, and I guess we'll save our comments for when it's time.

JUSTICE ROMAINE: Thank you. Mr. Linder?

MR. LINDER: My Lady, Peter Linder on behalf of Calpine Power Limited Partnership, along with my colleague, Emi Bossio, and we will have some comments in response.

JUSTICE ROMAINE: Yes, thank you. Mr. Gorman and Mr. Smith?

MR. GORMAN: My Lady and your Honor, Howard Gorman on behalf of the ULC ad hoc committee, and we will be speaking in support of the application in due course.

JUSTICE ROMAINE: Thank you.

MR. SMITH: My Lady and your Honor, Quincy Smith on behalf of Alliance Pipeline.

JUSTICE ROMAINE: Thank you.

MR. McCLAIN: My Lady, Douglas McClain for the TransCanada Pipeline. Also with me is David Elrod from the Elrod Trial Attorney firm in Dallas.

JUSTICE ROMAINE: Thank you.

MR. GRIFFIN: My Lady, your Honor, Peter Griffin for the US debtors.

JUSTICE ROMAINE: Thank you, Mr. Griffin.

MR. LANCE: Nathan Lance Canadian counsel for the ULC1 indentured trustee.

JUSTICE ROMAINE: Okay. Thank you.

Do we have everyone introduced?

Thank you then. Mr. Meyers?

MR. MEYERS: Thank you, My Lady. Good afternoon your Honor. My name is Fred Meyers, counsel for the Canadian Calpine debtors, and I rise today on behalf of the Canadian debtors seeking orders of this court approving and authorizing the Canadian debtors to enter into the global settlement agreement approving the sale by CCRC of its ULC1 notes, and also not to be forgotten, seeking extension of these proceeding.

I want to start off very briefly dealing with the sale of the ULC1 notes. That motion is an integral component of the global settlement agreement and is part of the value maximizing process that has been created to fit the nature of the market for those particular assets.

JUSTICE ROMAINE: Mr. Meyers, can I stop you just for a moment?

We have the sound turned very loudly in order to hear the US side. Could I just ask, Madam Clerk, that we turn it down just a little bit, and when we need to we'll turn it back up, that might make it a little better here.

Go ahead, Mr. Meyers.

MR. MEYERS: The process that we have proposed for the sale of the ULC1 notes is actually quite complex and it occupies a fair amount of material, including seeking a sealing order for the supplemental affidavit of Mr. Sholvat from Lehman Brothers. That affidavit discloses pricing issues that need to be sealed in order to protect the integrity of the value maximizing process.

Out of all the briefs that we have received, there has not been any opposition, that we've seen, with respect to the bond sale aspect of the motion. So I don't propose to spend any time on it, My Lady, except to note that it's a key element to the global settlement, designed to bring in sufficient funds to see to the payment of all of the Canadian creditors as best as possible.

In our bench brief, that is perhaps too long to be called a brief, we've summarized the benefits of the global settlement agreement, and I'm going to try to follow that section roughly. The bench brief is in the first volume of the binders behind Tab 3 -- Tab 2, excuse me, and I'm going to start at paragraph 20.

The first benefit that has been identified by the Canadian debtors from the global settlement agreement is the reduction in claims against the Canadian estates, something in the order of 7.4 billion dollars in

claims against the Canadian debtors are gone, because other claims from those same creditors are going to be paid in full. ULC1 note claims, for example, are simply moved out of the estate into the United States. Of the 21.7 billion dollars of claims identified by the monitor in its 23rd report, it look like all are going to be paid in full, with a possible exception of 25 thousand dollars at CCEL, and that's a matter that we are working on as part of the future structuring. And it's really an incredible outcome. It's certainly a long way from where this case began.

The monitor has identified the possibility of another 25 million dollars of potential creditor shortfall at the CESCA subsidiary, and those are claims that are not guaranteed by the US debtors, that are held principal by the pipe lines, TransCanada Pipeline, Limited, CCEL, and Alliance. Those are the creditors who are most on the bubble or on the cusp of the recovery, and who compared the result of the finance anticipated end result. Their counsel is here today to support the deal, or at least not to oppose the global settlement agreement.

So even though you hear from others, particularly the fund, who seek to raise the risk of non payment, as is identified in their materials, My Lady should be clear that they are not speaking on behalf of themselves but purporting to speak on behalf of others who

do not oppose, and in some cases actively support the settlement. CCEL and Alliance themselves together make up between 23 and 24 million of the 25 million potential shortfall.

There are other creditors as well. At CCRC, we tend to only talk about the ULC2 note holders or CESCA. There are direct creditors. West Coast is here with a 66 million dollar claim under CCRC. I understand that they are going to support the deal because they would like to get paid in full under the ULC2 note holders.

Equally important, since I don't mean to minimize anyone's role, but there is another party who is integral and whose recommendation will play a heavy weight on or have any weight on My Lady, not a question of the monitor, who is, of course, an independent officer. They have been highly involved, as My Lady has heard and seen in the materials. They worked on the models, the distribution analysis that's so carefully and fully outlined in the 23rd report. The monitor has given a clear and powerful support for the global settlement agreement. Paragraph 3 of its 23rd report says, "in fact, these global settlement agreement provides the maximum recovery available to the debtors." Those are strong words from the court monitor and the monitor's recommend is an important element in our request today for approval.

By decreasing the claims, we, of course, wanted to maximize realization. Part of the production of claims is a 2 billion dollar claim of CCEL against CCRC that is going to be subordinated by the US debtors. And you'll hear much reference, I suspect, to the US debtors as equity holders, but in fact they have creditor interest as well of their own and subrogated claims. And here we understand that as part of the global settlement agreement, they are going to subordinate those claims. And as the monitor can confirm, no money will go to CCEL by equity holders until all the Canadian creditors and CCRC are paid in full, either in Canada or through their guarantees. And that's confirmed in paragraph 7 of the draft order.

The monitor predicts that the US debtors stand to receive between 176 and 369 million dollars on distributions above the 75 million dollar settlement benefit. That's a substantial flow of money to the equity holders due to this transaction, but it means first that the Canadian creditors of CCRC are paid, because that's the provision of the order and of the global settlement agreement, either paid from the claims or paid through the guarantees of the US.

The second benefit that we've identified, starting at paragraph 22 of our bench brief, is the maximization of realization. And that's principally, but

not completely deals with the sale of CCRC's ULC1 notes. In order to get to the position to sell those notes, we've had to resolve the bond differentiation claims advanced in this court by the US debtors. The US debtors had to remove their objections to the ULC claims under the guarantees. We've been trying, as My Lady knows, for almost a year to get to this point. The CCRC committee says in their brief, they should have been cooperating throughout, but that's what makes lawsuits, parties disagree. And I've heard Mr. Anker and Mr. Seligman talk about potential litigation in the United States; I thought I understood that there were real objections filed and real deposition notices with respect to those objections.

At paragraph 26 of our brief, we note that in the March 5th application before this court brought by the CCRC committee, the committee complained that six months had passed since the August 31, 2006 order authorizing and directing the sale of the CCRC ULC1 notes at issue, and yet the notes remained unsold and pointed out that they could not be sold until the US debtors' market claims were adjudicated. And its bench brief for the April 4th, 2007 application, the CCRC committee said, it is inerrantly that the CCAA proceedings can proceed to conclusion without the bond differentiation claims, among others, being resolved, unless the bond differentiation

claims are resolved, the CCRC ULC1 bonds can not be realized and distributed. The global settlement agreement resolves those claims.

The fund then objects while a part of that is releasing a 575 million dollar claims of CCEL up into PCH, an American debtor. But again, in picking one piece "to look at," they ignore the other pieces that the US agreement to subordinate the 2 billion dollar claim back into CCRC. The 180 million dollars of cash that's going to come down in intercompany claims into Canada, the US debtors' agreement to remove their preference claims against the Salten proceeds, removal of the BEC's and US objections to the notes, subrogation of 50 million dollars to CESCA, all aimed at designed to ensure that the Canadian debtors are paid here or in the Unites States.

The third principle I want to spend a moment on is the elimination of litigation, which is dealt with in paragraph 37 -- 27 of our brief. Not just the BEC's, the bond differentiation trend litigation, but also it's the Salten proceeds, there were claims being made, those were preferential potentially in the United States, that's over 250 million dollars in cash at CCRC. The hybrid note structure that we heard about, the litigation and the complexity that would have been involved in that claim. The Greenfield litigation. And with respect to the

Quintana 575 million dollar claim that's been released, the CCRC committee says why don't you just make them pay it, because you owe 2 billion back, and under the rule ensuring liability, before somebody can get money, they have to pay the money. Well, it doesn't apply to a Nova Scotia limited liability company. And how does Cherry and Bolty apply the partnership claims in the subsidiary, to raise one issue, rises a whole host of litigation issues that have all been resolved.

The global settlement agreement is first and foremost a settlement of claims between the US and Canadian estates. And in our submission you can't simply isolate one issues, and even to make another an example to make the facts, is the 75 million dollar settlement that we are the US -- excuse me, 75 million dollar payment that we are making to the US, of course that's a payment that's not priority distribution but rather we understand that in selling the CCRC ULC1 notes free of bond differentiation claims and US objections, there will be an increased recovery through decreased market discounts.

In addition, we are settling at least five significant pieces of litigation with the US, and in return we are giving a 75 million dollar charge which will be a charge on the proceeds of the note sale, so it's only going to be paid ones we have a successful note sale, and it will

be paid at the same time as the ULC2 notes are paid after the bond sale -- the note sale.

The 75 million is, in essence, a net share of the benefit of certainty in all of these matters. You may recall in February when HCP bought the income fund, HCP being the current fund, some creditors complained, at the time, that HCP's offer had effectively declined by the 25 million dollars distributed during the bid process, and you were told by the funds counsel that was the price of certainty, because the fund wanted to litigate with us over whether our management agreements could be terminated. And My Lady accepted in your decision that it was reasonable for a debtor to share value to setoff claims to obtain certainty; whether we call the 75 million dollar payment a piece of sharing of the upside of having a clean bond sale, or we call it a net payment of 90 million to the US, offsetting against the 15 million dollar payment on Greenfield, which is in the monitor's finding report, we could call it a 200 million dollar payment to the US and 125 million dollar sale of the savings on Greenfield, or offset on Greenfield, it doesn't matters. It's a net 75 million dollar payment which is part of a bigger plan that sees money go to the US through equity on the basis that Canadian creditors are paid. And the monitor says that maximizes realization, and we submit its completely

correct.

Turning then to the last benefit that I'll spend time on, although there are others, is treatment of guaranteed claims, which is dealt with starting at paragraph 34 of our packet. We understand in common law that a guarantor has a right of standing in a claim between a debtor and a creditor. It's clear in the textbooks the creditor sues the debtor, it can sue the guarantor in the same claim, the proper parties. The guarantor has the right to be there and to raise defenses. But the problem in our case is the US debtor has a stake, so our creditors can't come and sue the debtor and the guarantor in the same claim. And under the texts it's equally clear, if you sue the debtor, the debtor sues a creditor and not the guarantor, the guarantor is not bound by the outcome; it prevents collusion between the debtor and the creditor.

So we have two claims with the guarantor not being bound by the outcome in the most inefficient and expensive process. And so our creditors face the prospect of having to deal with a trial here, and then a trial in the US. And under the global settlement agreement, the US debtors will acknowledge their guarantees unconditionally, they will admit to the claims, so that all that will be needed is an evaluation hearing.

The US debtors also agree that guaranteed

claims that could be claims in the US cases against US debtors, will be heard in a unified, single proceeding before this honourable court. We have to give credit where credit is due; after a tussle last April, the US debtors have certainly stepped up with to the mark, with the assistance and perhaps gentle nudges of the courts, which have not been lost on the parties, but as part of the global settlement agreement, we are all recognizing the efficiency of having a single court hearing on the issue of quantum; we don't even need to worry about liability.

Now, you may have read in some of the briefs that -- the CCRC committee's briefs, the complaint that they weren't at the table with the US actually drafting the document, and it's true. Mr. Austin, in his cross examination, when the trust was filed?

JUSTICE ROMAINE: Yes, it was. Thank you.

MR. MEYERS: Mr. Strausser said the settlement was estate to estate, the CCRC and the United States wasn't at the table either, each estate was acting for its stakeholders. How many people can one have at the actual bargaining table before it becomes impractical and nothing gets done. But they weren't fully involved, the ULC1s put in a term sheet that resulted in a deal. Mr. Austin said the ULC2s put in a term sheet for the fund. That didn't resolve the deal, but at the end of the day we

ended up getting a the deal that incorporated many of the terms of their term sheet and they are all listed in paragraph -- that's sort of the last paragraph of our reply brief, including among the terms sought by these baggaged funds and the ULC2 creditors was in fact the very terms that I'm rely relying on now, the single guarantee in Canada -- hearing in Canada.

I was going to turn, My Lady, to a brief which is a submission on the law, I don't know if My Lady feels the need to hear it at this point or it's better saved.

JUSTICE ROMAINE: Let's save it and see where we get. Okay.

MR. MEYERS: In summary, My Lady, this is an estate to estate settlement, no one is being crammed unilaterally, we are in a joint hearing to bring to fruition months of efforts spurned with the assistance of both courts last April. The ULC1 is going to be paid in full, the ULC2 is going to be paid in full, the fund is going to be paid in full, assets are maximized, enough so -- enough assets are going to be realized so as to allow payments into the US once the Canadian creditors are paid. The creditors at risk support it on their votes. Perfection, of course, is never the test, nor is formal equality. The test is fairness and reasonableness.

All of these matters are linked in our submission, but the settlement agreement provides all of the benefits that I've enumerated, unlocks the estates, allows us to move forward. And on that basis we seek approval of the global settlement and bond sale, the threshold amount referred to in the -- by a confidential affidavit which has to be sealed, and of course I'll speak to you later perhaps about an extension.

JUSTICE ROMAINE: Thank you, Mr. Meyers. And I should, as a housekeeping matter, tell you that I have not received a copy of the confidential Lehman affidavit as of yet. At an appropriate time --

MR. MEYERS: Very shortly.

JUSTICE ROMAINE: Okay.

Mr. Carfagnini, did you wish to speak? No?

Does anyone else in wish to speak in favor of the settlement agreement?

MR. GORMAN: Yes, My Lady and your Honor. Howard Gorman again on behalf of the ULC1 ad hoc creditor committee.

I think it's significant to recall the overwhelming size of the ULC1 claim in Canada. It's in excess of 2.5 billion dollars flowing through the various companies, which, without the guarantee or intercompany claims from the United States, overwhelms the remaining

Canadian assets.

My Lady, in your, and, your Honor, in your three or four binders or two feet of materials, there is a three page entry of the ULC1 note holders with respect to the approval of the plan, and it's a scant three pages. I've been on holiday, and it seemed to me that one needn't swing hard with the driver when faced with the beginning cut, and that is --

JUSTICE ROMAINE: I don't understand that, Mr. Gorman, I think you'll have to explain that.

MR. GORMAN: I think we need Justice Delvecchio to explain that analogy, My Lady.

My Lady, the absence of applications throughout this process have been to maximize recovery of assets, and we've heard from the commercial trust, we've heard from the ULC2 before their convergence under the CCRC and since, that the ULC1 people should be forced with a choice. You want this plead in the Canadian assets, which would be the notes, the Salten proceeds, and the money in the accounts, or do you want to pursue the guaranteed claims, both the initial guarantee and the guarantees under the hybrid note structure. And in the spring of this year, after significant negotiations, we gave the CCRC creditors what they asked for, which was we moved from looking at the Canadian assets, other than intercompany accounts, to a

resolution where we would focus our attention on recoveries from CORPX and the US debtors under the guaranteed plan. And this became sort of the lynchpin for the unlocking that has occurred. There is a significant benefit for other Canadian creditors in that Salten proceeds, the CCRC note proceeds, our part of the settlement, and that's what's occurred.

With respect to the timing, and should things be delayed in the implementation of the settlement, I remind My Lady that we started fighting with the CCRC notes last summer when they were trading at about half of what the current potential marketing plan is, and at that time the trust and ULC2s were adamant, don't wait, let's get the sale process going. It now can proceed in a timely manner to maximize the recoveries, otherwise with respect to the Calpine estate so as to satisfy the settlement, our client now, they didn't want to be at risk last year, I don't think anyone also wanted to be at risk this year, and don't let a creditor who still has some contingent claims get too much leverage in the process by derailing this significant settlement achievement.

With respect to the ULC1 holders, I think it's significant to note, and the numbers are in paragraph 8 of the brief, that over 55 percent of one series and 59 percent of the other series of bonds have negotiated with

its ULC1 trustee to provide the letters of direction and the required indemnity, and significantly no ULC1 note holder has filed any opposition to this plan. You have a predominant creditor supporting the settlement agreement, and that's the stage we are at because we've got the settlement agreement that is supported. Let's move it forward, and let's move these estates forward by implementing a settlement, getting the extension, and getting the notes sold at the appropriate time at the appropriate price. Thank you.

JUSTICE ROMAINE: Thank you, Mr. Gorman.

Mr. Smith?

MR. SMITH: My Lady and your Honor, Quincy Smith of Fraser Milner Casgrain. I speak for Alliance Pipeline who are a 30 million dollar creditor of CESCA. They have reviewed the material and are happy to support Mr. Meyers' application for approval of the global settlement.

I also speak as agent for Mr. Salard as solicitor for Westpoint Energy, who are a 67 million dollar creditor, he said 66 of CCRC. They also have reviewed the material and support Mr. Meyers application for approval.

Thank you.

JUSTICE ROMAINE: Thank you, Mr. Smith.

MR. McCLAIN: My Lady, Douglas McClain for

TransCanada Pipeline and Nova Gas Transmission.

As we have not appeared in that in these proceedings before, it may be of some benefit to give you some sense of TransCanada's position in both the CCAA Canadian proceedings, and also in the US Chapter 11 proceedings. In the Canadian proceedings between TransCanada and Nova they have collectively undiscounted claim exceeding one hundred million dollars. These claims arise out of transportation agreements which have been rejected by the debtor.

In the US Chapter 11 proceedings, TransCanada and Nova have guaranteed claims against the US debtor arising out of these same contracts which were at issue in the Canadian proceedings.

Additionally, TransCanada has subsidiaries, Portland Natural Gas Transmission, and GTN or Gas Transmission North, which between them have undiscounted claims in excess of 725 million dollars US.

So collectively in both proceedings TransCanada is a significant creditor. With the exception of small guarantee amounts and amounts which were small amounts which were secured by letters of credit, TransCanada's claims are substantially unsecured, and its position in both proceedings is basically as an unsecured creditor.

Having regard to the application before the court, it clearly resolves a host of issues and provides a basis for resolving others. With respect to TransCanada's position as a substantial unsecured creditor, both TransCanada and Nova have properly considered the motion and have no objection to the relief there is being sought on this motion by the Canadian Calpine debtors.

Thank you.

JUSTICE ROMAINE: Thank you, Mr. McClain.

Does anyone else wish to speak in favor of approval of the settlement agreement before the monitor speaks? Perhaps Mr. McCarthy; Mr. Griffith? Thank you.

MR. GRIFFIN: Thank you, My Lady. Peter Griffin for the US debtors, your Honor.

The US debtors are obviously pleased to be both in the US court and Canadian court in support of this global settlement agreement. I can see that the US debtors were uniquely positioned to participate in and deliver this result in conjunction with the Canadian debtors as, obviously, not only equity holder, but subordinating creditor and creditor of the Canadian estate.

It goes without saying, and we've heard much about it and you see it in the material of the benefits. My respectful submission of this settlement agreement are obvious. It is an agreement which resolves

much, delivers solutions or the method to arrive at a solution on an expedited basis, unlocks value and facilitates moving forward with respect to these estates. And there are time, My Lady, in any estate or series of estates, when there is the potential for a great step forward, and this is indeed one of those, which has been reached by virtue of this agreement. And it is for that reason that you can see it so exhaustively, and properly reviewed by the monitor in the 23rd report to give you the type of analysis of all of the stakeholders expect and deserve and are pleased to receive from the monitor as to the obvious benefits of the settlement.

At the end of the day, in my respectful submission, this is the very sort of facilitated forward looking result which the jurisdiction of this court exists to support and endorse approval.

JUSTICE ROMAINE: Thank you Mr. Griffin.

MR. GRIFFIN: My Lady, can I deal with one other point. I was a bit dismayed to see this afternoon that we were sitting with a jury. I would caution you to relieve no issue in this application.

JUSTICE ROMAINE: Two facts to be founded.

MR. DeWAAL: My Lady, your Honor, Rinus deWaal of the committee of unsecured creditors in the US proceedings.

As you've heard from Mr. Staber in the US courtroom, we support the application. For the reasons that have been stated with we think that's the way that it should go, and we, for that reason, support this.

JUSTICE ROMAINE: Thank you, Mr. DeWaal.

MR. RABINOVITCH. Good afternoon, your Honor. Neil Rabinovitch for the second lien committee. Just to echo what my colleague Ms. McColm said in the US court, we are delighted that some very very complicated issues have been resolved between the two estates, and we are very pleased and hopeful the settlement will proceed, and that both estates can move expeditiously to distributing funds to their creditors. Thank you.

JUSTICE ROMAINE: Thank you, Mr. Rabinovitch.

Does anyone else before I call upon counsel for the monitor?

Thank you. Mr. McCarthy?

MR. McCARTHY: My Lady and your Honor, we have all of the submissions from the monitor are contained in the many pages of the report, the 23rd report that you have before you. Having experience with Judge Lifland and you, My Lady, I am confident that both of you have read every word of all of that.

On that assumption, I don't intend to say

any more than obviously that the monitor does recommend this arrangement. And, secondly, that it is, as has previously been said in my submission, a credit to the debtors in the US and Canada, and if I may is so on behalf of my client, a credit to the work done by Neil Narfason and Mary McDonald and their staff in interfacing, and in some case mediating the many issues that you see in the complex agreement before you.

And, your Honor, if you have any questions on the monitor's report, I'd be happy to answer them. And again, My Lady, if you have any, I would be happy to answer them as well.

JUSTICE ROMAINE: I have none. Judge Lifland?

JUDGE LIFLAND: I have none except to observe the monitor's report was the most quoted in all the submissions that I've received.

JUSTICE ROMAINE: I guess that's a complement.

MR. McCARTHY: Thank you, your Honor, My Lady.

JUSTICE ROMAINE: Mr. Meyers?

MR. MEYERS: My Lady, I wonder if I can just hand up the register the confidential supplemental affidavit.

JUSTICE ROMAINE: Thank you.

I guess, Judge Lifland, we will go back to you for the next step.

JUDGE LIFLAND: Certainly.

JUSTICE ROMAINE: Thank you.

MR. SELIGMAN: Your Honor, we would next like to turn to any objections to the settlement lodged in the US proceedings.

With respect to the ULC1 indentured trustee, we've been making continued progress there, and to allow that process to continue without necessarily having arguments made on that aspect, I would ask that if we can reserve on that issue until after the Canadian objections are heard, I think hopefully that will facilitate that process and focus on resolution rather than in this area of the argument.

JUDGE LIFLAND: Well, it's my understanding that the ULC1 trustee's objection are the only objection that's really going to the merits of the settlement. And if that's in the process of possibly being resolved, we can defer that argument and pass it back to the Canadian court.

MR. SELIGMAN: Your Honor, I just didn't know if any of the other objectors wanted to make a statement here. On behalf of the equity, I notice Mr. Eckstein rising.

MR. ECKSTEIN: Good afternoon, your Honor.

JUDGE LIFLAND: Retrieving the gavel.

MR. ECKSTEIN: Good afternoon, your Honor. Kenneth Eckstein of Kramer Levin, counsel for the ad hoc committee of CCRC creditors which consists of both of the ULC2 bond holders and the CLP income fund.

Your Honor, I would certainly find it much easier to join the chorus of parties who are complementing the court, complementing the company, and complementing each other for achieving such an outstanding outcome. Regrettably --

JUDGE LIFLAND: I knew there was a but.

MR. ECKSTEIN: Regrettably, we are not in the same position, although I do think it's important to share the perspective that there is an additional hero, I think, in the case, in addition to, I believe, the efforts that the court did bring to ensure that there was a protocol and a process, and that is the market. The fact of the matter is, as some of the parties have indicated, a year ago we had all of these issues pending in this case and there was no ability to reach resolution. As your Honor recalls, there was a strong desire to have the bonds sold, and for some reason that was not accomplishable.

Today, with the power markets where they are, with the Calpine debt at a level where I believe the

parties are expecting to only be disputing the computations of postpetition interest and make wholes, there is an ability to somehow smooth over a multitude of problems. And there's no question that the proposed settlement today takes advantage of the market, and certainly does so effectively by suggesting that everybody has figured out a way to get paid in full. And if in fact that were true for my constituency, I probably would also be standing here and join the chorus of support.

The fact of the matter is, your Honor, unfortunately while the parties suggest that we will be paid in full, I did hear Mr. Seligman acknowledge that in fact with respect to the ULC2 bonds and CLP income fund, our claims have not yet been resolved. There are financial disputes that remain open, for some reason the parties did not see fit to try to bring those to foreclosure before today. And unfortunately we stand here today being told that we shouldn't worry that at some time in the future they will get to our claims and resolve those.

The income fund claim is called a disputed claim. It's a 500 million dollar contract claim that we are told may get resolved at some point in time. It's not great comfort to us, your Honor, to simply be told that we can possibly look to a guarantee if there are no funds in Canada to resolve those claims. We don't know what that

guarantee will be worth, maybe it will be worth what it's worth today, maybe it will be would this less.

Your Honor will note that with respect to ULC1, they were willing to live only with their guarantee because they reached an agreement to backstop that guarantee with two-thirds of an additional claim in the US. We don't have the benefit of that arrangement, your Honor, so therefore we have to rely solely upon our rights.

Your Honor, we are not suggesting that a global resolution is not in order, we are not suggesting that the sale of the ULC1 bonds are not in order. What we are concerned about, and I will defer to Mr. Thornton in Canada who is going to make the substantive arguments, we believe that where there has not a full consensus in a proceeding, whether it's in the US or in Canada, the right way to proceed is to submit a resolution to the creditors for a vote and let the creditors speak through a plan of reorganization as to whether or not they do or do not want to support this resolution.

In the absence of a complete consensus, we believe that there is a responsibility on the part of the debtors and an obligation imposed upon the proceeding to rely upon the process that we have both in the US and in Canada, which is creditor vote. Let the creditors determine whether in fact they do want to support this.

And in the process of the vote, and in the process of a confirmation proceeding, you would, I would expect, be able to work through the claims and we would have the opportunity over the next several weeks and months, which I think is what the debtors suggest, to both resolve the ULC2 claims and resolve the income fund claim so that we can determine whether in fact we will be paid in full, or whether or not in fact it's appropriate to allow monies to leave Canada into the United States prematurely. Because right now the suggestion is that before the ULC2 claims are paid, before the income funds claim has even be adjudicated, 75 million dollars of funds will move from Canada to the US, and whether that's in respect of a debt or in respect of equity, we would submit that that is not permitted or authorized under the bankruptcy process.

So, your Honor, that is the perspective of my constituency, since we are standing really from the perspective of the guaranteed claims, I think it's appropriate to let Mr. Thornton articulate the Canadian issue, which I believe governs both the ULC2 rights and the income fund rights. Thank you, your Honor.

JUDGE LIFLAND: Thank you, Mr. Eckstein.

MR. FREDERICKS: Your Honor, Ian Fredericks on behalf of the ULC2 indentured trustee.

I would also like to allow my Canadian

counsel, Mr. Dunphy, to speak first to the issues, because I believe they involve primarily Canadian issues, and then, to the extent anything else is necessary, I request that the court allow me to speak in after Mr. Dunphy has concluded.

JUDGE LIFLAND: We'll play it out, Counselor.

MR. SELIGMAN: Your Honor, if I could just respond briefly pursuant to schedule, and I'm going to defer to Canadian counsel for the Canadian debtors to speak to the issues of Canadian Bankruptcy Law, I'm not proposing to be an expert in that area.

Just one or two clarifying notes. Mr. Eckstein spoke about the lack of clarity or timing of payment of the ULC2 bonds. I think that what's been set forth and what the documents contemplate, that as soon as there is distribution to anybody, it's going to include distributions to the ULC2 bondholders, and Canadian counsel for the Canadian debtors can confirm that.

There hasn't been agreement on the exact amounts of the interest because it's very clear that you have an issue of currencies in pounds and currencies in Euros, and there's different conventions about how you calculate interest, but it's literally a couple million dollars difference on a 350 million dollar issuance.

There is an issue of a make whole of perhaps almost 50 million dollars alleged. I think everyone has agreed it's going to be paid out -- what's agreed to is going to be paid out; what's not agreed to, that 50 million dollars in the make whole, the couple million dollars in interest, that's going to be reserved, so there shouldn't be any issue as to the ULC2 note holders getting paid in full whatever their claims are ultimately determined to be. It's not going to be an issue. They continue raise that issue, but I just want to make it clear for your Honor.

As to the issue of the CLP claims, when it's going to be decided and the lack of clarity on that point, just to remind your Honor that in the Canadian debtors' replied bench brief they did lay out a proposed schedule for resolving that claim. I won't go through the schedule, but do note that they contemplate a hearing in the last week of October or the first week of November with respect to that hearing. I think all parties have an interest in getting the claim adjudicated quickly and promptly, and the fact that the parties have worked together on the issues between the Canadian debtors and US debtors to agree upon a schedule to resolve that claim as soon as possible as indicated before, speaks volumes to the process.

As to the third point raised by Mr. Eckstein, again, as to whether this should be put to a vote or not under Canadian law, I'll defer to my colleague in the Canadian proceedings to address that.

JUDGE LIFLAND: Do I understand, then, what's contemplated, at least the principal amount of 350 million dollars will be paid?

MR. SELIGMAN: That's my understanding that that will be paid upon the bond sale, that there will presumably be an application --

JUDGE LIFLAND: Leaving only the issue of make whole and interest differentials.

MR. SELIGMAN: That's correct, your Honor.

MR. FREDERICKS: Respectfully, your Honor, Ian Fredericks again in response to Mr. Seligman's comments that involve the 350 million dollars, I believe that he's speaking of only speaks to the ULC2 bonds that are held by third parties. There is the issue, as indentured trustee, that certain of these bonds are held by Canadian affiliates, and the indentured trustee's position is that we have not been provided proof that these bonds have been canceled or otherwise satisfied. And before our claim can be compromised, one of the issues -- we don't believe our issuance can be compromised. Before the settlement can be approved, either the US debtors, Canadian debtors, or

someone else needs to provide us with proof that these bonds have been canceled, or they also need to pay us on account of those bonds as well. So with we don't believe that the 350 million, or payment of the 350 million dollars resolves our claims, or comes close to paying it in full.

JUDGE LIFLAND: Thank you, Counselor.

MR. SELIGMAN: Your Honor, just with respect to that, and I'll defer to the Canadian counsel to address the issue. But, yes, there are bonds held by the Canadian debtors, whether they are treated cancelled or there's a round trip of funds, economically it's not going to make a difference, and I will leave it to the monitor and to counsel for the Canadian debtors to speak to the issue, but I don't think there's an issue of dispute of making sure that the third party bond holds will be paid.

JUDGE LIFLAND: Very well.

MR. ECKSTEIN: Your Honor, at the risk of leaving the record open, there are a number of other categories and claims that will need to be resolved that are not yet resolved, and I didn't want to omit those from at least being mentioned on the record.

JUDGE LIFLAND: My only inquiry was, in concept, of the principle amount of the bonds is a bond payment.

MR. ECKSTEIN: I understand fully what it

says --

JUDGE LIFLAND: We'll pass over to the Canadian court at this point.

MR. SELIGMAN: Thank you, your Honor.

JUDGE LIFLAND: My Lady?

JUSTICE ROMAINE: Thank you, Judge Lifland.

Mr. Meyers, Mr. Robinson, before I call on Mr. Thornton, does anybody wish to address the question has just been raised in the United States proceedings about what happens to the ULC2 bonds held by the Canadian debtors.

MR. MEYERS: Yes, thank you, My Lady. It's good of the trustee to be concerned about our bonds, we are, too. And there's an obligation that My Lady heard about earlier to deal with the structure and a tax efficient way of those issues are being considered, whether the bond should merely be cancelled or whether the bonds should flow through.

In the proposed order there are two provisions of relevance. Paragraph 34 makes it clear that the 75 million that goes to the United States is at the same time as a payment of CCRC direct creditors, which include the ULC2 bonds.

Secondly, in paragraph 21 we'll be handing up a black line of the order, and one of the black lines it

has already been added, it's been matriculated to the list, is a -- you saw in schedule B to our reply bench brief, there is actually agreements; the ULC2 note holder's trustee, and our financial advisors and theirs agreed on what the amounts in issues are. And they are set out in Schedule B.

Those amounts are now contained in the order and will be held, as well as an additional amount to be calculated out in respect of the Canadian debtors' bonds in the event that the bonds are not cancelled. And we understand that is a straight proportionality. We know the amount of their bonds, the amount for our bonds is just a percentage increase depending on the bonds.

So the matter is covered; all monies in dispute will be held in escrow for the ULC2 bonds. They will be paid.

JUSTICE ROMAINE: Okay, thank you, Mr. Meyers.

Mr. Dunphy, are you starting?

MR. DUNPHY: Well, just on that point.

JUSTICE ROMAINE: Okay.

MR. DUNPHY: Since you asked about it. And just to be very clear about it, I have other issues of other aspects. But as trustee, the only thing we know are the bonds that are issued.

We are told from reading onerous reports that a certain number are held in Salten LP. I have taken a number of things on faith in life; I suppose that can be one of them. And without being a doubting Thomas about it, I just don't know. And under our trust indenture, when I get a dollar, it tells me exactly how to distribute it. Who gets the first portion; I get the first dollar, but after a few more of those come in, then we start to pass it to the bond holders, and I have to pay all the bondholders pro rata in relation to the bonds the I hold. And I don't know Salten LP, I don't know how many they own, and if they show up and say cancel these bonds, then they all live happily ever after.

I will agree with Mr. Meyers on the make hole; our financial advisors have had a dialogue. I don't think the order is spot on in terms of catching the issue, but I think we are mostly there, in that if necessary, even in subsequent attendance that issue should be able to be resolved quantum of the make whole amounts, as long as the principal, whatever it is, gets tallied up and socked away, we can deal with that. And I have something to say about where it gets socked away, but I'll wait to get to that.

JUSTICE ROMAINE: Exactly. Okay, I'll leave that issue and then turn to Mr. Thornton. Are you going to be the first speaker?

MR. THORNTON: Yes, I am. Thank you, My Lady. Good afternoon, your Honor.

I'm wondering if we could prevail upon the US court to focus on your Honor rather than the very talented group of gentleman we have in the front row?

JUSTICE ROMAINE: Judge Lifland, do you mind?

MR. THORNTON: Because otherwise I'll be making submissions to Mr. Seligman's empty chair. And even when he is there to hear them, he hasn't been too receptive of my submissions. I'm hoping to do better with Judge Lifland.

JUSTICE ROMAINE: Okay.

JUDGE LIFLAND: That's not a problem.

JUSTICE ROMAINE: I'm not sure, Judge Lifland, whether you heard that request.

Oh, there you are, okay. Thank you.

MR. THORNTON: Thank you, your Honor. Thornton, initial R., and we represent the CCRC committee, which is the committee composed of the majority of the third party ULC2 bonds and CLP as since the purchase of that entity earlier this month, and earlier this year in this proceeding. And because of the breath and diversity of our representation, for your Honor's benefit, we are probably most analogous to what you would refer to as the

UCC.

In order to facilitate these submissions, I would ask both courts if you would have and handy our bench brief, our book of authorities, the revised settlement agreement which I received Monday, but which I think perhaps the courts received either Friday or over the weekend, and the revised orders which I think are being proposed in Canada and the US which we received in the last day or two. In addition I will be making reference to the monitor's report.

JUSTICE ROMAINE: I think that takes care of 2 of the 3 volumes, Judge Lifland?

JUDGE LIFLAND: I think it spans across three of mine.

JUSTICE ROMAINE: Mr. Meyers, if you have an extra copy that would be useful.

(handing)

JUSTICE ROMAINE: Thank you.

MR. THORNTON: The references for both My Lady and your Honor's benefit will not be extensive for this material, but if we have difficulty locating it, I will try to be mindful of that and help.

Now, a lot of work has gone into this settlement. And there is a lot of benefits for both

estates in the settlement. And we are not suggesting that this settlement should simply be thrown out, what we are suggesting is that Canadian law must be complied with before it can be implemented; and that is a key part of our submission.

This settlement does not just effect the parties to the settlement, it effects all of the Canadian debtors and every creditor in the Canadian estate. And that is why the monitor has examined the effects of this settlement upon every Canadian debtor estate and the recoveries of every Canadian debtor.

As it happens, there are some estates that get paid in full and some estates that do not, or may not, and that may is very important. Everyone is optimistic that they will, but what the settlement actual contemplates is they may get paid in full.

And what the settlement, in essence, as it happens I should add, I suppose, as a matter of coincidence I'm sure, the creditors we represent, who are at the CESCA level, at the CCEL level, are the estates that are most likely to be subject to a potential compromise, and there are other non economic compromises that are being proposed for the ULC2s, and we will go into those in some detail.

But the settlement agreement in its essence represents a balance of risks, of tradeoffs, of negotiated

settlement and proposed compromises. In short, this settlement is replete with business judgments. And as such, under Canadian law, the affected creditors are the ones who are required to decide whether the compromises, viewed as a package, are acceptable.

The mechanism required under Canadian law and the CCAA to discover the answer to that is through a vote. And this is not a question of whether or not this is a good deal, a fair deal, an equitable deal, or, in fact, as I assume for the purposes of argument is, it's very best deal that the Canadian debtors and the monitor could negotiate under the circumstances. And I can understand the desire of all of the parties who have spoken here today and the courts to want to implement it.

But the issue is a question of who decides. Can the court, this court, decide on its own, and thereby force this package of compromises upon the creditors, or must the creditors decide in the usual and recognized way in Canada? And I emphasize here that the debtors seek not just the approval of this settlement to go forward to a vote of creditors, but an actual implementation of it.

The settlement agreement is a comprehensive rearrangement of priorities and compromise of claims of the Canadian creditors. Can the court impose it, or must it be put to the creditors? That is the issue for this court

today.

My Lady, your Honor, I propose to examine four areas of fact and law. Firstly, we will examine the nature and extent of the compromises being proposed upon three creditor groups, being the ULC2 creditors, the CESCA creditors, and the CCEL creditors.

Secondly, we will examine the effect of the approval and implementation now, as asked, what that would have on the creditors and on the vote, and, in our submissions, a subsequent vote to the implementation would, in fact, be rendered meaningless. I will then examine the jurisdiction of this court, and I will distinguish the jurisdiction under Section 4 where a compromise is proposed to a class of creditors or creditors generally from the supervisory jurisdiction under Section 11.

We will also look at the jurisdiction under Section 18.6 to coordinate foreign proceedings, and to inherent jurisdiction to fill in the gaps when the statute is silent. In so doing, I will then address the cases in all of the bench briefs that have been filed with a view to reconciling them along the bright line that says where compromises are proposed upon a class or classes of creditors, a vote and the protection of that fundamental right must be protected by the CCA Supervisory Court, and distinguished that from cases where there is no such

compromise being proposed.

And lastly, within the statutory jurisdiction, I will propose a way that the court may exercise its discretion within the statutory jurisdiction that is available to this court in a way that promotes the efficient finalization of the administration of the Canadian estates, brings them to an expeditious resolution, and more importantly, maximizes the possibility of salvaging the benefits and all the good work and efforts that have gone into the settlement agreement.

First, to the nature of the compromises, and starting with the ULC2 trustee and its beneficiaries the bond holders. My friend, Mr. Dunphy, will have more submissions on this point, but I note three.

Firstly, the amounts were in dispute. And in the first draft of the settlement agreement that accompanied the motion materials, there were specific amounts in there, and the amounts were in error. The numbers were changed in the revised agreement, we don't need to go to them actually, but let's just say that there was a significant variance from our point of view. The ULC2s believe that there is no reason to compromise anything in this estate given their structural priority.

And so, when the numbers that were too low and wrong in our opinion first showed up, we were most

disturbed about that. And we were told as well in the bench briefs that every section of the settlement agreement was precious and could not be changed without threatening the picture as a whole. Well, they changed the numbers; which I raise that only to point out that the settlement agreement is not quite as immutable as the bench briefs would have us believe, and it does show that what can happen when you actually engage with the creditors who are effected to try to clarify things, as should happen in this case and as would happen if there was an establishment of a voting mechanism, that those negotiations could occur.

So those amounts have been changed, and there is a hope that there will be funds sufficient to put aside to pay all of the ULC2s in full, to which we say that is a good step in the right direction. But there are other compromises that are inherent in this settlement agreement as written, and I emphasize the following two.

Firstly, there is a release of claims immediately, even though payment is deferred and contingent. Contingent against at least upon the bond sale and then contingent upon a subsequent court order. Now the claims specifically that are released are oppression claims, and they are not marker claims. And for the benefit of Judge Lifland's who may not have this background, prior to Calpine filing for protection in

Canada, Harbor, which is a bondholder, brought an oppression action in Nova Scotia, which was the jurisdiction of ULC2, to say that certain parties in the Calpine empire were guilt of conduct that was asset stripping, that materially and prejudicially and with oppressive effect, disregarded the interests of the bond holders. In fact, cash was being stripped out of Canada to feed US needs.

Now, there is a judgment that was rendered in the summer before the filing, and that judgment found that CCRC and CORPX were guilty of oppressive conduct. The claims that have been filed are against CCRC in Canada and against QCH and CORPX in the United States. QCH was added once we learned through the monitor's reports in this proceedings, that it was intimately involved in the transactions that were oppressive and that stripped the assets out of Canada.

Now those claims were filed in accordance with this court's claims procedure order on a timely basis, they were based on an existing judgment and a finding of oppression. There has been no dispute of those claims, and there has been no judicial determination under the claims process about those claims. But under the settlement agreement those claims simply vanish, and they vanish before payment. And here there's an interesting

distinction in the timing of what happens in the US and in Canada, and this may be inadvertent, but in either way it's prejudicial, and I just want to bring that to your attention.

So let us look at the revised order submitted to in the US proceeding.

JUSTICE ROMAINE: I don't have that order in the US proceeding. I have the Canadian form of order, but go ahead.

MR. THORNTON: Well, it's quite possible to follow along without having the order in front of you.

JUSTICE ROMAINE: Okay.

MR. THORNTON: Paragraph 16 of that order says that, "The claims included in Exhibit G to the settlement agreement are hereby dismissed with prejudice or deemed to be withdrawn with prejudice." That is, I think, the exact same paragraph as is in the Canadian order in paragraph 9.

JUSTICE ROMAINE: Thank you.

MR. THORNTON: Yes. In the Canadian order, paragraph 9.

Now in the US order where it was paragraph 16, if we look at the tiny paragraph, while this is effective in the US order, paragraph 5 says that paragraph 16 is effective upon entry of this order. So that means

that if this order is given today, our claims are gone today before the bond sale may ever happen, and certainly before any payment.

Now with respect to the Canadian order they have, and may I emphasize, that would get rid of the oppression claims against both CORPX and Quintana, QCH, gone. Now the Canadian side of that equation is the oppression claim against CCRC, and it is actually delayed, under paragraph of the 5 of the Canadian order, to be effective only when the bond sale us occurs, which is little better, but in any event, what it is is a compromise. It is an extinguishment of rights now before payment, and I ask why? Why was that so important that that had to be embodied into this settlement agreement? Why couldn't the claims stay upstanding and be dismissed or extinguished upon payment?

If they are going to be paid, they should be paid. But the payment is contingent, and therefore there is some risk. It may be small, but it is the creditor's risk to choose to accept it or not. It is their choice, in my submission, My Lady, not the courts.

And thirdly, there is a transfer of jurisdiction inherent in the -- embodied in the settlement agreement. The legal entitlement of the ULC1 trustee and its note holders for their claims, as it stands today, is

established by the claims order in this proceeding with respect to claims it has made in this proceeding pursuant to those orders. And that includes an ability on your part, My Lady, to call Judge Lifland and get advice about US law, to the extent you feel you need to, under the protocols that we have put in place.

But three things under the settlement agreement are transferred to the U.S. Bankruptcy Court. The ULC2's right to make whole payment, to the interest that is in dispute and continues to be in dispute, and certain fees of Harbinger -- of Harbor, pardon me, which I will get to in a minute.

Now this is not a question of which is the better court or the best court, this is a question of is this a compromise of an existing right to people who are non parties to the settlement, and it is. And let's look it at it from Harbor's points of view. What is the jurisdiction of the U.S. Bankruptcy Court to its claim which has no connection to the US in any way? It is a claim for recovery of fees in a Nova Scotia action against Canadian entities, primarily, and that claim is not made against CORPX, not made against any US debtor, and there is no element of a guarantee involved in it.

JUSTICE ROMAINE: This is the Harbor fees issue.

MR. THORNTON: This is the Harbor fees issues. And furthermore, there is different treatment under the US law of a litigant's fees than there are is Canada. In Canada, a successful litigant has a reasonable expectation of recovering at least some of their costs against an unsuccessful defendant. And whether you -- pardon me. And in the US, a party litigant bears their own costs except under extremely unusual circumstances, as I understand it.

Now we say that the transfer of this jurisdiction is possibly done with a view to seek different treatment imposed, or we have to prove the entire Canadian law of cost before the US Bankruptcy Court, which does not seem to be a valuable use of anybody's time, and we are not sure why this issue has to be determined there when it's already a claim in this proceeding. And as you know, in addition to the issue of success, we will be claiming recovery on a quantum meruit basis, since it was that litigation which stoppered up 280 million dollars of Canadian -- of the Salten proceeds so that that asset did not get stripped as a result of the oppressive conduct.

So, with the dispute about the amounts, the release of the claims prior to payment, and the transfer of jurisdiction from the rights as they now stand, there are a number of compromises and arrangements that affects ULC2,

which would be an identifiable class or group of creditors as we would ordinarily classify them in a Canadian proceeding, and that is enough to bring this case, in our submission, within the jurisdiction of Section 4 of the CCAA.

But the settlement agreement goes much further, and I do not have to rely on the compromise that's proposed on ULC2, because there are also compromises on the CESCA creditors. These are of economic significance, it dwarfs the issues relating to ULC2.

And I turn now to the monitor's report, in particular to the very important chart on page 15 of the monitor's report. That chart shows the claims against CESCA. And it shows, on the right hand side, that's on page 15 at the top, the monitor's 23rd report. All right.

Your Honor and My Lady, you'll note in the column on the extreme right hand side under recovery that there were a range of recoveries specified for intercompany trade creditors, CRA being the Canada Revenue Agency; the CLP tool claims and gas transportation claims that range between 64.7 percent and one hundred percent. You will also note that the gross claim numbers in the first column shows 500 million dollars of claims, approximately, and recovery in the next column from the CCAA proceeding, that is the proceeding that this court is dealing with, of only

324 million dollars. There is a shortfall of 177 million dollars. And the monitor notes that it expects 151 or 2 of those millions to be satisfied out of Chapter 11 proceeding, but still leaving a shortfall of some 25 million dollars at the end of the day.

Now, being forced to rely upon a guarantee, when there is demonstrably sufficient value in Canada to be paid in full, is of itself, in our view, a compromise. And I pause here to note that the monitor has assumed one hundred percent recovery under the guarantees in the US preceding for the purposes of its analysis. And the monitor is quite capable of making its own assessments, but that also is a risk analysis and decision for the creditors who are affected there and forced to rely on those guarantees to make.

The fact of the matter is that the recoveries from the US estate, and I emphasize this, particularly with respect to undetermined claims, unliquidated claims, are uncertain. They are uncertain as to timing, they are uncertain as to amount, and they are uncertain as to the form and value of consideration. There is much work yet to be done before a plan is confirmed in Chapter 11 and before these claims will see payment from Chapter 11.

But in addition to that compromise, there

are four others that I would like to bring to the court's attention. Firstly, there is the US 75 million dollar priority payment of the CCRC. Secondly, there is the cutoff of CCRC from making claims up into CCEL. Thirdly, there's the settlement of the Greenfield litigation for 15 million that's as a net credit to CCRC as opposed to CESCA. And lastly there's another collateral attacked on your claims process, My Lady.

Now starting first with the US 75 million dollar first charge cash payment, as Mr. Seligman calls it, out of the CCRC estate. Is that a good deal or not? Well, it resolves a lot of things, but the US has, as a matter of fact, untested claims in Canada, and we say, after extensive examination, those claims are unmeritorious. Now, is 75 million dollars the right number? Is it coming from the right place? We say that is part of the creditors' judgment to accept this compromise as a passenger or not.

Let's look then at the cutoff of CCRC. And for this we need a bit of explanation. CESCA is a partnership. Under Canadian law, the partner is liable for the claims of the partnership. One of the partners here is CCRC where a lot of the value in the Canadian estate resides. CCRC, in turn, is wholly owned by CCEL, and CCRC is an unlimited liability corporation. The key distinction

between an unlimited liability corporation and other corporations is that the owners, called members, can be forced to contribute to the assets of the unlimited liability corporate estate until all of the ULC's creditors are paid in full.

Now in this case, one of the creditors of CCRC is CCEL, its parent. So under the corporate law that establishes the liability of the member, CCEL is required to contribute enough to CCRC so that CCRC will be able to pay off its own member. That sets up a perfect setup. And my friends say what a great deal it is that that claim has been subordinated. We say that claim doesn't exist because it would be set off in any event.

And furthermore, under the general rules as uncharitable as it may be, wherever you have any fund that a person who claims from that fund is owed money by the fund, they have to make good on the claim before they get anything out of it. That is in fact the situation we have here. So whether it's setoff or subordination, the fact of the matter is the creditors of CCRC are the claim up into CCEL, and CCEL has a 575 million dollar intercompany claim owing to it by QCH; we've known that since the monitor's 5th report, in appendix B, which is annexed to our bench brief. That at today's values, and now that much QCH is consolidated into the general US estate, is the single

biggest assets of the Canadian estate.

That asset, under the settlement agreement, is being cut off from being available to the Canadian creditors, because the settlement agreement purports to terminate the member liability of CCEL, which owns that receivable, which otherwise it would be liable to contribute to the estate of CCRC.

So let's stop there. The CESCA creditors, according to the monitor's report, could suffer a shortfall as much in the Canadian estate of 176 million. Under the settlement agreement, 75 million in cash, 575 million of an intercompany receivable are being taken off the table for the creditors of CESCA. We say there should be no need for any creditor to be exposed even to the risk of a shortfall when there is something in the neighborhood of 650 million of value going to the US equity holder.

Now, these payments are really going on account of the untested and we say unmeritorious claims of the US creditors which should give rise to mere hold up value. 650 million dollars; some hold up, some value.

JUSTICE ROMAINE: So, Mr. Thornton, you are discounting the 7.4 billion dollars of claims that are no longer being made against the Canadian estate as a result of this settlement agreement.

MR. THORNTON: I am not balancing at all

the benefits and the burdens in the agreement, because that is an inquiry as to whether this is a good deal or not.

What I am pointing out is that to the extent legal rights are compromised upon a class of creditors, that that class must have a vote, and that is a fundamental right under Canadian restructuring law. And in this case that right can be respected, and we still do not have to throw out this settlement agreement. And I will get exactly as to how we get there later in my submissions.

Now Greenfield. There is an a trend that that was an inter-billed project, complete with a 20 year power purchase agreement with a promise of material and all municipal regulatory environmental approvals in place. It was sold six weeks before filing to a non filed US affiliate. It was transferred from CESCA for a hundred dollars. It was one of the largest and most obvious fraudulent conveyances I've seen in my 23 years of practice, as I've said in this court previously, and it is a claim for the benefit of the CESCA creditors. It was CESCA's assets and transfer.

Now that claim is to be dismissed. And under this settlement, there is a release by all Canadian debtors and any creditors who claim through them. So that action would be dead as a result of this settlement agreement. And CESCA itself gets nothing on account of it.

It is settled by the reduction of a payment that CCRC would otherwise have to make, but more importantly it settled for 15 million dollars.

Now, who came up with that number? The parties that implemented that transaction in the first place came up with that number. And do you have evidence before you to vet that number on its own? I submit that you do not. That is an element of the kind of decision a creditor is entitled to make. In fact there's no whole package worth that, and that is what the creditors should be asked here by way of a vote.

And lastly, in terms of particular effect upon Canadian creditors, we look at the adjudication of disputed claims. The US debtors seeks to do, through the settlement agreement, what you directly denied them on their motion on April 4. They sought then a change to your claims process order to be allowed to insert themselves into that order, and in effect revoke or rework a notice of dispute or disallowance that the monitor and the company had put forward.

You will recall this was in relation to CLP's repudiation claim with respect to the Calgary Energy Center, the monitor and the company allowed that claim in the amount of 142 million. CLP thinks the claim is much higher, but the US debtors have a theory. They have a

theory that even though the new toll is lower than the old toll, that the net damages claim is actually less than zero. And I don't think they go so far as to say as the CLP owes CESCA any money, but they do want an opportunity to go at that again, even though they were unsuccessful in asking you to do that directly, and they do that through the provision of Section 2.8A sub 4 on page 22 of the revised settlement agreement.

JUSTICE ROMAINE: I'm sorry, what page?

MR. THORNTON: Page 22.

JUSTICE ROMAINE: Thank you. Okay.

MR. THORNTON: If you look at sub 4 at the top of that page, and about halfway down, the Canadian guaranteed claims determination order will also provide for the manner of participation in the judicial claims determinations of the guaranteed claims by guarantors who have submitted their guarantee obligations, so it's a long way of saying that includes the US debtor with respect to the CLP claim, to ensure, and this is the meat of it, that such guarantors have all of their rights of participation preserved, including the right to raise and have fully determine any defenses or objections that the Canadian debtor or monitor could have raised to the creditors' claims, notwithstanding any statements of the Canadian debtors position in any notices of revision they have

issued to date. Clearly trying to do indirectly what they do could not do directly as determined by this court.

So not only does that represent a compromise of the rights to CLP as they now stand, but is also a collateral attack on both your claims process orders and your order of April 4.

Now the monitor, in page 15 and 16 of its report, also notes that that CLP claim is very important to the CESCA creditor group as a whole. It is the swing claim. Depending on how much it is determined that, and I can say that at this point I believe all the parties are agreed that needs to be determined, because I don't believe it will be settled, that that claim is a swing vote, a swing claim which determines whether or not the CESCA creditors get paid in full under this settlement agreement.

Well that's a critical fact among all the CESCA creditors, and having that determined would be of great assistance in determining whether or not there is a compromise being imposed on the CESCA creditors whether they like it or not. It's a question of whether it needs to go to a vote. So the determination of that issue, which we are all in agreement should be done as expeditiously as possible, we say should occur under that schedule and be so ordered by you.

So, in summary, the CESCA creditors are

exposed to recovery as low as 64 percent. The size of the CLP claim is a key driver of how much that compromise will be. In addition, the rights of the CESCA creditors are being compromised in a number of ways, recognizing that there are benefits, recognizing also that we have always maintained that the ULC1 claims, by virtue of the nonrecourse nature of the notes, were not, in fact, through claims as if this chain of assets in Canada, but there are a complete -- the settlement agreement is a complete plan of priorities it sets out who gets what and how from all of the Canadian. Estates, and that in that regard it is more like a plan outline and does propose compromises to classes of creditors, and therefore must be put to a vote, which we say should happen expeditiously so as to coordinate with the US proceeding and be then in tandem with the resolution of the CESCA claims so it can be determine whether or not there are, in fact, economic compromises to be suffered by the CESCA creditors.

JUSTICE ROMAINE: Mr. Thornton, I just seek to take you up on the table on page 15, of course. The table shows that the creditors of CESCA who are possibly at risk are the trade creditors in the amount of 1.9 million dollars, and the gas transportation claims creditors in the amount of 23 million dollars. I don't hear the trade creditors objecting to this approval of the settlement

agreement today, and I have heard from the gas transportation claimants that they in fact support the settlement.

Where is the risk to your clients?

MR. THORNTON: You have bought into the argument that there will be recoveries --

JUSTICE ROMAINE: Perhaps I have.

MR. THORNTON: -- of one hundred percent from the -- because you've identified the 25 million dollar shortfall.

JUSTICE ROMAINE: I'm not talking about the guarantees, I'm talking about the shortfall after taking into account the guarantees.

MR. THORNTON: After taking in the guarantees. Yes, I'm suggesting that from the point of view of this court and whether or not there are compromises, the mere fact that they are forced to look to guarantees is in itself a compromise.

JUSTICE ROMAINE: Yes, I understand your point.

MR. THORNTON: Now jurisdiction comes from two places. A compromise can be consented to, and if it's consented to, is binding upon that creditors. But it is not within the jurisdiction of this court to impose a compromise on a class of creditors without a vote of that

class, a two-thirds majority of vote in value and a majority in number and a sanction order that says it's a fair and reasonable compromise.

What we are doing here is skipping that nasty step of the proposed compromised based on the fact that some people haven't showed up or that some have and they like it. That's good that they like it, that means that there's a chance that this would actually be voted on and approved, that this is not doomed to fail, but we should go forward to a vote. But what you cannot say today, My Lady, is that every creditor who is affected by this compromise has signed off on this saying that they accept it. And without that you must go through the mechanism of having a vote.

We wish that they had. We don't see any reason why they can't. The vote can happen here within the timelines of what is the economic, legal and practical necessities of this case.

The US debtor is not about to emerge from Chapter 11. I don't believe it's scheduled before the end of December. We are now at the end of July. We can have a vote in a couple of months. We can have a determination of these outstanding claims within that same time period. We can be done. We don't need to skip over the fundamentally important Canadian aspect of this restructuring, which is a

creditor vote of a proposed compromise. There is no need to try to skip that bit. If this is such a good deal and they have such creditor support, why are they not putting it to a vote? Why are they asking this court to side step and turn on its head the Canadian restructuring law, and that is in essence our submission.

Now, if they say don't worry there's a vote coming later, I say the train will have left the station. This settlement agreement is, conveniently perhaps, but as point of fact, wrapped together as one big ball. You don't get the benefit of a clean bond sale unless you buy into the structure of settlements and priorities established through CCRC and CCEL, you don't get one without the other.

So, is that compromise worth it? Are those benefits worth the burden? In my submission that is exactly the question that our regime suggests must be put to the creditors, and that's what we should do. And we should be quick about it.

A vote after the settlement agreement is implemented, a vote after this settlement is implemented would mean nothing. You couldn't unscramble the egg at that point. There is nothing from a military point of view, after the settlement goes through, there is nothing left to be done but bayonet the wounded. And we will see then whether or not these creditors have a shortfall or

not. They should not be asked to take that risk, we don't need to be asked to take the risk, we can determine that beforehand, and we should do so before it's implemented.

Which brings me now to the issue of jurisdiction. There are four relevant sources of jurisdiction under Canadian restructuring law that possibly come to bear here. Under Section 11 of the CCAA, you are given jurisdiction to make such order as you consider appropriate on an initial order or any other application. That allows you to impose a broad stay to stabilize the business of companies and do all manner of things that have filled the case books with the appropriate extent of that jurisdiction, and after the initial order, it is the section that gives the jurisdiction to shepherd the process along.

Now where that shepherding process jurisdiction under Section 11 stops, and the jurisdiction under Section 4 begins, is where there is a permanent compromise or arrangement of rights being proposed by the debtor upon the creditors generally or a class of creditors. There is exactly what Section 4 says.

Section 4 then prescribes what your jurisdiction is. It says you may, and implicitly may not, choose to put it to a vote of the creditors duly called. What it does not say is that you may decide to implement

the transaction and forego the vote. There is no such authority within the CCAA.

Furthermore, where the statute is specific as to what your discretion is, inherent jurisdiction cannot pour in to fill the gap because there is no functional gap. The statute says what must be done, and that is what we must do in a way that helps the case move forward to a resolution.

Now, there is also jurisdiction under Section 18.6. 18.6 is meant to coordinate foreign proceedings. And under that section, it is specifically -- that section is not so vigorous as to override a fundamental right nor to override the statutory discretion inherent in Section 4. I will deal with that in length during the course of the cases, as I would like to address the cases. I would like to address Red Cross, Palladium, Air Canadian Stelco and Phelps, and I will do so in the context of the distinction between of the sale function and the shepherding function under Section 11 with the requirement under Section 4.

Now, in both Red Cross and Palladium there was a sale of substantially all of the assets. And now I am mindful here that they are both Ontario cases. And I am mindful of the fragmaster decision from the Alberta Court of Appeals that suggests that perhaps liquidating all the

assets is not a jurisdiction that -- that should not be done under the CCAA. So I will leave my Alberta co-counsel from Peacock Linder to address the fragmaster decision specifically. But because my friends would submit to you, which submission I submit that they are wrong, that Red Cross and Palladium stand against, me I'll address them anyway, even though they might have been differently decided had they been decided by this case.

So in Red Cross there was a sale of substantially all of the assets. In essence, My Lady, the case stands for the proposition that a debtor may propose to convert its existing assets into cash, and that that exchange does not affect a compromise on anybody, that's a conversion of one asset for another. So that alone does not amount to a compromise.

Now in the Red Cross case one creditor said, don't do that, I want the debtor to consider going concern restructuring. But Mr. Justice Blair, when he was still at the trial level, held that there was, as a matter of practicality and legality, there was no way the Red Cross could stay in business, that the governments had made the decision that the Red Cross was no longer going to be responsible for the blood supply business in Canada because of the social and political repercussions flowing from the tainted blood scandal which this country so unfortunately

faced. So we found that there was no possibility of that being a realistic possibility, and therefore the fact that that was not being put forward or followed by them could not be viewed as a compromise.

So Red Cross and Palladium, sale of all the assets, exchanged the assets for cash, and provided you do so in the right way, as we've learned here already in the agreement sale, that you go through a process, that you are content that there is no unfairness in the process, and that the price is good, all of the sound air principals that we've already debated at length in this part, that court may, under its supervisory jurisdiction down under Section 11, approve theit's conversion of assets.

Now in Air Canada, quite a different thing, in Air Canada it negotiated -- Air Canada and its affiliates negotiated a significant agreement with a major constituent, GE. I had some familiarity with that having been on the team that did that. It provided a significant amount of exit financing, of new regional jet financing, which was key to Air Canada's business plan, and most importantly it offered a number of compromises on various aircraft as the leading lessor in Air Canada's fleet, approximately 25 percent of the fleet was leased with a GE affiliate.

And that GE deal formed a building block to

what eventually became Air Canada's plan of arrangement. But, and this is an important distinction, there were no compromises of any other creditors' rights proposed or inherent in the settlement agreement other than those that directly affected GE, the party to the settlement. It did not purport to compromise the rights of creditors generally, nor any particular class of unsecured creditors, only GE's rights were compromised.

And so I would submit to you that in that case Section 4 never entered in. The parties accepted the compromise, they asked the court to bless the transaction as the building block under the supervisory, shepherding jurisdiction in Section 11, and most importantly, My Lady, they then put it to a vote. When they actually got enough building blocks together to have a plan, that plan was put to the vote and the deals inherent in the GE agreement became effective upon exit. As opposed to here, where a comprehensive plan of priorities and compromises are to be effected immediately, without ever having a vote.

So then we turn to the similar kind of deal approvals in Stelco. And again this is a case of interim supervision under Section 11, as both the trial judge and the Ontario Court of Appeals being clear. There were no compromises or arrangements proposed on any creditors other than those who are parties to the deal. There were three

of them, as I recall. The first was a collective agreement there had been outstanding which the united steel workers used to great advantage. It settled deals as between the steel workers and Stelco but didn't effect anybody else. Next, and I can assure you that there were no compromises in there.

Secondly, it established how the pensions were to be funded by the government, and the government was a party to that deal, and that did not effect creditors generally, it effected the funding of the pension plan. And lastly they made a deal with Tricap, and Tricap offered exit financing and that was approached. The only thing that could be worried into a compromise of creditors generally was that the Tricap financing had a break fee, and the court, both at trial and in the Court of Appeals, recognized that the break fee in and of itself was held to be a reasonable one.

And I would submit, My Lady, that it is now recognize that it is a cost of doing business of getting in a value enhancing financing transaction that there needs to be a break fee component when you are dealing with an insolvent company. And the cost that of that value enhancement cannot be viewed responsibly or practically as coming within the meaning of compromise or arrangement of creditors generally within the meaning of Section 4.

Now I would like to take you to some of the things that the Ontario Court of Appeals said in Stelco.

JUSTICE ROMAINE: Mr. Thornton, I have copies of these cases in several places; can you perhaps tell me where I can find Stelco?

MR. THORNTON: Yes. If you look at the ad hoc committee of creditors of Calpine Canada Resources Company, that is at tab 5, My Lady.

JUSTICE ROMAINE: Okay.

MR. THORNTON: No, I am in error.

JUSTICE ROMAINE: Okay.

I've got it, found it. Thank you. Judge Lifland, are you okay?

JUDGE LIFLAND: Yes, I'm fine.

JUSTICE ROMAINE: Okay. Thank you.

JUDGE LIFLAND: Does Mr. Thornton have an estimate of how much more time he's reserving?

JUSTICE ROMAINE: I'm sorry, Judge Lifland, I couldn't hear that.

JUDGE LIFLAND: Does the speaker have an estimate of how much more time he's going to spend?

JUSTICE ROMAINE: Mr. Thornton?

MR. THORNTON: Yes, I suspect I would be approximately another 15 to 20 minutes.

JUSTICE ROMAINE: Do you wish to call an

adjournments, Judge Lifland?

JUDGE LIFLAND: Why don't we wait until he's finished.

MR. THORNTON: I'm actually having trouble finding my copy of the case.

JUSTICE ROMAINE: It appears that it might be a good time here to call an adjournment. Would you like to do so?

JUDGE LIFLAND: Sure.

JUSTICE ROMAINE: Okay. How long do you usually call.

JUDGE LIFLAND: I usually take five minutes.

(Laughter)

JUSTICE ROMAINE: 20 minutes; is 20 minutes all right?

JUDGE LIFLAND: Sure, 20 minutes.

(Whereupon a recess taken)

JUSTICE ROMAINE: Thank you. Please be seated.

JUDGE LIFLAND: Is everyone refreshed? Please be seated.

JUSTICE ROMAINE: Judge Lifland, we are ready to continue? Are you ready?

JUDGE LIFLAND: We're ready.

JUSTICE ROMAINE: Mr. Thornton?

MR. THORNTON: Thank you, your Honor. Thank you, My Lady.

In fact there are two different Stelco cases in two briefs, which was the cause of my confusion.

I point you to the reply brief of the US debtors at Tab C.

JUSTICE ROMAINE: Okay, thank you.

MR. THORNTON: So this is the Court of Appeals decision after Justice Farley had approved the interim deals to go forward with a plan and the bondholders objected and said that any such plan was doomed to fail. The Court of Appeals says, at paragraph 18, and I'm quoting paragraph 18 and 19, "In my view the motion's judge have the jurisdiction to make the orders he did authorizing Stelco to enter into the agreements. Section 11 of the CCAA provides a broad jurisdiction to impose terms and conditions on the granting of the stay. In my view Section 11.4 includes the power to vary the stay and allow the company to enter into agreements to facilitate the restructuring, and I emphasize these following words, provided that the creditors have the final decision under Section 6 whether or not to approve a plan."

And then again at paragraph 19, they say, "In my view, provided the other" -- pardon me "provided the

orders to do not usurp the rights of the creditors to decide whether to approve the plan, the motion's judge has the necessary jurisdiction to make them. The orders made in this case do not usurp the Section 6 rights," and for your Honor, that's the right to vote and Section 4 is the right to call a meeting to hold the vote, "of the creditors and do not unduly interfere with the business judgment of the creditors. The orders move the process along to the point to where the creditors are free to exercise their rights at the creditors' meetings."

Now I would submit that what the court is doing in that case is recognizing that the supervisory shepherding jurisdiction under Section 11 runs up against a wall when faced with a compromise proposed to the creditors as we have in this case.

In this case, usurping the creditors' rights is exactly what is being proposed as the debtors here are not speaking mere approval of this deal, but actual approval and approval of implementation of it now, and without a creditors vote. It is the implementation that compromises the rights of the creditors groups here, and that rendered any subsequent vote meaningless for the reasons I have previously described.

In both Stelco and Air Canada, the affect upon other creditors of the largest complicated deals put

before the courts for interim approval there were delayed in their implementation until after the creditors had their say by way of a vote. It's ironic that in Stelco the bond holders said, this is doomed to fail so don't you dare send it to a vote. We are standing here today and saying the debtors are trying to forego that vote please send it to them.

Which brings us to the Phillips services case. Now that case is to be found in our book of authorities, the book of authorities of the ad hoc committee creditors of CCRC, at Tab 3. Now in that case, a cross-border case where both Canadian debtors and US debtors, as here, and a compromise of rights of Canadian creditors was proposed. In particular, under a joint plan, some Canadian creditors who had claims against the parent were to be dealt with in the US and not the Canadian plan, and as such, they had no right to vote in the Canadian meeting.

And the heart of the decision is in paragraph 38 on page 11. And I quote it in its entirety. "In my opinion, it is the loss of the right to vote in the Canadian plan which lies at the heart of the present dilemma. The mere fact that a Canadian creditor's rights are to be dealt with and affected by a single or parallel insolvency in the U.S. Bankruptcy Court, or that the

reverse may be the case, a US creditor in a Canadian court, is not necessarily sufficient in itself to undermine the fairness and reasonableness of a proposed plan." He cites two cases there.

"In Canadian insolvency proceedings under the CCAA, however, it is the right to vote on the compromise or arrangement which the debtor company proposes to make with them, which is the central counter part on the part of the creditors to the debtor's right to attempt to make that compromise or arrangement.

"In my view, having chosen to initiate and take advantage of the CCAA proceedings, Phillips cannot now evade the implications and statutory requirements of those proceedings by seeking to carve out certain pesky and potentially large contingent claims," and may I stop there to say that if there ever was a perfectly pesky precedent that is, for this case, "as a requirement to be dealt with under a foreign regime where you will be treated less fairly, while at the same time purporting to bind them to the provisions of the Canadian plan, all of this without the right to vote on the proposals."

JUSTICE ROMAINE: In Philips there was a settlement and there was a plan, the two were distinct. And these comments of Justice Blair referred to the plan, did they not?

MR. THORNTON: Correct.

JUSTICE ROMAINE: Not the settlement agreement. And the plan purported to cram down certain creditors.

Mr. Dunphy, do you want to address that?

MR. DUNPHY: The plan certainly outlined on what it would say, but it wasn't, I guess, proceeding to votes, and so on and so on.

JUSTICE ROMAINE: Right. But they wanted something identified clearly as a plan.

MR. DUNPHY: Yes, there was.

JUSTICE ROMAINE: And something identified clearly as a settlement.

MR. DUNPHY: That's correct.

JUSTICE ROMAINE: Okay.

MR. THORNTON: As far as the United States, there was a proposed settlement which was put forward to the court, and various motions as to what should go forward and how.

And in my submission it does not what you call it, whether it's got the name plan in the title or not, the word plan does not appear in Section 4. What Section 4 addresses is whether there are proposed compromises or arrangements.

So the fact that we have something called a

global settlement here, it doesn't call itself a plan, it is certainly not the determination if there are not proposed settlements and compromises. There are, in fact, many settlements and compromises, as I have suggested in my submissions, and it is up to the creditors to decide that based on this court's jurisdiction to decide whether to put it to a meeting and a vote or not.

MR. DUNPHY: In paragraph 17 of the decision, Justice Blair says in Philip's perspective the plan filed in both the US and Canada, according to the debtor, so that we are clear to on that.

JUSTICE ROMAINE: Thank you.

MR. THORNTON: In my submission it doesn't matter, because in this case what we have is a plan, not so named.

Later at paragraph 42 we have the statement of the law in Canada as I submit it now stands in terms of when and how this court can compromise creditors' rights. And that is to say that the rights of creditors under the CCAA cannot be compromised unless, one, the creditor has been given a right to vote in the appropriate class on the proposed compromise, two, no mention of a plan there, B, that the creditor's vote is in accordance with value ascribed to the claim by a court approved procedure, we have a claims procedure here, C, the class in which the

creditor has been appropriately placed as voted by a majority in number and two-thirds in value in favor of the compromise, and, D, the court has sanctioned the compromise on the basis that is fair and reasonable with a considerable deference being given by the court in this regard with respect to the votes of the creditors.

Now that is not what is proposed here. What is proposed here is an implementation of a proposed compromise and arrangement which is a comprehensive plan, and it may be a wonderful settlement, but it has not gone through the steps required under Canadian law to effect a compromise, and cannot be simply approved directly by this court.

Now, we then turn to issues that are also germane to this case regarding comedy and the jurisdiction under Section 18.6. And Justice Blair says that the jurisdiction you under 18.6 cannot override the statutory requirement of the vote.

And I turn to paragraph 48 of the Philips decision, starting in the middle of the paragraph at the word however, "However, comedy and international cooperation do not mean that one court must cede its authority in jurisdiction over its own process or over the application of the substantive laws of its own jurisdiction whenever any kind of differences between the two

jurisdictions may arise. Both the protocol and the provisions of subsection 18.6 sub 2 of the CCAA which gives this court authority, 'to make such orders and grant such relief as it considers appropriate to facilitate, improve or implement arrangements that will result in the coordination of proceedings under the CCAA, any foreign proceeding, confirm this.'

"Sub Section 18.6 5 of the CCAA provides that nothing in this section requires the court to make any order." And he emphasizes that he is not in compliance with the laws of Canada or in the force and the order made by a foreign court.

So My Lady, I remember respectfully submit that the Philips case has settled the issue of whether Section 18.6 can be used as a back door through which the jurisdiction clearly demanded in Section 4 where compromises are proposed to be applied, and it can not.

In summary, courts' jurisdiction is found and prescribed in Section 4 when a compromise arrangement is proposed. The discretion provided within that jurisdiction the is to determine whether or not to put the matter to a vote, not to simply implement the compromise directly.

No matter how appealing such a compromise might be to this court and the creditors, it is not within

the jurisdiction of this court to do so. Such a cramdown cannot be done in Canadian insolvency restructuring.

JUSTICE ROMAINE: Where do you say the cramdown occurs here with respect to your clients?

MR. THORNTON: Correct.

JUSTICE ROMAINE: Where do you say it is occurs here with respect to your clients.

MR. THORNTON: It occurs with respect to all of the compromises that I have identified which we may accept. They are 75 million out to the US debtor. It's cutting off the claims in the CCEL. It is establishing the foreign court as a jurisdiction to determine rights and entitlements that are now before this court. They are all of those things, which might be ironed out by the time we actually have a vote, or it may be determined that the size of the CLP claim is such that the CESCA creditors are in fact are not compromised. But right now there is a settlement being imposed that is at best a maybe in terms of being paid in full from Canada, and that is the cramdown. That is the matter that must, as a matter of Canadian law, be put to the creditors.

And it can be done, I hasten to add, in a time line that does no violence to the cases that are before this court and the US court. We can still go forward and do everything that we wish to do. There is no

screaming urgency here that requires us to travel upon the Canadian insolvency regime to that requires a vote of potential compromises.

JUSTICE ROMAINE: So you don't accept the urgency argument with respect to the volatile of the market being the necessity to sell the bonds as quickly as possible.

MR. THORNTON: Well, as you know, My Lady, we have on our record saying that bonds should have been sold many, many months ago. Now in a perfect world we would be done now, but the bond market has not been proved as so volatile that we can't wait the extra 60 days that it would take to get this thing to a vote, perhaps 90.

After a year and a half in this proceeding, to suddenly now have everyone jump on the urgency band wagon because they think that's the way to trample over certain pesky creditors that might be standing in their ways demanding a fundamental right like their right to vote, there is no reason to suggest that now, of all times, is this critical 90 day period.

So, My Lady and your Honor, I would submit that the broad compromises that are contained within the settlement agreement is, as hard bargained as they all were and as wonderful a deal as they all might be, still represent particular, potential, or and actual compromises

classes of the creditors in Canada which requires this court to exercise jurisdiction under Section 4, and not simply implement it under any other jurisdiction, because a vote after the battle is over, the creditors --

JUSTICE ROMAINE: I think somebody walked over the video camera.

JUDGE LIFLAND: Somebody is exercising editorial prerogative.

(Laughter)

MR. THORNTON: I knew you were with me, your Honor.

JUSTICE ROMAINE: Okay.

MR. THORNTON: The proposed compromises here would be effective immediately, or forthwith. There would be no vote. The battle would be over and the creditors get what's left. And that's not the kind of creditor protection that is required under the CCAA. It is required under our regime. And it is spoken out by Justice Blair in the Philips case, and in the Ontario Court of Appeals in Stelco, and by the Alberta Court of Appeals in fragmaster.

I pause here to mention that the ramification of any decision to the contrary will be important for future Canadian restructures. This is an important case and an important issue. Increasingly,

Canadian restructurings have cross-border implication. And there are those who believe that many elements of the restructuring statutes of other jurisdictions, particularly of our neighbors to the south, should be incorporated into our CCAA. And, in fact, some of them are in the legislation which has been passed but not yet proclaimed enforced; however, even those provisions do not include a cramdown provision such as being contemplated here today, nor can they purport to give the court the jurisdiction to forego a creditor vote of an effective class of creditors.

The decision in this case that would allow the debtors and the court to implement a compromise or arrangement without a vote over the objection of creditors would have far reaching effects indeed. In our submission such a change must come from Parliament and not from the court.

I turned to turn to the last leg of my submissions, mercifully for some I'm sure, and that has to do with the discretion that this court has under Section 4 about how, and how we should go about putting this matter to a vote. As I have is said, the two large creditor groups which stand opposed today are the ULC2 bondholders and the CESCA creditors, particularly CLP. The CLP has two large undetermined claims, and those claims can be determined on an expedited base.

A significant amount of work has already gone into agreeing on a common model to calculate the amount of the claim depending on various legal theories and inputs, and a litigation timetable has been worked out between the US and Canadian debtors and CLP. And we would suggest that it would greatly assist the creditors, when coming to a vote, to know what that CESCA claim is, and whether, in fact, they are even being offered a compromise by this settlement.

As it now stands it's somewhere between 65 and one hundred percent; and that's a range, and that's a potential compromise. If we determine the claim, we will know with certainty what the compromise is, if any. It is our submission that it would be towards the lower end of that scale, but that is a matter to be determined in this process fairly and expeditiously, and that will inform the decision. Likewise, the issues that separate us on the ULC2 trustee's part can also be determined expeditiously and within the time frame that a vote would be allowed.

So we say that this is not a case where your discretion should be exercised not to put this to a vote at all. We do not suggest we throw this agreement out the window, because it is not doomed to fail. What we suggest that practicality dictates and justice demands is to put the handful of largest claims that are outstanding

into an expedited process in parallel with the vote that's required and bring this entire proceeding to its practical conclusion.

Lastly, I reemphasize, My Lady, where is the urgency? We have, in fact, been at this, which is not a restructuring but from the Canadian perspective a liquidation, for a year and a half.

JUSTICE ROMAINE: Is that all?

MR. THORNTON: It just seems like three. The US debtor does not need this cash. They are not despite for this last 75 million dollars to stay in business. They will do quite well. And they would be very happy to receive this before or upon their exit from their proceed I am sure. Time has been generous to this proceeding in that the values have risen. And there is no evidence before you that the bond market is such that it is about to crater such that huge value is going to be lost. So there is no urgency disclosed that would require you to consider for a moment that there is some crisis that should tempt you to eliminate a fundamental right of the Canadian creditors to vote on this proposed compromise inherent in the settlement agreement.

In fact, My Lady, it is our submission that the debtors are trying to do this not because they have to, but because of the weight and momentum they think they can.

And we say there is no jurisdiction in Canada to do that.

So in the end, My Lady, we are asking for a brief delay in the implementation of this agreement and a vote. And while that vote is being put in place, we should do three things -- pardon me, one is the vote itself; two other things. One is to direct the ULC creditor entitlements to be determined as expeditiously as possible. And thirdly, that the CLP claims be determined in accordance with the schedule contained in the reply briefs.

In all cases that can be by the end of October or the first week of November, creditors will have clarity to know what they are getting, and more importantly what they are not getting and what they are giving up in the settlement agreement, and will be able to make an informed decision, and most importantly, Canadian restructuring law will be respected.

Those are our submissions.

JUSTICE ROMAINE: Thank you, Mr. Thornton.

Mr. Dunphy?

MR. DUNPHY: My Lady and your Honor, I will be referring to exactly two volumes of things. To make life a little simple, have I the affidavit of Sean Collins from the 20th of July. I'm only using that because it has the settlement agreement black lined in it as Exhibit E, and at the tail end it's got the revised draft of the US

order that I had a few comments on. So I'll be turning to that from time to time.

I have the affidavit of Jacob Smith, which is the one that we filed on behalf of the ULC2 trustee. And the only thing I'm going to be referring to in that is Article 7 of the trust indenture, the ULC trust indenture in a moment, and then finally our bench brief, but you can get it elsewhere, it's the famous Philips case. I'm proud to say it's the only case I've ever lost. But I can show you something were where I've gotten from that.

Now I would very much like to join the parade of counsel that is congratulating everyone on the wonderful settlement that they had done. I'm sure that there was a lot of hard work all around. My only complaint was that in their excess of enthusiasm they decided to settle my claims too. And I would very much of appreciated a phone call or two just so we might compare notes. And I note the contracts between what happened here and what happened in my friend's court. Mr. Seligman stood up and said he had all these committee and that he was keeping them all up to date, maybe erroneously thought I read into that, but they had probably seen drafts of the settlement agreement once or twice, and maybe put into the order, because I see the revised order has about six paragraphs on the end stipulating that not a single change to the

settlement agreement is going to be made without those committees having their say so. I have nothing like that here reflecting the fact that this material was drafted with a long session in front of a mirror. It was not drafted by getting dialog with us, and that's where I would submit using my analogy to the Philip case.

We need a level the playing field here. They are close. They are very close. This is not, in the abstract, a bad deal. There are a lot of good things done here, there's been a lot of hard work done. We are very close, but what we have is, in effect, unilateral deal, and as my friend said a moment ago, relying in part upon the momentum of a deal, let's see what else we can put on the back of the train and get it down the tracks. And, My Lady, I am saying there are some things you can't do that way. We can fix them if we had a proper level playing field and a single opportunity for dialogue. And at the end of my submissions, I will give you a suggested fix, at least for us, which is very simple and they are already all in the documents. We don't have to do things in a complicated way when it's fairly simple. I'll leave you in suspense on that for a moment.

Now our main points are that the ULC2 trustee, standing as it does in the shoes for all the bondholders, has compromises imposed upon it. You will see

in the settlement agreement and two draft orders that our claim is determined at a number which is less than the face amount of the bonds and which we say is inadequate interest.

I'm going to take you to one that's completely unnecessary for that one, but there's more; not only is that claim determined with a without a hearing on the merits, with a subsequent right which, in effect, to revised claim, but it doesn't say that. It says we have an allowed claim in one paragraph. Two paragraphs later it says if it's a different number we can fix it. I guess I read into that that I have some kind of right of appeal, but I'm not sure what it means.

But, be that as it may, I have a bunch of other claims. We have oppression claims filed against CCRC backed by nothing less than a judgment by the Nova Scotia court, and we have claims filed against the US debtor backed by that same judgment. We have a number of claims filed in the US and Canada, all of which are being dismissed through and thoroughly without a hearing on the merits. Now is if not though that is not a compromise on my claim without a vote, I don't know what is.

JUSTICE ROMAINE: Well, Mr. Dunphy, it may be that your claims have been recharacterized, but the financial impact is the same, is it not?

MR. DUNPHY: No, it's absolutely not, it's all a question of timing. And this all gets to the nub of the matter. And I'll take you to it. Article 7 says, My Lady, how you pay my off. Because what's really happened -- let's take two steps back and look at this from on high. What the US debtor and Canadian debtor are relying telling you, break out the ticker tape parade, the market has been good to us, and I congratulate them.

And as a result, the Canadian estate is totally, if not certainly, probably not asset insolvent any more. It may have appeared to be asset insolvent when they filed, but what they are telling you is the claims sitting on the books, who owes what to them, there is enough there to pay everyone; they haven't done it yet, but they are saying there is enough.

It may be liquidity insolvent, meaning that absent of the sale of the ULC1 bonds they haven't got enough money to pay their creditors right away, and many of them have accelerated claims, but they are telling you they are asset insolvent.

And what follows from that, of course, is that now the US debtor says, well, I have the equity left here and all the residual things are mine. And I have no dispute with that; it is. I have only dispute with putting the cart before the horse or after the horse; the equity

cart belongs behind the creditor horse, not in front of it.

So what we are seeing here is, in a dialog between the US debtor and the Canadian debtor, I need not point out wholly owned subsidiaries, in a case where equity has restorative value, we have all of the equity, in effect, being safe.

Well, I'll get the 75 million now, I'll get a bunch of your claims against me canceled, and while we're at it, I'm going to cancel, and, My Lady, I will not say recharacterize, they are canceled. My claims are simply gone. And in fact they are gone whether or not the settlement agreement ever closes. They are gone whether or not I'm ever paid out. They are gone whether or not we have a 1929 again that crashes everything.

I'm not standing here telling you that I want to take market risk and volatility risk. I'm still saying sell the bonds yesterday and pay me thereafter. My job as trustee is simply to recognize when the obligations on the trust indenture have been satisfied, and they haven't. There's a road map to do it right in the trust indenture and you don't need my permission to do it. You just flood me with money; it's easy and it's right in there. And if there's too much it tells me what to do with it; I give I it back to the company.

I'm a trustee; that's what I do. I hold

the money, I find it tells me who is entitled to it and I give it out. It's right there. You don't need my permission. You don't need a court order that says anything. You don't need to dismiss my claim; you just need to do it. So rather than say trust us you will be paid, what I say is I'll trust you when I have been paid. And until I have been paid axiomatically, I haven't. And at the point in time where I haven't and all my claims are flying out a window, that is a compromise. It is nothing more or less than a compromise.

And, My Lady, there are a lot of things we can do under the CCAA, it affords us a lot of latitude, but not unlimited latitude. And as I heartedly concur with what my friend said about Section 4 of CCAA. Look at the definition of court in the CCAA. My claim can't just be tossed over to another court to be determined, not in the CCAA. If I'm being paid under the trust indenture, different matter maybe. If you are looking for advice and direction as a trustee, I might go to the superior court of any province or in the State of New York possibly, but there's a if I needed advice and directions; there's a provision dealing with that.

If I'm being paid under the CCAA, then either give me a vote or pay me out. And you can't just invent a mechanism to do that. What they are trying to do

is come up with what is, in effect, an insolvency discount, and they are not entitled to that. It's not like equity is getting paid here. What they are entitled to do is give me everything I'm owed, and when I'm not owed any more, surprisingly enough I will have no more claims. So my claim will die a natural death, not a premature one. They will die a natural death when the trust indenture is discharged. And there's a specific road map for how you do it in Article 7, and I'll take you to it.

JUSTICE ROMAINE: Mr. Dunphy, and perhaps this is a question that Mr. Meyers can help me with.

Do I understand today that I'm being told in the Canadian order that the claims are not released until the CLR2 notes have been paid. Mr Meyers?

MR. MEYERS: In the Canadian order, the claims are released when the bonds are sold. And we will have a commitment, an order of the court, requiring us to come back here as soon as practicable to distribute the money. And that's, of course, when the US will get their 75 million as well.

JUSTICE ROMAINE: Okay.

MR. MEYERS: The same fund; the same distribution order. You will order us to come back and bring that motion right on.

JUSTICE ROMAINE: Okay, thank you.

MR. DUNPHY: And I'm going to get to that since I'm hopscotching all over my submission.

JUSTICE ROMAINE: Go ahead.

MR. DUNPHY: But the US order is patently clear, in paragraph 16 and paragraph 5 of the draft US order said, if memory serves me, those two paragraphs make it of immediate effect so that my claims in the US are evaporated on contact of your pen with that piece of paper, your Honor's pen. So that's when my claims evaporate in the United States. My claims in Canada apparently evaporate on the completion of a bond sale, according to the settlement agreement, after which I'm still not paid, nor have I even got a certainty of being paid. I don't have any money being held in trust for me anywhere that's only for me and not for anyone else.

I then have the liberty of sitting back and waiting for the subsequent application, which may or may not be granted, and which may or may not involve different circumstances arising between now and then, which may or may not see me paid. In other words, while I'll probably be paid, I don't know that I'll be paid. And it is entirely unnecessary to compromise all of my rights if it is assured that I will be paid. It is so simple to say to the US debtor and the Canadian debtor both, if you are both telling the court that the reason why you need pay no heed

to ULC2 is because they are going to be paid in full, then stop wasting the court's time and mine with a bunch of compromises that you don't need, because, as a matter of law, when I am paid in full, all of those claims fall away. And if it's eminent, if it's going to happen by September 30th, from their lips to God's ears, it should happen.

But it hasn't happened. And until it does happen, I would submit Section 4 of the CCAA. This is not an issue, it cannot pass. It cannot pass. When I am paid, then I'm not compromised. When payment is in futuro and my present, existing claim is evaporated on that hour, minute and day, I have been compromised. And you need look no farther than Section 4 to say there is no vote that preceded that. It was not done by my voluntary concession, and therefore my claim, having died an ignoble death on that day, was compromised and it cannot pass under Section 4. There are many things they wish they could do, but that's just not one of them.

But as I said, there is an easy way out here because Article 7 tells you how to pay me off. And I'm a trustee, and I'm used to holding money for other people. And if it turns out you end up giving me a little bit too much and I have to give a bit back, we can handle that. And it if it turns out that we have to come back to the court for direction because my financial adviser and

the monitor can't agree on the right number or interest, how long can that take? And will we have an issue on the make whole? Well, we don't have an issue on the calculation of it, but we do have an issue on the merits of it, and that's what I'm owed by ULC2, a Canadian company.

And so, can we come back between now and September 30th to have a hearing on that? I think we can. Can we get a ruling before then? I should think so. Do you need to have all this in the settlement agreement that is jamming me in advance when your whole premises don't listen to him because he's paid? Absolutely not. If you are going to pay him anyway, then why insert provisions in there dealing with the ULC2 trustee? You don't need it. You've got Article 7. You don't need my consent to discharge the obligations on the trust indenture.

I'm a passive preacher. I just follow orders. Pay me money, I'm out of here. It's no discretion on my part, just follow the map that's in Article 7. And what follows from that follows from it. What my legal entitlements are more, and unfortunately for them not less; just what it is.

And that's the beginning of my end of submissions, quite frankly, it's a little bit in the middle which I'll get to now.

The first ask is what do we want? We want

to be paid in full before our claims fall away. We want not the probability of settlement, but the certainty. We want to know we have been paid. I don't want to have a subsequent application to the court to say can I be paid now and find out that revenue in Canada is reassessed. I don't want to have a subsequent application and find out that some other thing has happened and that values the have plummeted to the floor and who knows what; not my cup of tea. If that happens I'll live with it, if values do fall, but then I keep all my claims. If I have three pockets to pick to get paid then so be it. But until I'm paid, I'm not.

So we want to have, as I said, nothing prior to being paid, we want to have any dispute on quantum settled by this court. Am I telling you that you cannot have a joint hearing as we're having today? Absolutely not. If you think it's warranted, it's merited, we can do that.

The only justification for having my claims determined in a different court is that the make whole provision is set to be governed my New York law. Well, guess what? This settlement agreement is governed by New York law. Are we to understand by that, that by virtue of having the settlement agreement that any subsequent applications, including, while I'm at it, my getting paid

have to go now before the U.S. Bankruptcy Court because it's governed by US law? Not at all. We have contracts governed by foreign law every day of the week.

And the rules of conflicts of law are the law of the forum is presumed to be the same unless there's evidence lead to the contrary. There's no evidence to suggest that New York law is the issue on the make whole, it's the interplay between the trust indenture and the CCAA where we are in kind of uncharted territory here. And that is your domain. It's not what the words mean, it's how you apply those words in the context of the CCAA. And with all due respect to his Honor, that's not determined under the US Bankruptcy Code, that's determined here.

And it's the obligation of a Canadian company, ULC2, under the trust indenture that I'm saying you can't just turn that away. And under the CCAA, which is the only jurisdiction being invoked here to do all these things, you must determine my claim. The court is not a different court, it's you. It's the Alberta court.

So I would submit, and my second ask was I'm in this court and I stay in this court. You can ask for directions. We can do have joint hearings; I'm all over all of that, but I can't be thrown out. I'm staying here until you are done with me is my submission.

The third ask we have is that any disputed

sums, and if there appear to be some I won't bore you with the details of that dispute because I'm sure we'll have a chance to do that before you later, but there are some legitimate disputes that add up to a relatively small sum of money compared to the total amounts at issues but there's some real numbers. There's about 30 odd million on the make whole, and there's three quarters of a million to a million in interest.

We were a couple million apart. We are now about three quarters of a million apart. We may settle those numbers out with further discussion, or we may need your help. But our submission is if we are going to have some escrow numbers, I don't want to have anything preparatory in there, anything that may apply for an escrow or anything something.

The only condition of my being paid should be my legal entitlement on the resolution of that issue, not whether some subsequent issues occurs and they become asset insolvent again. If the premise is that we are all asset insolvent, then pay me out and be done with me. But I'm not losing my claims, and I'm taking the risk that escrow is going to have somebody else putting their nose into it and saying that's my money, too.

Article 7 says you pay the trustee, and it's held in trust for the bond holders, and anything left

over goes back to the company. There I have absolute certainty that the only thing left to be determined is your ascertainment order, with the assistance of his Honor, if necessary, of how much we are owed. So I could submit, my third ask is the trustee is should get the money what it's to be paid.

But, My Lady and your Honor, we've been told that every term is sacred and nothing can be changed. Much has been changed, including coming most of the way to our interest number. We are about three quarters of a million apart; we were a couple of a million apart before. So they managed to change those, but they didn't get all the way there.

So until the FMB told us an all or nothing deal, I have no option but to say what is a pretty good deal, what an is almost all the way there, I have no objection but to say I'm asking you not to approve it.

I'm not a party to the settlement agreement, I have no rights to it under it. And as I'll take you to in a moment, the settlement agreement is preparatory, which means it's a statement of intent, not a legal obligation. Because the two parties, and I again remind you, a wholly own subsidiary and parent, are they in a situation where we are now talking about the equity of the parent, can move assets around within those schedules.

I'll take you to some of those provisions on their own. They don't need your consent. They sure don't need mine. In fact there's an explicit provision in there that says no one else has any rights under this agreement. So that's why I'm asking you to say great agreement, just don't make me bear the burden of it if I'm not paid. If the whole premise of this is on being paid, then just do so. But if there's a burden to be borne, it's not mine.

So let's look at a couple of things where I'll show you there is a lot of discretion built into this agreement, which is worrisome, Section 2.2 sub 1 and 2 of the settlement agreement. This is basically our get, one of the big gets, which is all the claims the US and Canadian claims. And you will see when you look at that Section 2.2 sub 1 and 2, that they can.

JUSTICE ROMAINE: I'm sorry, I just got to --

MR. DUNPHY: I just have to get my notes.

JUSTICE ROMAINE: Go ahead.

MR. DUNPHY: Section 2.2 sub 1 and sub 2, says they can move these claims around in those schedules and remove them. So although I'm being told that these claims are subordinated, so a major benefit is, for example, the US debtors subordinating a bunch of claims in

CESCA, but if they decide not to subordinate it tomorrow, then they just remove it from the schedule and put it somewhere else, and they can give the Canadian debtors' consent. Will they consent? Probably not. But can they consent? Yes. And is anyone else's consent required to validate their consent? No. In fact, the thing says at Section 5.3, "no other party has any rights under this agreement but them."

So without your supervision, that could happen. I am suggesting that shouldn't be the case.

The other thing we get from this agreement is things we already have. Mr. Thornton referred you to the rule on Cherry and Bolty, but we are being told the major benefit of CCEL, a Canadian creditor, or I should say a Canadian debtor, is going to agree to subordinate its claims in CCRC. Well, that's a purely domestic internal matter. I don't need the consent of the US debtor for that, so I don't consider that to be a major concession that we got from them in our own estate, and I don't consider it to be anything of great merit, given the fact that Canadian Bankruptcy Law, contributories are obliged to contribute before they can share in the bankrupt estate in the BIA, and we have the rule on Cherry and Bolty as well.

Now, the sale of the bonds, I agree. Sell the bonds. But if the price is 90 million, I'm no not

going to make that decision as to whether that's a good price or not, or 75 million, or whatever they are at. I am in agreement with my friend that if that's to be done, that that can go elsewhere. Don't ask me to make that business call.

Then I want to refer to the compromises. I took you to the biggest one, which is Exhibit G. And Exhibit G says prior to payment in full of my claims, all of my claims in the US and Canadian estates are evaporated. And I submit, I can't be more candid, it simply can't be done. There is no constitutional jurisdiction do that. You can't dismiss a claim without hearing on the merits. I filed a claim. I'm entitled to procedural due process. And two parties sitting in a room somewhere else can't decide for me to settle my claim, and they sure can't do it based on a promise that I have no way of -- that is unsecured, that I will be paid in the future. It's an unsecured promise. We've got plenty of those already. Thank you, very much. Payment I understand. Promises, I've got a few.

Now Mr. Thornton took you through some of the other ones, but I will just point out -- Greenfield we've been through, the limitation on CCRC claims. Again that's, you know, one of the reasons in which CCRC finds the money to pay us is by paying its intercompany claims.

They are being capped. But the biggest one is our claim.

Our claim is being fixed at a number which does not reflect our actual claim amount. It is less than what you are owed. And if you look at the paragraph, paragraph 21 fixes my number, and that's res judicata on the day you sign it. It says what my claim is, yet somehow in paragraph 25 there's a backhanded way that recognizes that it might be readjusted later. Then don't fix my claim.

Why don't you just say nothing on it? You don't need to fix my claim. How about we just pay it, and if we need some direction from the court, we'll get it? We don't need to fix my claim. Am I appealing it? Have I got an onus now to say it's not what they say; it's some other number? What does that mean? So, it's not their business to sit around a table and fix my claim for me. That's a compromise. You can't do that.

And as I've said, there is simply no basis in law to send a determination of my claim, under my trust indenture, against my Canadian debtor to the US to be resolved. It can't be done, because the resolution of the claim in the CCAA, Section 12, and the definition of court is court. It's you.

JUSTICE ROMAINE: It's not that that aspect is not compromised you are suggesting.

MR. DUNPHY: I'm saying it's over the top. I mean it's -- I've got a claim against a Canadian debtor. And let's take a step back. Remember what the whole premises here, don't listen to him he's going to be paid by anyway. Well, who is he going to be paid by? He's going to be paid by the Canadian debtor, of course. So if I'm going to be paid by the Canadian debtor, and what I'm supposed to take is that I'll probably, for present purposes, as I will certainly be paid. I'm going to be paid by the Canadian debtor so my guarantees in the US don't matter, so don't worry if you're cancelling all those other superfluous claims in the US.

Okay. Let's follow that reasoning. That tells me that I have no claim in the US that is ever going to be adjudicated on and result in a payment. So why again would I be walking down there to get my claim against the Canadian debtor on the premise of the claim resolved in the court of the guarantor, when the whole premise of this exercise is the guarantor is never going to pay me a red cent.

Since the premise of your doing all this is the guarantor not going to pay, then why am I in front of the guarantor's court? In fact, why am I in the U.S. Bankruptcy Court at all? Because it's not a bankruptcy matter, it's a matter of New York law which is supposed to

be the superior court or whatever is down there. That doesn't make any sense.

But under the CCAA you just can't do it. There's no basis in law to do it. The only basis offered up is that it's governed my New York law. And as I just mentioned to you, lots of things are, including the settlement agreement. And the logic of that proposition would be that as long as you sign this order you're pointless, because the settlement agreement is governed by New York law, so you better sit down to and let everything else happen somewhere else.

That's not the case. That's not right. And, again, this is one of those things grafted onto the back of a locomotive that they sent off down the hill saying there's so many wheels in this thing that nobody can possibly stop it. I'm standing up and saying you can't do that. And if the price is I'm going to have to make you do it again, we'll pay that price. We're saying, as drafted, we can't stand for the settlement agreement. It's really close. It's really close, but whether you negotiate in front of a mirror and not by talking to the effective parties these things happen. And I submit, with regret, that the only thing for you to do here is to recognize the fact that we are very close, but to tell them to go and take it over the line.

There's a couple, just while I'm on the subject of the order I want to point out what I think are two Trojan horses in there. Paragraph 32 of the US order, and 23 of the Canadian order. Paragraph 32 of the US order says, "all relief contemplated by the settlement agreement is hereby granted." Well what does that mean? Because I have the settlement agreement. I have a very lengthy order that's implementing various bits and pieces of it, but then I have this one paragraph that says in case we forgot something this implements it anyway.

JUSTICE ROMAINE: I'm sorry, I'm having trouble getting my hands on the Canadian order, Mr. Dunphy.

MR. DUNPHY: Well, the Canadian order I only have one copy of it.

JUSTICE ROMAINE: No, I have a copy of it right here. What paragraph is it?

MR. DUNPHY: In the US order, it's in the column dated July 20. It's right at the very back. Unfortunately I have no tabs in mine; it's the very last pages.

JUSTICE ROMAINE: Okay. And you are looking at what paragraph?

MR. DUNPHY: I'm looking at paragraph 32 which is on page 14 of mine at the back.

JUSTICE ROMAINE: Okay, thank you.

MR. DUNPHY: And paragraph 32 says, the failure to mention any provision of the settlement in the settlement agreement are accrued in all the steps -- in all that is contemplated by the settlement, the ULC1 settlement, the settlement agreement is hereby granted. So in case we forgot something, everything else is swept in here. That's just a Trojan horse. If it means nothing then I would submit it goes. If it means something I would very much like someone to tell me exactly what it means.

And to the same effect, slightly different, is an arguably bigger Trojan horse, which is the paragraph -- the paragraph over here. I don't have the tab. In the Canadian order we have a paragraph that approves the monitor's report that admits. I don't mind approving the activities of the monitor, we haven't done it in prior attendances, but I'll do it every day if that makes people happy.

I don't take issue with the activities of the monitor, but the monitor's report is a breathtaking rendition of a lot of things that have happened. And I don't want to be arguing at some future court at some future day as to what is implicitly meant by a blanket approval of the monitor's approval report. His activities, I don't have a problem with, but I'm not in favor of a Trojan horse that I don't understand.

I've dealt with the subject of an escrow; as I said, an escrow is not the same as being paid. I don't know that I'm the only one entitled to the funds that's in there. I do know when it's paid to me, pursuant to Article 7 of the trust indenture, which I'll take to you in a moment, so I don't want to go there. So let me take you to Article 7 and my suggested resolution, and I'll finish with this, because we are done here.

Page 32 of the trust indenture, Article 7, and you'll see that under 7.1, for example, if all outstanding securities of a series become due and payable, you can deposit the money with the trustee. If you want to prepay there's provisions to do that too. I say that because I'm told that the holders of my bonds may be in the process of withdrawing the automatic acceleration of their series. It doesn't matter. Even if they do, you've got another provision where you can repay it.

So they have provisions where you can repay it. And under this provision, anything leftover goes to the company, and ti says it in a couple of places. And let me find you one; 7.6, for example. They can ask for any excess that we are holding and the return of it. So I'm a trustee. You get the simplest way to do it, and I'll read you my language at the end, because I am finished, is instead of having my claims being compromised, instead of

having provisions that say my claim is fixed at dollars bullet when I don't agree with the number, none of that is necessary. All they needed to do, and all they still need to two do is exactly two paragraphs.

Number one, upon payment in full of all amounts owing to the US -- under the ULC2 trust indenture pursuant to Article 7 thereof, all claims filed by the ULC2 trustee in the US proceedings or Canadian proceedings shall be withdrawn or satisfied. Common sense. I submit it follows law anyway, but if someone needs the comfort of knowing it's in an order, I'm happy to have that in the order.

Paragraph 2, the court shall stand seized to provide ULC2 and its trustee with advise and directions regarding the amounts to be paid pursuant to Article 7, proving that this court may, in its discretion, hold a joint hearing. We're done. That takes care of all my issues; all of them not, just some, all of them.

And with that hopefully simple submission, I will thank you for your time, and your Honor as well, thank you.

JUSTICE ROMAINE: Thank you, Mr. Dunphy.

Mr. Linder?

A VOICE: Mr. Linder is not here. Ms. Bossio will be presenting the matter.

JUSTICE ROMAINE: Okay, Ms. Bossio, go ahead.

MS. BOSSIO: Good afternoon, My Lady. Good afternoon, your Honor. My name is Emi Bossio and we are counsel for the Calpine -- excuse me, for Calpine Power L.P., which is also referred to as the fund. CLP and the fund is a massive creditor in this CCAA application, My Lady. It has over 483 million dollars in claims, and this morning My Lady reserved a judgment on whether or not there will be an additional proof of claim allowed for an extra 30 million dollars.

Of those claims, at least 142 million dollars has been acknowledged and admitted by the monitor of the Canadian debtor with respect to the CLP's toll rate claim.

CLP is a creditor of CESCA and of CCEL. The monitor's report identifies that the creditors of those companies are at most risk of shortfall. And in particular, My Lady and your Honor, I take you to the monitor's report at paragraph 28, page 12. And this is the chart where the monitor summarizes perspective recoveries underneath the proposed settlement agreement. And what is particularly important about this chart from the perspective to CLP is, first of all, that on a low scenario there's a risk for CESCA creditors, that's CLP's 378

million dollars, of a 65 percent recovery.

And if we look above there with respect to CCEL, we see that even on the high recovery scenario, CCEL's creditors, of which CLP is the single largest creditor, will recover 65 pursuant to settlement agreement. On a low recovery it's a 35 percent figure, My Lady. And this is critical because CLP is a significant, indeed massive creditor of the CCAA applicants. If we turn first to its claims with CCEL, CLP has two claims already into CCEL and the third which was dealt with this morning.

The first claim is with respect to an contractural indemnity owed by CCEL in its role as manager of CLP's assets. That is what's called the heat rate claim. And the current claim has been valued by CLP at over 115 million dollars. The second claim relates to a potential penalty that is payable by D.C. Hydro, and that amount has not yet been quantified. And the third claim relates to a recently filed statement of claim by the Canadian Power Developers Group, Inc. which was filed in May, and for which relief was sought this morning to file an additional proof of claims into CCEL in the amount of 30 million dollars.

Pursuant to monitor's analyses CCEL's creditors, on the high scenario, this is their best case scenario, would receive 65 percent of their claims. With

respect to the heat ray claim alone, that relates to a 35 percent recovery on the low scenario. That results in a shortfall to CLP of between 40 million to 74 million dollars, My Lady. If the lead is granted with respect to the claim arising from the statement of claim filed by CPDG, then that shortfall would be in the range of an additional 10.5 to 19.5 million dollars.

With respect to CLP's claims into CESCA, that claims arises as a result of what is referred to as the toll claim. That was the repudiation by CESCA of a 20 years tolling agreement with CLP. Heat monitor and the CCA debtors have acknowledged that at least 142 million dollars is owing to CLP pursuant to that claim. Pursuant to its dispute note, CLP values that claim at over 378 million dollars. Therefore, even the smallest percentage or risk to shortfall in CESCA, My Lady and your Honor, could translate into an extremely significant shortfall.

JUSTICE ROMAINE: This is all, of course, prior to the operation of the US debtor's guarantees, Ms. Bossio?

MS. BOSSIO: That's correct.

JUSTICE ROMAINE: And in fact your client, if in fact the US guarantees are taken into account, would not suffer a shortfall; is that right?

MS. BOSSIO: My Lady, you bring me to my

very next point.

There are two issues that I would like to raise with respect to the guarantee. First of all, the claim that addresses the late filed proof of claim, that was dealt with this morning. That, as far as CLP is aware, is not a claim that would be guaranteed by the United States debtors.

JUSTICE ROMAINE: Right.

MS. BOSSIO: And as a result, any shortfall in that claim, the entire claim has to be satisfied within the Canadian estates, there would be no recourse in that claim to the United States. So on the monitor's own numbers, there is potentially a 10 million to 19 million dollar shortfall.

Then with respect to the guarantee, the difficulty with the recourse to the guarantee, My Lady, is that as we understand it the recourse is proposed to be paid by way of equity in the US guarantor. And first of all, obviously, My Lady, that in and of itself is a compromise of CLP's rights. And with it, in particular, we have difficulties because there is delay associated with the resolution of that guarantee issues, but more fundamentally there is risk associated with the payment of the amounts owing under the guaranteed claims.

And specifically, the monitor's report and

the CCAA and US debtors settlement are premised on a very fundamental assumption. We've heard the reference to CLP being paid in full, but that assumes that equity is equivalent to cash, My Lady, and that, in our submission, is a flawed assumption. It is not always the case. In particular, there is risk associated with equity, and it is a compromise of the claim to pay a creditor other than in cash. And that's particularly problematic here, where we have Canadian cash assets that are flowing out of the Canadian estate and going into the US estate.

And it's flawed to assume, My Lady, that payment in equity equates to full payment, or that it equates to -- it can't relate to payment at all. I'm certain the shareholders of Enron assumed that their equity was as good as cash, or at least would have some cash value. That is not always the case. And that takes us to the fundamental problem with the settlement agreement, and that is that it places the risk on the Canadian creditors, and in particular on CLP. CLP has the risks of the shortfalls, while the certainty is flowing up through to the US equity holders.

And it's not for the US debtors and the Canadian debtors to ascribe that list to CLP, in fact in our submission they cannot. They cannot compromise our claims, they cannot import risk to our claims. Those are

not matters that can be unilaterally imposed. The determination to impose shares as a payment on a creditor, that may well be acceptable to a creditor, but it may not, and I will involves risks. And those risks and that determination is a compromise of the creditor's claim.

And as a compromise of the creditor's claim, My Lady, that takes us to the fundamental legal question, which is, given that there are clearly compromises to CLP's claims being proposed, the monitor has acknowledged on a high recovery under CCEL, there is a 65 percent recovery. What jurisdiction is it in the debtors to agree to compromise that claim, and what jurisdiction or discretion is there that exist in this court to approve that settlement agreement which would have the effect of affecting a compromise on to CLP.

My Lady, it is clear that there is no jurisdiction, and it's simply not recognized as law that debtors can agree and unilaterally compromise the claims of their creditors. Compromises may occur under Canadian law, but they must occur under the statute that allows that, which is the Companies' Creditors Arrangement Act, which we are under today, My Lady. There is not, and it cannot be the case in Canadian law that debtors can unilaterally compromise the claim of their creditors, nor can a settlement bind non parties. But that's what's purported

to occur here. The CCAA attempts to achieve -- does achieve in our submission...

(loud background noise)

JUSTICE ROMAINE: The microphone is very delicate. We seem to be getting some feedback from the telephone and would I ask you to please mute your side of the telephone call. Thank you.

I'm sorry. Go ahead, Ms. Bossio.

MS. BOSSIO: The CCAA, through its structure and through its framework, provides for a very delicate balancing of the rights of creditors and the rights of debtors.

Even though there has been much judicial comments on inherent jurisdiction and flexibilities needed in though process, no amount of flexibility and no amount of inherent jurisdiction can overrule the express requirements of that statute. And those express requirements are set out through the operation of Section 4 and Section 6. My friends have taken you through that and I won't do that again, but one thing that's very critical about Section 6, My Lady, is that Section 6 deals with the ability of the court to approve a compromise. And it doesn't speak only of plans of arrangement, but Section 6 expressly speaks of any compromise that is to be approved, My Lady.

The Canadian courts, and in particular our court of appeals master had held that there's no discretion in the courts to approve a compromise of creditors unless and until that has been put to a vote of the creditors.

JUSTICE ROMAINE: But specifically, the court held that is the court has no discretion to sanction a plan unless it's been approved, Ms. Bossio; is that correct?

MS. BOSSIO: That is correct. But in this case, My Lady, if you have a settlement agreement that has a compromised or plan that has a compromise, in my submission you cannot do indirectly, or through naming something completely different than a plan, achieve what you could not achieve through the statute. It's an indirect and an inappropriate intervention of the statute.

One of the difficulties, and what distinguishes the circumstances of a compromise of creditors' rights that we have in this case through some of the authorities that my friends have cited to you that the involve the sale of assets, is that in those circumstances the courts have been very clear about the need to determine to a very open process, a process that ensures that all the creditors understand what is going forward, that there's an open process in the market, so that the best price for the assets can be determined, and that it be transparent so

that creditors can ascertain that the best price is being accomplished.

What is troubling about this case, My Lady, is that the settlement agreement settles numerous intercompany claims, and those are settled on the basis which creditors have no knowledge and have no understanding. The intercompany claims have been unascertained, undetermined. They are uncertain claims. And so, as a creditor, we are left without the process, without the transparency of understanding whether or not, in fact, those intercompany claims have been dealt within a way that's fair to creditors.

And in our submission one of the reasons why creditors are given the right to vote, and should not be stripped of the right to vote, is because it forces that accountability on the plan, and it forces that accountability on any compromise. And that's what's lacking here, My Lady.

In summary, My Lady, CLP's claims are significant, and they are at clear risk, according to the monitor's assessment of the settlement agreement, particularly the claims of CCEL will be compromised at 65 percent.

JUSTICE ROMAINE: Ms. Bossio, isn't the monitor saying that there is very little risk to the fund,

in fact?

MS. BOSSIO: It relies on that, as I understand that report, on an assumption that the guarantees will be available and will be paid. But again, that relies on the fundamental assumption, first of all, that equity does equate to cash, which is not the case. And secondly, it does not acknowledge the fact that payment in equity is in itself a compromise of a creditor's claim. It can be -- a debtor cannot unilaterally impose the determination that a claim will be paid by equity. It cannot simply determine that and impose it upon a creditor without the creditor's consent, or in the CCAA context, without a vote of the creditor. And that is simply where the fundamental problem with the settlement agreement lies, My Lady.

In sum, CLP has a statutory right to vote on a compromise of its claims. The settlement agreement does purport to compromise those claims, and on that basis alone, it's a legal threshold issue that the court, in our respectful submission, lacks the jurisdiction and lacks the discretion to approve a settlement to which CLP is not a party, to which it has not given its consent, and which is compromises its claims.

JUSTICE ROMAINE: Thank you, Ms. Bossio.

Is there anyone else here that wishes to

speak?

Judge Lifland, I recall that one of your counsel in the United States, I think it was Mr. Fredericks, wanted to address this after the Canadian creditors had addressed it?

Do you want to deal with that?

JUDGE LIFLAND: If Mr. Fredericks --

MR. FREDERICKS: I'll be very brief, your Honor. If I may just say I that I adopt Mr. Dunphy's arguments. And for the reasons that he stated, and in particular by reason that paragraphs 5 and 16 of the US order proport to dismiss and withdraw, deal with our claims prior to their payment, that this court should decline to approve the settlement at this time.

Thank you your Honor. Thank you Madame Justice.

JUSTICE ROMAINE: Thank you.

Okay then. Mr. Meyers?

MR. MEYERS: Thank you, My Lady, your Honor. I'm cognizant of the time, and I'll try to be very brief. In trying to assist Judge Lifland to understand what the CCRC committee, Mr. Thornton analogized himself to an official creditors' committee. I've seen official creditors' committees, and that's not one.

MR. DUNPHY: Thank you.

JUSTICE ROMAINE: Excuse me, if you could hold on. Madam clerk, if you could turn down the sound again? Thank you.

Mr. Meyers, go ahead.

MR. MEYERS: CCRC is an ad hoc committee made up primarily of Harbor and ULC2 note holders, and we only know much about it because of the disclosure that it made in the United States, not even to this court today. But one of the things that makes a difference is there are things official creditors committees won't do. For example, if I can just read a line from a case, "The burden is upon Harbor to satisfy me to that they are entitled to the relief claim. And the circumstances of this case they have not fulfilled its burden, and the application for relief is hereby dismissed." That's the decision of Madame Justice Smith in the oppression remedy in Nova Scotia that Harbor lost.

It sounded like -- I was probably wrong but, it sounded like Mr. Thornton was saying that his client won that case. Now the trustee won, the trustee for the note holders won for a small portion of the note holders who had not bought into the oppression, and the debtors were ordered to hold up about 50 million dollars. Instead today the ULC2 note holders are getting paid in full.

But it goes beyond that, Mr. Thornton then said his claim for costs is being compromised, part of his claim for costs, having not won the litigation, having then brought the derivative action that was tossed out simarily, his costs are being compromised, he said in Schedule G, and he referred you to paragraph 9 of the order. It says how dare they compromise my --

MR. THORNTON: I did not make that submission, My Lady, that was the trustee's claims for oppression that were being dismissed in Schedule G.

JUSTICE ROMAINE: That may be, Mr. Meyers. Go ahead.

MR. MEYERS: The claims were tossed and not on the schedule. The trustee's claims against ULC2 are not being released at all. The oppression claim is, as a trustee as Mr. Dunphy rightly said, can only claim a hundred cents on the dollar, including everything that is made up in the hundred cents on the dollar, and that's what's being paid. But the suggestion that Harbor won the Nova Scotia litigation, that it has an entitlement to costs that's being released in this proceeding and therefore is subject to compromise, is simply not the facts.

Mr. Thornton questioned the urgency of this. Incredible coming from the party who's been distracting this pound of flesh throughout. But in

addition to market risks, foreign exchange risks, there's three million reasons per month of interest accrual under the ULC2 notes that continues; not to mention the need to avoid the paralysis that has characterized some of the proceedings because of the difficult issues between the cross-border estates.

The global settlement agreement is not a plan of compromise. It's an asset realization, principally among the debtors. And the big lie, the big -- that kept coming from all of my friends this afternoon, and I don't -- I'm sorry, that's a terrible, terrible phrase. I don't mean any intention.

JUSTICE ROMAINE: Okay.

MR. MEYERS: The error that is common to all of their submissions is that they put themselves in the positions of debtor companies. Mr. Thornton says our claims up into Quintana are being compromised. The fund is creditor of CESCA. The fund is not a creditor of Quintana CCEL might be, CCEL might be; CCEL is a debtor, it's not a final. All claims are recognized as being paid in full or not being touched, not being compromised.

Mr. Thornton says in paragraph 34 of his brief that if its established that the settlement can be implement such that all CESCA creditors will recover a hundred percent of their valid claims from the Canadian

estates, then implementation of the settlement would not, at this point, effect a compromise of CESCA's creditor claims. There's no compromise if you are paid a hundred percent. The fact that asset realization may not yield a hundred cent recovery is not a compromise.

These creditors have bought into companies that don't necessarily have the ability to pay them in full. We are going to realize the assets. If we realized only 10 cents worth of assets, that's still not a compromise. What is a compromise is when we come to them and say we want to satisfy your claims for 10 cents. We are not asking to satisfy their claims today. There may never be the need for a plan because we hope they are going to be paid in full. We going to see what happens with the bond sale. We are going to see what happens with the toll claim. There may never be a compromise, but if there is one, there will surely be a plan on which they vote.

But all Justice Blair said in Philips is you can't compromise claims in a case without a plan. And Philips was such a different case. In that case there was a Canadian debtor who also filed in the US. So it was a Canadian debtor who proposes a plan of arrangement under the CCAA. And in it it says you, Canadian creditor, go to the US. It threw a Canadian creditor out of Canada and into a US class that was subject to a cramdown.

And we've heard the term cramdown used rather loosely today. Cramdown, as I understand it, and I don't pretend to be an expert on, is a particular section or sections of the US Bankruptcy Code that all plan to be approved even if creditors may opposed. There is no cramdown here, nobody is being crammed down in any kind of sense. I doubt anyone was told that you're being thrown into the United States and you are subject to a proceeding that doesn't treat you as well as a Canadian proceeding. All Justice Blair said is that you can't have a Canadian plan for Canadian debtor and not let the Canadian creditors vote on it if you are going to subject it to a worse treatment somewhere else. And that is not what's happening here.

And I have an unfortunate confession to make as well, it's an Ontario, and as much as I respect Justice Blair, it might not settle the law for the whole country. It could be that My Lady thinks something different, but in any event it has nothing to do with this case, because by settling the intercompany relations among the debtors and their US affiliates, no claim of the funds, no claim of anyones' is being compromised unless it's being paid in full, and in that case, of course, it's not a compromise.

So that having the US jurisdiction

determine a claim that has a forum of Canadians, it's not a compromise. Settling the Greenfield litigation, Mr. Thornton said it was a compromise. It's a settlement of a case by our client against another client. It's not a compromise of a creditor's claim, it's a settlement. In Red Cross, also written by Justice Blair, the same judge that wrote Philip, well aware of the difference between Section 11 and Section 4, Section 6 of the CCAA, Justice Blair made it clear that you can't realize on assets and use the court's authority either the discretionary power to stay under Section 11, which includes an injunction to deal with assets realization, or inherent jurisdiction in order to reorganize affairs among the creditor's positions and realize on assets.

In Air Canada the restructuring agreement that was approved included a cross collateralization of DIP priority, a priority determination that cost 22 million dollars to the creditors. Mr. Thornton said it was nothing, it's all just GE, it gave it priority. One of the things he complains about in this case is there's a priority determination, well that's what was done in Air Canada.

In Stelco the pension funding agreements set Stelco's obligations in the future, how much it had to pay, because a priority is deemed trust in future,

perfected creditor realization, because there would only be so much value left to give to the creditors. As long as a transaction is fair and reasonable and does not compromise the creditors' claims, the court has jurisdiction to do it.

I want to deal very briefly with something that Mr. Thornton said about the notice of revisions, that this is somehow a collateral attack on what was done April 4th, because it's nothing of the sort. Ms. Bossio tried to say that the debtors have admitted the claims and no supervisions. Of course that's nothing as far as I know of, we've set an amount of value that we would be prepared to have claims accepted at had there been no notice of dispute filed.

And the whole issue on April 4th was we were in an early stage where the notice of revisions had been sent, but no notice of dispute yet, and it's the notice of dispute that triggered the judicial phase, the judicial determination phase. And in our submission, the fund is simply the author of its own misfortune. It had the opportunity to deal with us at that time, instead it filed a notice of dispute which results in standing for guarantors. We talked about that on April 4th. That if they said that -- I said in particular on April 4th, if he delivers is notice of dispute and we have to bring a motion, Mr. Griffin will have all of his ability at that

point to state his client's peace, and hopefully at that point they will have said they are a guarantor.

It was clear on April 4th, once we went into the court proceeding, that the US would come into the process. And, in fact, My Lady, if I could just quote from your reasons, on balance I think I'm inclined to dismiss the application, that was Mr. Griffin's application opposing the notice of revision. I believe the claims process should continue as it has continued, and that does preclude, of course, any kind of agreement between the US debtors and the Canadian debtors with respect to US standing with respect to these issues. There's no collateral attack on the claims procedures order. It was always intended, and right in your endorsement, that if we got to the judicial phase if they couldn't settle with us, then there was going to have to be an assessments of standing.

Mr. Dunphy's submissions reflect the unfortunate rigidity of the position of a trustee that we saw in the US with ULC1 trustee, and Mr. Dunphy didn't make quibble about it. He has one thing he can do. Well, he's going to be paid in full. He looks at paragraphs 21 and 25 of the order and says why are they assessing the amount of my claim? What is it they are holding for me? Well, 21 cents is the amount that we admit, we agreed we owe him.

And 25 is a court order that we shall establish and fund, as appropriate with consent of the monitor and escrow account or other reserve, for the payment of such amounts to the extent they are disputed. Well, My Lady is going to order us to establish an escrow in the amount disputed, and we've agreed on all those amounts.

So my submission, apart from being the least practical entities involved in these proceeding, the -- sorry.

(loud background noise)

JUSTICE ROMAINE: That's okay, Mr. Meyers.

MR. MEYERS: The submissions of the trustee are not correct and not an appropriate response.

Then he said why do you have to dismiss some of my claims before I'm paid in full? And the answer is sitting in the monitor's report. It's the rock and the hard place we've had through these proceedings. Everybody claims everywhere. Markers all over the place. The monitor says when you drill down and get to who really owes what to who and you flow the money this way it works. But I can't flow the money until the other claims against those debtors are gone so that we know where the money is going. So as long as there's a practical assurance, an assurance satisfy to My Lady that's fair and reasonable, and to your Honor, as long as there is a practical assurance that these

funds are going to be paid, we have to take the other claims out of the way in order to create the flow for the waterfall to come, otherwise it's a chicken and egg, he can never be satisfied because no claims can ever go away until you're paid, and we can't be paid until the claims go away. So it's about five years of litigation instead.

Well, what happens if the CCAA debtors change something? My Lady, they will be here in a flash. And if we've change something before we've committed to you, put in this voluminous material, with the monitor watching every step, everyone will understand what the relief available to it is.

As to the referral to the US, just a brief point that Sections 18.6 sub 2 and sub 4 give you ample jurisdiction. They are not trumped by Section 12 or 4 of the sections in the statute, if anything Sections 18.6 and 4 are even more specific, and the later. Many claims have had Canadian claims to go to the US and US claims go to Canada for resolution. In our case the US debtors, guaranteed claims which are American claims against an American debtor are coming here? It's an example of comedy at its best to settle.

Subject to my Lady's questions or if your Honor has any questions, those are my submission.

JUSTICE ROMAINE: Mr. Meyers, I have just

one question, and that is there seems to be a difference between the Canadian order and the US order with respect to the release of the oppression claims and how that will work. Am I missing something? Is there an --

MR. MEYERS: I had understood during the break --

JUSTICE ROMAINE: -- a resolution?

MR. MEYERS: -- that there was a discussion with the US. I don't know if Mr. Seligman could answer it.

JUSTICE ROMAINE: Perhaps Mr. Seligman could answer it.

MR. MEYERS: Perhaps we can take one moment to look into the issue of that.

JUSTICE ROMAINE: Adjourned.

Go ahead, Judge Lifland.

JUDGE LIFLAND: Go ahead, Mr. Seligman, if you can respond.

MR. SELIGMAN: We are in the process, your Honor, of revising the order to try to account for the ULC1's hopefully resolution. I believe we are trying to pick up that change there. I just do need to confirm it, but the idea is that they should be completely conforming, so we'll have to just double check it. But if there's any disparity, there shouldn't be.

JUDGE LIFLAND: Well, you are talking about

now only about the ULC1 potential settlement. What Madam Justice Romaine and I are concerned about is that the orders, assuming that the settlements are approved, are parallel in every respect and do not diverge so that stakeholders have different outcomes depending upon their participation in the orders.

MR. SELIGMAN: Your Honor, there shouldn't be. We are just double checking it, but I can represent that the intent is that the orders are exact, and we will go back and comb through the order and double check that all the cross references are the same, but they should be identical. That was the principal when we were drafting the proposed orders.

JUDGE LIFLAND: The point that's being made is will the revised order capture the impression that there are different outcomes based upon the way the orders are now?

MR. SELIGMAN: Yes. We are in the process of revising them and that we will fix those, to the extent there's any discrepancy, and make sure that the orders are exactly the same in both jurisdictions. And we will have revised orders that we will make sure to hand up and we will have red lines that shows those corrections.

JUSTICE ROMAINE: Okay. Judge Lifland, I'm sorry we are having problems hearing you. I get the gist

of what your questions were from Mr. Seligman's answers.

But could I perhaps ask, Mr. Seligman, is the intention that the Canadian order provisions will be the ones that apply here, or is that still under discussion?

MR. SELIGMAN: I apologize, but I just have to double checks the cross references, but they should be identical in both jurisdictions. So perhaps I can report back to the court on that in a moment, but I just do need to double check, but they should be exactly the same. I just don't have the latest version of the order right here at counsel's table.

JUSTICE ROMAINE: Okay.

MR. THORNTON: Thornton, initial R.

My friend, Mr. Meyers, had mentioned that I misstated something in the Air Canada case. I want to clarify that less there be any doubt about that. And, in fact, I believe that Mr. Meyers is in error that the cross collateralization in the Air Canada case for certain aircraft leases in fact was imposed as part of the DIP order earlier on in the piece. When the large restructuring agreement was put in place there was a further cross collateralization which came into effect upon implementation which was after the exit and after the vote.

JUSTICE ROMAINE: Thank you.

MR. MEYERS: I might have --

JUSTICE ROMAINE: Okay. Mr. Gorman?

MR. GORMAN: Yes, my Land and your Honor, it's Howard Gorman of the ULC1 creditor's committee.

I think part of the problem here is the settlement agreement which largely resolves intercompany claims like intercompany assets. We didn't have a creditors vote when we went to sell the ULC1 bonds that were held by the CCRC. We had court application. We've had argument. We've had court determination. Similarly, when the B units were sold, it ended up virtually dealing with all of the assets in common, we don't have a creditors vote then, we have the court direction. The end result is you get the assets, the monitor puts together a distribution amount, and you then have the ranges.

If we had a warehouse that sold for a million dollars, the monitor would say we have between 3 and 5 million dollars in claims, that means if we sell the warehouse a million dollars you'll get between 33 and 20 cents, we'll determine those claims in the future, and if there's a shortfall, we'll have a vote; there's a compromise at that time.

What the settlement agreement does is realize the company's assets, and the monitor's report where it says there is a shortfall isn't saying anything

more than when looking at the this as the court, as a party looking at the agreement, what the potential outcome is, depending upon how the claims are ultimately resolved.

When you hear Mr. Thornton's lists of things that he thinks are being compromised, what jurisdiction claims will be in, how -- from CLP, how they are their shortfall is calculated, that's not anything we get to vote on. They don't want my 2 billion votes determining where to have their claims heard. They don't want my 2 billion votes determining what their make whole claim is worth. And that is why that is not a part of it, that is a further step down the road, and that exactly demonstrates why the settlement agreement is a realization of the assets and it's a step forward to the end, it's not the end. Thank you.

JUSTICE ROMAINE: Thank you.

Judge Lifland, I think we are now over to you.

JUDGE LIFLAND: We have one remaining item, and I'll hear from the parties. They have been attempting to work out the objection to the settlement filed by HSBC, which I think is the only remaining objection on the merits, other than Mr. Eckstein's comments.

MR. SELIGMAN: Yes, your Honor. And just to, I want to just clarify. We did pick up that

discrepancy between the orders, it was the timing of the effect of the claim which was on schedule G. This was paragraph 16 of the proposed US order, and at paragraph 5 which talks about the date of effectiveness of various provisions. We have clarified that paragraph 16 is effective upon a date the Canadian debtors and the US debtors have executed and filed certificates with the court advising that all the conditions in the settlement agreement have either been waived or satisfied, et cetera it's in paragraph 5. So that should now match with the Canadian order.

MR. ECKSTEIN: Your Honor, excuse me can I ask? I noticed that Mr. Seligman has drafts of the modified order. I'm assuming I am going to have an opportunity to at least get a copy of the order that's been circulated?

JUDGE LIFLAND: That's a good assumption.

MR. ECKSTEIN: Thank you.

MR. SELIGMAN: Yes. Your Honor, I believe we are -- if I can could just have one moment your Honor.

JUDGE LIFLAND: Maybe it's appropriate for us to take a five minute recess while we see whether we have a settlement or not.

MR. SELIGMAN: Your Honor, I believe we do, but yes, a five minute recess just to confirm that would be

good.

JUDGE LIFLAND: Is that all right, My Lady?

JUSTICE ROMAINE: Yes, thank you. Five minutes?

JUDGE LIFLAND: Yes.

THE CANADIAN CLERK: Order.

(Recess taken)

JUSTICE ROMAINE: The Calgary court is ready when New York is.

MS. HEALY: We just need one moment, please.

JUSTICE ROMAINE: Sure.

JUDGE LIFLAND: Remain seated.

Thank you all.

MR. SELIGMAN: Your Honor, David Seligman, again, on behalf of the US debtors.

Your Honor I do believe we have a settlement of the ULC1 trustee's objection. The debtors, the ULC1 indentured trustee, as well as the ULC1 ad hoc have agreed upon a revised form of order, as well as some changes to the settlement agreement that would satisfy their objection.

We have delivered those materials to the Canadian debtors. They still need to look at those and gave their signoff. I'm hopeful that we will get that,

because, again, it just deals with this parochial issues, but we need to get their approval and consent. So we have also submitted copies of the red line order in the courtroom here for all the parties present.

So I feel good enough about where we are that we don't have to proceed with their objection, and we will work we the parties to see if we can come up with a final version of the order and submit it to chambers once we coordinate with Canadian debtors' counsel and get their sign-off on the merit.

JUDGE LIFLAND: I don't exactly follow you, Mr. Seligman. There's an objection on the record that's not been withdrawn. It's subject to an approval. If I hear that it's being withdrawn subject to a pending of that approval, I can react to it.

MR. CASTELLO: Your Honor, Jeff Castello of Kelley Drye and Warren for HSBC --

JUDGE LIFLAND: I can also tell you before you finish that I'm prepared to rule if you can't resolve it in your own way.

MR. CASTELLO: Thank you, your Honor. HSBC is the indentured trustee under the indenture relating to the ULC1 notes.

Subject to what I believe might be one final nit that the Canadian attorneys are going to deal

with right now, we will withdraw the objection. And hopefully by tomorrow we will submitted a proposed form of order to the court that everybody has agreed on, if not later on tonight.

JUDGE LIFLAND: Does anybody want to be heard with respect to this conditional withdrawal of the objection?

MR. ECKSTEIN: Your Honor, to the extent the indentured trustee is going to withdraw his objection, I'm assuming that does not effect any position that any individual holder has with respect to the actions being taken by the ad hoc committee. So to the extent the individual holder is not --

JUDGE LIFLAND: That's the way I would rule, Mr. Eckstein.

MR. ECKSTEIN: So to the extent the individual holder is not participating, they are not bound by the decision of the indentured trustee to give its consent.

JUDGE LIFLAND: Yes. But I'll note that no individual holder has filed any objection.

MR. ECKSTEIN: I appreciate that, your Honor, but I don't think that there was an obligation necessarily to file an objection or to be bound by the action that's being taken.

MR. SELIGMAN: So with that, your Honor, I believe their objection is withdrawn subject to finalizing some language, which I don't believe we'll have any issues with.

And with that, your Honor, we have nothing more on behalf of the US debtors.

JUDGE LIFLAND: Very well. The objection is considered withdrawn on a contingent basis subject to a final approval.

JUSTICE ROMAINE: I'm sorry, Judge Lifland, I believe Mr. Dunphy wishes to make some statement about the order.

MR. DUNPHY: To clarify at least. Just to be clear, we obviously haven't seen anything, so we're not buying into the provisions. We've been told it's a whole package deal, but packages change I guess. But anything that effects us, I don't know, we haven't seen any changes as accepting a pig and a poke, and the order is supposed to be binding on everyone. So if there's something there to be seen, I think everyone needs to see it and ascertain whether it affects their position.

I can tell you that the truing up of the US and Canadian orders only goes part of the way to addressing the points I've raised. Our point being it's not enough to promise to be paid, it is to be paid.

JUSTICE ROMAINE: I understand.

Mr. Robinson, can you help with the issue of the changes?

MR. ROBINSON: I can, My Lady. For the record Larry Robinson.

I understand from the folks in the courtroom that there have been some revised order provision of the proposed Canadian order sent up. It's being looked at at the moment. And also a proposed revision to the settlement agreement to deal with this American objection issue.

I am feeling awkward here because I'm standing discussing changes to an order when your Ladyship and his Honor have not made a ruling on the applications themselves. But were I to presume, and it's a presumption, my partner, I apologize if it's an incorrect assumption, I would presume that an order of the sort that we are seeking were to be granted in Canada by your Ladyship, I think we are a bit of time away from indicating to you what changes might be needed to that form from the form that we originally presented to you, all being driven out of this accommodation in the ULC1 trustee's position.

I may have simply added to the confusion, but I think that's where we are at the moment. I don't know what your Ladyship's time is or his Honor's time is,

but I suspect where we are at is that the form of order is not driving your decision making process, and I don't know whether, were the applications to be granted, whether we are within ten minutes or half an hour. I see some nodding. I think we are probably within ten minutes to half an hour of having a form of order to present to you, and the other parties, obviously, that we believe is a modification simply to address the one point that Mr. Dunphy has addressed with -- I'm sorry, to address the one objection by the ULC1 trustee. I think that's the status at this point, your Ladyship. That is all.

MR. LANCE: My Lady, I may have something to add to that.

JUSTICE ROMAINE: Mr. Lance?

MR. LANCE: For the record, I'm Canadian counsel for the US ULC1 indentured trustee, and so I've seen some of these orders that we've been working on all day.

The changes, as far as we're concerned, really address the liability issues to the indentured trustee. I don't think anyone else is going to have that much interest in them.

JUDGE LIFLAND: They are internal, as I understand it.

MR. LANCE: We are close to finishing them.

JUSTICE ROMAINE: I'm sorry. Judge Lifland?

JUDGE LIFLAND: Those issues, I think, are very internal and parochial to the trustee, so I don't think they go at all to the settlement. As a matter of fact, however they compromise out and rework their issues, I don't think there is anything that really goes to the merits of the settlement.

MR. SELIGMAN: That's correct, your Honor. If your Honor wishes I can take five, I can take one minute and I can walk through, at least just for the benefit of your Honor, the changes that we have made to the order.

JUDGE LIFLAND: That may be appropriate, because I think it's really much ado about not very much at all.

JUSTICE ROMAINE: Okay, thank you.

MR. SELIGMAN: So, I'll just walk through, I'm looking at a red line here, which -- so I know everyone in the US court has something to look at, but let me just see if I can identify a couple of the changes, again they are parochial.

For example, in recital G, on page 3, it should be approximately page 3 of the form of the US proposed order, at the end of the paragraph, and -- excuse me just one second.

Your Honor, may I approach and just hand up a copy to your Honor?

(Handing)

MR. SELIGMAN: In paragraph G, at the end of the recital on page 3, we just added that the terms of the settlement are embodied and memorialized in a settlement agreement draft which was attached as Exhibit B to the motion. So again, that just cross references the settlement agreement itself.

On page 4 in paragraph L, there are literally some changes to defined terms. For example, capitalizing the word holders, referring to the approval motions, just cross referencing in definitions that were in the motions, so those, I think, are of no consequence.

There is a new paragraph M, as in Mary, on page 4 which just recites that the holders of the majority of the ULC1 bonds have directed the indentured trustee to take certain actions, and those actions include withdrawal of the objection, support of the settlement motion, and a statement in support of the settlement at the settlement hearing. Also adding provisions that if and when the order should be entered, to execute and deliver the settlement agreement on behalf of all holders of the ULC1 bonds and to execute such other and further documents and to take such further actions as the holders may direct the indentured

trustee to take.

Further, in paragraph 3 of the proposed order at the bottom of my page 5, we changed the definition of HSBC, and instead to refers to it as the indentured trustee.

Paragraph 4 there are some changes to the defined term ancillary documents because it had already been defined earlier.

In paragraph 5, that was the conforming change that I spoke about earlier. We have removed the reference in the first line of paragraph 5 to paragraph 16. That clears up the timing issue that I spoke to you about before.

There are some other changes to those paragraph numbers that basically account for the fact that there are some changes in the order of the paragraphs and numbers of the paragraphs in the order.

Moving on to page 8 in paragraph 11, there are some clarification of the exculpation that it applies both to the indentured trustee as well as its present and former directors, officers and employees, et cetera, and just clarifies the extent to which the exculpation applies to the schedule. Instead of just causes of action, claims, et cetera; it refers to causes of action, debts, demands, judgments, et cetera; it's just the standard provisions

that you would expect to see in an exculpation.

The next is to paragraph 21 on my page 11. That paragraph basically had an injunction with respect to any claim or cause of action against the US trustee in relation to the CCRC senior notes that also include the indentured trustee.

There's a new paragraph 25 that's been inserted on page 12 that basically copies and pastes language from the settlement agreement, that's the operative provision giving the ULC1 and the indentured trustee the 3 and a half billion dollar claim against the estate.

On page 16, paragraphs 35, 36, 37 and 38, there is just a change to the defined term. We had referred to the second lien committee, which was the ad hoc committee of second lien holders in the US, instead we refer to it as the Calpine second lien holders. That was a cross reference to a cash collateral order, we were just using the same definition. And that's just a defined term issue that we needed to clarify.

And then there's a provision in paragraph 42, a new paragraph 42 on page 19, which states that any future plan will incorporate this order in the settlement agreement.

So again, I think that a lot of these

changes relate to the agreement between the US debtors, the ULC1 indentured trustee, and the ad hoc committee with respect to the direction of the ULC1 indentured trustee to withdraw its objection and to sign off on settlement agreement.

And again, we will circulate this to -- it has been circulated to the Canadian debtors, just dealing with electronic transmissions takes a little while for them to get the latest version. They have seen interim versions over the course of the hearing, but we understand that they need to give their final sign-off. We hope that we are able to get that. We do believe that we will get that. And so we think that we can submit an order when we get those issues clarified, which will hopefully be in the next hour.

JUDGE LIFLAND: Very well.

JUSTICE ROMAINE: Thank you.

JUDGE LIFLAND: Consider the HSBC objection withdrawn.

MR. ECKSTEIN: Your Honor, if I may, having seen this for the first time, these changes, I do want to make one or two observations for the record.

I do note paragraph M has the court making a finding that a majority in the aggregate principal amount of the ULC1 bonds is given a direction. We certainly

haven't seen any indication as to what amount of holdings have participated in this process. We simply have a naked finding that a majority have been given a direction. I want note that the record is completely absent of any indication that there's a majority.

Number two, I think it's significant because paragraph 11 provides for a complete and irrevocable indemnity and release of the trustee by all holders. And to the extent there is going to be a release with respect to all holders, including those who are not participating in this direction, it's significant, your Honor, to at least have some record and know that there are in fact holders who are giving this direction and who they are, because we don't have any record of that in this case.

Thirdly, your Honor, it does say with respect to CCRC, which I think is more on the Canadian side, and I am just curious about the use of the word in paragraph 15, it says "In the event there's an entitlement to accrued interest fees and the like that have not been resolved," it says, "CCRC may establish a fund." I had understood that they were going to establish a fund. And it just seems curious to me that the order was using the word may, when at a minimal, if this is going to proceed, it should say that they will establish a funds. And I would suggest that that modification be considered.

JUDGE LIFLAND: Take the last first.

MR. SELIGMAN: What's that?

JUDGE LIFLAND: Take the last observe first.

MR. SELIGMAN: Well, your Honor, that's an issue obviously for the Canadian debtors, but that's not been a change in the proposed order it has always been that way, so I think we can stand on that that was something not raised previously.

MR. ECKSTEIN: Excuse me, your Honor. We objected to the motion. I don't think we were expected to fly spec the order.

MR. FREDERICKS: And I also believe that -- this is Ian Fredericks for the ULC2 indentured trustee.

I also believe that we did raise that in our papers, that the escrow should be established and that it should not be discretionary. And I believe Mr. Dunphy also addressed that in his submissions.

MR. SELIGMAN: Your Honor, that --

JUDGE LIFLAND: That should not be a deal breaker.

MR. SELIGMAN: Right. Obviously that is -- it's a directive as to CCRC, one of the Canadian debtors. I guess we can deal with that. Obviously that's not my -- that's not the US debtors' issue to sign-off on that.

Perhaps we can refer that to Canadian debtors' counsel in a moment.

JUDGE LIFLAND: Well, it's precatory, it's suggested by the US court, but you are correct that is more the for the Canadian debtor to accept.

Let's get to the other forms of objection by Mr. Eckstein with respect to wanting to know about the majority.

MR. SELIGMAN: Well, your Honor, the holdings of the ULC1 ad hoc committee, which they allege in their papers they represent a majority, they were filed with this court under seal. So I think your Honor has them and can take notice of them.

JUDGE LIFLAND: I do have them, Mr. Eckstein. I do take notice of them, and I do find from those papers they purport to represent the majority. And they have communicated that, I believe, to the indentured trustee in full detail.

MR. ECKSTEIN: Your Honor, I was not aware of that fact. And obviously I haven't seen anything that was filed under seal, so I am not in a position to respond to whatever was filed, your Honor.

JUDGE LIFLAND: Is there anything else?

MR. SELIGMAN: I think those were the issues raised by Mr. Eckstein.

JUDGE LIFLAND: With respect to what I have left on my plate, and that is the objections. One is withdrawn. To the extent that there are any others, I will rule on the other objections.

And perhaps My Lady and I might prepare for about five minutes and then come back and inform you as to how we decide to further proceed.

JUSTICE ROMAINE: Judge Lifland, if I can say, I believe there are a couple of comments to be made with respect to the changes here. If we can just allow that first.

JUDGE LIFLAND: Certainly.

JUSTICE ROMAINE: Mr. Carfagnini wishes to speak.

Go ahead, Mr. Carfagnini.

MR. CARFAGNINI: Jay Carfagnini for the Canadian debtors. I just want to say there are some changes that are going to have to be made to the Canadian order to conform. We are happy to take those changes certainly to the US counsel. And perhaps what would make sense is for the US to appear before Judge Lifland when it suits them and us to submit the orders to you for Canada. These are not, in our view, substantive change, and we are confident by the cooperation that we've received from counsel so far, will be achieved again.

On the one point raised by Mr. Seligman and Mr. Eckstein about the funding of the escrow, the term will be shall. We are happy to do that. That is the intention and always has been.

JUSTICE ROMAINE: Okay. Anything, Mr. Dunphy? Mr. Thornton?

MR. THORNTON: No.

JUSTICE ROMAINE: Thank you.

Judge Lifland, you are suggesting that we now adjourn for how long?

JUDGE LIFLAND: About five or ten minutes. And we can come back and either rule or advise the people whether there is any need for any further proceeding.

JUSTICE ROMAINE: Okay. Let's take ten minutes, if you don't mind?

JUDGE LIFLAND: Sure.

(Recess taken)

THE CLERK: We are ready in Calgary whenever you are.

MS. HEALY: Okay.

JUSTICE ROMAINE: Thank you. Please be seated.

JUDGE LIFLAND: Thank you all for your patients. What happened to the microphone?

Can you hear me?

JUSTICE ROMAINE: We can hear you better than we could before.

JUDGE LIFLAND: I understand there was a part missing.

JUSTICE ROMAINE: Of the microphone.

JUDGE LIFLAND: Of the microphone. I thank you all.

(Laughter.)

JUSTICE ROMAINE: It's been a long day, Judge Lifland.

JUDGE LIFLAND: Even longer here. It's well passed the dinner hour here, who probably spent the last 10 minutes phoning home saying hold dinner for them.

We are here in this segment of the proceeding do deal with the settlement that comes under Rule 9019 of the Bankruptcy Code. And as our Second Circuit Court of Appeals recently noted, there is little doubt that the settlements of disputed claims facilitate the efficient functioning of the judicial systems. In Chapter 11 bankruptcies, settlements also help clear a path for the efficient administration of the bankruptcy estate, including any eventual plan of reorganization. Before pre-plan settlements can take effect, however, they must be approved by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. Motorola, Inc. against Official Committee of

Unsecured Creditors known as (In re Iridium Operating LLC) 478 F.3d 452,455 Second Circuit 2007 a short time ago.

Bankruptcy Rule 9019 has a "clear purpose.... to prevent the making of concealed agreements which are unknown to the creditors and unevaluated by the court." Id. In determining whether to approve a proposed settlement, the court's responsibility is not to decide the numerous issues of law and fact implicated by the settlement "but rather to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Cosoff against Rodman (In re W.T. Grant Co.) 699 F2.d 599, 608 (Second Circuit 1983.)

Courts in the Second Circuit have developed standards to evaluate if a settlement as fair and equitable based upon the original framework announced by the United States Supreme Court in TMT Trailer Ferry. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. against Anderson, 390 U.S. 414 (1968). Those interrelated factors are: (1) the balance between the litigation's possibility of success and the settlement's future benefits; (2) the likelihood of complex and protracted litigation, with its attended expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected classes' relative benefits and

degree to which either creditors do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting, and the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arms-length bargaining. In re Iridium Operating LLC 478 F.3rd at 461-462 citing TMT Trailer Ferry, 390 U.S. at424.

Here the settlement resolves all material disputes between the US debtors and the Canadian debtors without the costly and time consuming cross-border litigation that would otherwise ensue. The settlement will cause the elimination of billions of dollars of claims against the US debtors' estates, enable the debtors to proceed with the Greenfield Energy Center project and give the debtors a 75 million dollar charge against the net proceeds realized by the Canadian debtors from the sale of the CCRC ULC1 senior notes. Although the settlement does not resolve the guarantee claims by the fund against the US debtors, it creates a process for resolving those claims. The settlement also provides for an equitable division between the US and Canadian debtors of the proceeds of the sale of Calpine's subsidiary Thomassen Turbine Systems, and may possibly result in a distribution to US debtors on

account of their equity interest in certain of the Canadian debtors and allows the US debtors to move forward with the confirmation process.

The settlement agreement has universal support in the US by creditors, equity holders, ad hoc committee of second lien debt holders and the note holders. The creditors' committee and the equity committee have both filed statements in support of the settlement. The only US objection was filed by HSBC as indentured trustee for ULC1 notes but that objection was resolved by the parties. The settlement provides for payment in full of all principal and interest (including compound interest) owing under the ULC1 notes allowing the trustee's claim in the amount of approximately 3.5 billion dollars, which is 1.65 times the filed amount of the trustee's claim for the principal amount of the ULC1 bonds outstanding (i.e. approximately 2.12 billion dollars). The form of currency of the ULC1 bondholders will receive in the Chapter 11 cases is an issue to be addressed in the context of plan confirmation, where ULC1 bondholders and others will have the opportunity to vote for or against a plan as provided by the Bankruptcy Code.

Holders of a majority of each series of the ULC1 notes have delivered to HSBC a direction and indemnity letter directing HSBC the enter into the settlement

agreement and indemnifying HSBC against any losses suffered as a result of doing so. In addition, wide spread notice was given to all note holders directly by mail and through extensive publication and none have objected.

Accordingly, I find that the settlement is fair and equitable, well above the lowest rung in a range of reasonableness, and indeed well within the zone of reasonableness, and indeed is in the best interest of the debtors, their estate, creditors and stakeholders.

And I will entertain the order approving the settlement consistent within the like order to be submitted to Canadian court.

That is my ruling.

JUSTICE ROMAINE: Thank you, Judge Lifland.

I will give my decision orally with brief reasons, more detailed written reasons will follow later this week dealing more specifically with the various objections raised by the ad hoc committee, the ULC2 trustee and the Fund.

I start by accepting that if the global settlement agreement were a plan of arrangement or compromise, a vote by creditors would be necessary under Canadian law. However, I am satisfied, after careful analysis of its terms, that the settlement agreement is not a plan compromise or arrangement with creditors.

Under the terms of the settlement agreement objecting creditors either will be paid in full and thus not compromised, or will continue to have the same claims against the same entities. Those claims will be adjudicated, and if they are determined to be valid, the settlement agreement provides a mechanism for their full payment or satisfaction, other than for the possibility of a relatively small deficiency for some creditors of CESCA whose claims are not guaranteed by the US creditors. Those creditors have not objected to the settlement agreement, and, in fact, the largest group, the gas transportation claimants, have appeared before me today to support the approval of the settlement agreement on the basis that it improves their chances of recovery, resolving as it does, all the major cross-border issues that have impeded the progress of this preceding.

I am satisfied that no rights are being confiscated under the settlement. Some claims are eliminated, but only with the full consent of the parties directly involved in those specific claims. The existing claims of the ULC trustee are replaced with redesignated claim; however, the financial effect of the redesignated claims is the same. The ULC2 trustee's right to assert the full amount of its claims remains, and the Canadian debtors and the US debtors have agreed to hold funds in escrow

sufficient to satisfy the entirety of those claims once settled or judicially determined.

It is true that the settlement will have implications for the value of the Canadian estate. On an overall basis the effect of the settlement on the funds available for distribution to Canadian creditors is positive; however, the settlement also has implications for the funds available to creditors on an entity by entity basis. Settlements often do affect the size of the estate available for distribution, whether they are settlements of a single issue such as a simple claim of a lien holder or this settlement of the major issues that have impeded the resolution of this very complex cross-border insolvency. Settlements sometimes result in less money being available to non-settling creditors, that is why they require court approval and consideration of whether the settlement is fair, reasonable and beneficial to creditors as a whole.

It is clear that court approval of settlements can be, and often is, given over the objections of one or more parties. The Court's ability to do this is a recognition of its authority to act in the greater good, particularly in the insolvency context. Viewed against this test, the settlement agreement is a remarkable step forward in resolving this CCAA filing. It eliminates approximately 7.4 billion dollars in claims against the

CCAA debtors. It resolves the major issues between the Canadian debtors and the US debtors that had stalled meaningful progress and asset realization and claims resolution. Most significantly, it unlocks the Canadian proceeding and provides the mechanism for the resolution by adjudication or settlement of the remaining issues and significant creditor claims and the clarification of priorities.

The monitor has concluded, through careful and thorough analysis, that the likely outcome of the implementation of the settlement agreement is payment in full of all Canadian creditors. As the ad hoc committee of creditors of Calpine Canada Resources Company concedes, the settlement removes the issues that the members of the committee have recognized for many months as the major impediment to progress.

The sale of the CCRC ULC1 notes is a necessary precondition to resolution of this matter. But contrary to the ad hoc committee's submissions, that sale cannot occur otherwise than in the context of a settlement with those parties whose claims directly affect the notes themselves. I'm satisfied that the settlement agreement is a reasonable and indeed necessary path out of the deadlock. I am persuaded that the settlement agreement provides clear benefits to the Canadian creditors of the CCAA applicants

as a whole, and that on an individual basis no creditor is worse off as a result the agreement. While it does not guaranty full payment of claims, the settlement agreement substantially reduces the risk that this goal will not be achieved. Crucially the settlement agreement is supported and recommended unequivocally by the monitor who was involved in the negotiations and who has analyzed its terms thoroughly.

I am mindful that the settlement agreement is not without risk to the fund; however, that the outstanding risk falls upon the fund does not make the settlement unfair. As the applicants point out, particularly in the insolvency context, equity is not always equality. Given the monitor's assessment that the risk of less than full payment to the CESCA creditors is relatively remote, I am satisfied that such risk does not obviate the fairness of the settlement.

This settlement agreement is without precedent in this breath and scope. This is perhaps appropriate given the enormous complexity and highly intwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to precede cautiously and with careful consideration; nevertheless, we must proceed

towards the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.

In my view the settlement agreement represents enormous progress, and I commend all parties for the efforts necessary to achieve it. I'm prepared to approve the settlement agreement.

Okay. Judge Lifland?

JUDGE LIFLAND: Thank you, My Lady. I, too, would like to express my appreciation to all, both pro and con with respect to the settlement. I think the advocacy has been excellent, the argument excellent, and the effort that was put in in coordinating and cooperating in order to get to this point and to clarify issues has been rewarding for this side of the bench, as well as, I assume, the others. And it goes again to demonstrate the desirability of approaching these cross-border matters through the medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately.

Thank you all. And thank you, My Lady.

JUSTICE ROMAINE: Thank you, Judge Lifland.

MR. CARFAGNINI: My Lady, just one last -- this is Peter Linder on behalf of the Canadian debtors.

Just one last motion that I would like to bring on behalf of all here, and its done both before you and before Judge Lifland. And in my usual style it's without notice, but I want to bring this notice of thanks on behalf of all participants for hearing us today, and to thank your clerks for assisting us in carrying this joint border joint hearing.

JUSTICE ROMAINE: Thank you, Mr. Carfagnini.

MR. LINDER: My Lady?

JUSTICE ROMAINE: Is this something that Judge Lifland should hear?

MR. LINDER: I believe it is, My Lady.

JUSTICE ROMAINE: Okay.

MR. LINDER: Judge Lifland, Justice Romaine, first of all I would like to support the motion of thanks to both of you for sitting through a very long day and for obviously giving this matter great attention. It's Peter Linder on behalf of Calpine Power L.P. And my instructions are immediately seek leave to appeal the order that's been granted today by this court, and to expedite an appeal forward of it.

As such, My Lady, under the practice of the court and under Rule 341 of the overall rules court, the practice is first to seek an appeal or to seek a stay of your order on the basis that in the absence of a stay, any appeal would be rendered nugatory.

My Lady, as you are likely aware, the test for stay pending appeal is tripartite test. I have an excerpt for action both under Rule 340 and under Rule 508 that perhaps I can just hand up.

MR. CARFAGNINI: Perhaps I can get clarification. My friend is seeking the stay from this court today, or advising this court that he's going to be seeking a stay from the Court of Appeals.

JUSTICE ROMAINE: Mr. Linder, do you want to answer that?

MR. LINDER: May I answer?

JUSTICE ROMAINE: Go ahead.

MR. LINDER: My Lady, Rule 341 of the overall rules of the court allow us to seek a stay initially from this court, the court that granted the order --

JUDGE LIFLAND: May I interject?

As far as I know, the order has not been signed by either court. And it is, under our procedure, that you appeal from an order.

MR. LINDER: Quite so, your Honor. However, under our practice, we would typically raise this issue at the earliest possible time, and we would seek a stay from the judge that granted the order.

JUSTICE ROMAINE: Two things. Thank you, Judge Lifland.

I think what I would like to do is finish the procedure with respect to the orders and the business that we have today. I understand the necessity of you bringing your application for a stay quickly. I doubt that Judge Lifland needs to be part of that, so after we've finished with the orders, let's finish this cross-border joint hearing and then I'll hear you on the stay, Mr. Linder.

MR. LINDER: Thank you, My Lady, that's more than fair.

JUSTICE ROMAINE: Thank you.

MR. SELIGMAN: Your Honor, David Seligman. We're going to finalize the orders and circulate them both to chambers most likely first thing in the morning. So we will send those over as soon as we are done with those.

And I would like to express, Mr. Carfagnini beat me to the punch, but I would like to express my thanks especially to the court and their staff for staying late on a Tuesday.

JUDGE LIFLAND: Very well, thank you all.

JUSTICE ROMAINE: Okay, thank you. Thank you, Judge Lifland. And I gather that perhaps I'll see the order in the morning as well, Mr. Meyers?

MR. MEYERS: There's still some changes on the ULC1 provisions of the settlement of the global order. The other two orders, the bond sale and the agreement sale order, have no changes.

JUSTICE ROMAINE: I'm prepared to grant those orders today.

Judge Lifland.

JUDGE LIFLAND: As am I.

JUSTICE ROMAINE: Okay. And I think we're done with the joint portion?

JUDGE LIFLAND: I think this joint hearing is concluded, and I thank you all.

JUSTICE ROMAINE: Thank you, Judge Lifland.

(Time noted: 8:00 p.m.)

C E R T I F I C A T E

STATE OF NEW YORK }
} ss.:
COUNTY OF WESTCHESTER }

I, Denise Nowak, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2007.

Denise Nowak
Digitally signed by Denise Nowak
DN: cn=Denise Nowak, c=US
Reason: I am the author of this document
Date: 2007.08.30 15:15:04 -04'00'

_____

DENISE NOWAK

EXHIBIT 8

In re Mark Scott Constr., LLC, Case No. 03-36440 (HCD) (Bankr. N.D. Ind. Apr. 23, 2004)

CASE NO. 03-36440 HCD
United States Bankruptcy Court, N.D. Indiana

In re Mark Scott Construction, LLC (Bankr.N.D.Ind. 2004)

Decided Apr 23, 2004

CASE NO. 03-36440 HCD

April 23, 2004

Scott M. Keller, South Bend, Indiana, for debtor

J. Richard Ransel, Thorne Grodnik, LLP, Elkhart, Indiana, for debtor

Patricia E. Primmer, Oberfell Lorber, Suite, South Bend, Indiana, for creditors

R. Wyatt Mick, Jr., committee, Bingham Loughlin, P.C., Lincolnway East, Mishawaka, Indiana, for creditors

MEMORANDUM OF DECISION

HARRY DEES, Bankruptcy Judge

Before the court is the Debtor's Motion to Alter or Amend Judgment Granting Motions for Relief from Stay, filed February 6, 2004, by the chapter 11 debtor Mark Scott Construction LLC. The debtor also requested an oral argument on his motion. On March 25, 2004, the court held a hearing on the debtor's motion. It then took the motion under advisement. For the reasons that follow, the court denies the debtor's motion.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(G) over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil *2 Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

A. *Procedural Background*

This proceeding involves three creditors — Doug and Donna Campbell ("the Campbells"), Donna Kash ("Ms. Kash"), and Keith Madden and Nancy Keller Madden ("the Maddens") — who entered into construction contracts with Mark Scott Construction LLC ("MSC"), an Indiana limited liability company, to build homes for them in Michigan and who were dissatisfied with the construction and increased costs. The Campbells were the first to act by filing a lawsuit in a Michigan court. They filed a complaint (on August 15, 2003) and an amended complaint (on September 8, 2003) against both the debtor MSC and the individual Mark Lee Scott, owner of MSC, in Berrien County Trial Court, Civil Division. They alleged that the construction of their home was improper, illegal, negligent, and/or incompetent. They also alleged breach of contract, violations of Michigan statutes governing residential construction, fraud and misrepresentation. The defendants filed an answer and counterclaim on October 16, 2003. The Campbells responded by filing a Motion for

Summary Disposition on October 30, 2003. The motion alleged that the defendants-counterplaintiffs had failed to demonstrate that the contracting entity, MSC, possessed a certificate of authority to conduct business in Michigan, as required under Act 299 of P.A. 1980, M.C.L. § 339.2412.[1] They claimed that MSC was an *3 unlicensed contractor in Michigan and therefore was prohibited by the Michigan Limited Liability Company Act, M.C.L. § 450.5007, from maintaining an action against them.[2]

[1] Section 339.2412 of the Michigan Compiled Laws, which is a provision of the Residential Builders Article of the Occupational Code, states, in pertinent part:

> (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

M.C.L. § 339.2412.

[2] Section 450.5007 of the Michigan Limited Liability Company Act mandates:

> A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain an action, suit or proceeding in a court of this state until it has obtained a certificate of authority.

M.C.L. § 450.5007. The definition of a "foreign limited liability company" is "a limited liability company formed under laws other than the laws of this state." M.C.L. § 450.4102(i).

On November 10, 2003, MSC filed a voluntary chapter 11 bankruptcy petition in this court. Because the bankruptcy stayed the Campbells' state court action, the Michigan action was dismissed without prejudice on November 21, 2003.

On December 12, 2003, the Campbells filed a "Chapter 11 Motion for Relief from Stay" in this court. The motion stated that, although their state court complaint against the debtor had been dismissed, the creditors filed suit against the individual Mark Scott on December 2, 2003. They sought relief from the stay so that they might join their claims and sue Mark Scott in his individual and corporate capacity as MSC.

On December 30, 2003, Motions for Relief from Stay were filed by Ms. Kash and by the Maddens. Prior to filing those motions in the bankruptcy court, Ms. Kash had filed a complaint on December 22, 2003, against Mark Scott individually in the Cass County Circuit Court, and the Maddens had filed a complaint on December 12, 2003, against Mark Scott individually in the Berrien County Trial Court. In each of their bankruptcy court motions, the creditors sought relief from the automatic stay so that they could join their claims against the debtor MSC with the Michigan lawsuit against Mark Scott individually.

B. *Ruling on Motions for Relief From Stay*

On January 27, 2004, the court held an evidentiary hearing on the three motions seeking relief from the automatic stay. The court had before it the motions for relief from stay, MSC's objection to the motions, MSC's memorandum of law in support of its objection, and memoranda of law in support of the creditors' *4 motions for relief from stay. At the hearing, evidence and testimony were

presented by creditors Ian Douglas Campbell, Donna Turner Campbell, Donna Kash, and Nancy Keller Madden, and by Mark Lee Scott, owner of the debtor company MSC.

At the end of the proceedings, the undersigned bankruptcy judge set forth oral findings of fact and conclusions of law. For the benefit of the creditors and others in the courtroom, the judge pointed out that the applicable bankruptcy statute, 11 U.S.C. § 362(d), gave the bankruptcy court authority to lift the automatic stay for "cause," but it did not define "cause." The judge explained that, if the court determined that there was "cause" to grant the creditors' motions and to lift the automatic stay, the creditors' complaints against MSC could be taken back to the state courts in Michigan. If the court denied the motions, however, then the issues would remain in the bankruptcy court. The judge stated that the hearing was conducted not to determine the merits of the plaintiffs' claims against the debtor but rather to decide which court will make that determination.

The court found that the three parcels of real estate were in Michigan, that subcontractors' liens were filed in Michigan, that MSC's Michigan headquarters were in Macomb, Michigan, and that its present construction projects were in Michigan. It also found that any claims concerning incompetent construction, negligence, or breach of contract concerned the residential construction that took place in Michigan. The court stated that the three contracts were signed in Michigan. It concluded that the majority of the contacts surrounding the creditors' claims were in Michigan and that litigation based on Michigan law was pending in Michigan courts. It then determined, based on those significant contacts, that the proper venue for resolution of the disputes was in Michigan.

The court recognized that the construction contracts contained a choice of law provision stating that Indiana was the proper venue for deciding disputes. However, the court found that the uncontested evidence before the court was that MSC was not properly licensed in Michigan at the time it built the homes at issue. It agreed with the debtor that MSC's unlicensed status was a "technicality," but it was a required legal technicality in Michigan, and the bankruptcy court could not ignore the law. For that reason, the court pointed out, the *5 construction contracts arguably were void and, if so, the choice of law provision was not applicable. It further determined that Michigan was the better locale for all the parties. It noted that the Michigan state trial courts have more expertise concerning the interpretation of Michigan's residential building laws and regulations than the bankruptcy court does. The court took judicial notice that Cass County and Berrien County both adjoin St. Joseph County, Indiana, where this bankruptcy court sits. Therefore, the distance between the state courts and this one is not much, and the extra expense is de minimis. The court thus determined that it would be as convenient for the parties to litigate in Michigan as in South Bend, Indiana. It also found that allowing the state court litigation to continue in Michigan would not prejudice the bankruptcy estate. It noted that any judgment giving recovery to MSC would be an asset in the bankruptcy and that any recovery by the creditors would become claims against the debtor's bankruptcy estate. The impact of the state court litigation on the bankruptcy of MSC ultimately will be determined in the bankruptcy court, the judge stated. After considering those factors, the court found that there was cause to grant the creditors' motions for relief from stay.

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On February 6, 2004, the Debtor's Motion to Alter or Amend Judgment Granting Motions For Relief from Stay was filed. It raised the following reasons for requesting that the court alter its judgment and deny the motions for relief: (1) The creditors, by failing to file supporting briefs with their motions for relief from stay, violated Local Bankruptcy Rule B-7007-1(a) and failed to meet their burden of presenting a prima facie case for

relief from stay. Furthermore, the court erred in allowing the creditors' late-filed legal briefs and in denying the debtor's request to file a post-hearing brief to address the legal arguments raised in the creditors' late-filed legal briefs. (2) The choice of law in the contracts signed by the creditors is Indiana; therefore, the court erred by relying on Michigan law. (3) The creditors failed to satisfy the factors required to prove that "cause" exists, and the court, by relying on the creditors' late-filed legal briefs, erred by not addressing those factors. (4) The court perhaps did not understand the harsh impact and manifest injustice of permitting the creditors to file litigation in Michigan. According to the debtor, MSC's "simple failure to change the name on the Michigan Builders License from `Mark Lee Scott' to `Mark Scott Construction, LLC'" precludes it from attempting to recover
6 from *6 the creditors Campbell and Kash.[3] R. 74 at 3-4. The court's granting of the motions for relief from the stay will simply increase the liabilities of MSC's bankruptcy estate if the creditors' litigation in Michigan is successful, claimed the debtor. *See id.* at 4.

[3] The court notes that Nancy Keller Madden, one of the creditors, testified that she paid the bills Mark Scott presented to her because he came to her place of work demanding that she pay him and, she testified, "he was very threatening." For that reason, the debtor has not claimed a debt owed to it by the Maddens.

Discussion

A motion to alter or amend a court's determination, filed within ten days of entry of the court's judgment, is governed by Rule 59(e), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 9023. *See* F.R.Bankr.P. 9023 (incorporating Fed.R.Civ.P. 59(e)); *see also Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1121 n. 3 (7th Cir. 2001). "The purpose of such a motion is to bring the court's attention to newly discovered evidence or to a manifest error of law or fact." Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003). *see also Cosgrove v. Bartolotta*, 150 F.3d 729, 732 (7th Cir. 1998). The movant bears the burden of demonstrating to the court the reasons for amending its judgment.

A. *Federal Rule of Bankruptcy Procedure 7007 and Local Rule B-7007-1(a) of the United States Bankruptcy Court for the Northern District of Indiana*

The debtor contended that the creditors failed to file timely briefs or supporting legal authorities with their Motions for Relief from Stay, as required by Local Bankruptcy Rule B-7007-1(a). Because the creditors violated the local rule, the debtor asserted, the court should have summarily denied the creditors' motions for relief from stay. The court also should have denied the creditors' legal briefs — filed belatedly and improperly after the debtor responded to the creditors' motions and just before the hearing, according to the debtor. In fact, the debtor claimed that it "did not know that the Homeowners would later file extensive legal
7 briefs, and the *7 Debtor had no way of anticipating what legal authorities and arguments the Homeowners might assert just before the hearing."[4] R. 74 at 3.

[4] The court finds this argument disingenuous. The Campbells' Memorandum of Law was filed on January 13, 2004, two weeks before the trial held January 27, 2004. Although the Maddens' Memorandum of Law was filed January 23, 2004, and the Kash Memorandum of Law was filed January 26, 2004, those memoranda differ from the Campbells' memorandum only in the factual statement of each party's circumstances on the first and second pages of the documents. In all other respects, they are identical. In addition, many of the points presented in those memoranda were made in the Brief in Support of Motion for Summary Disposition filed by the Campbells on October 29, 2003. Therefore, the debtor should have had no trouble anticipating the legal arguments of the creditors.

Local Rule 7007-1 of the United States Bankruptcy Court for the Northern District of Indiana is entitled "Motion Practice; Length and Form of Briefs." It states, in pertinent part:

> (a) Any motion filed within a contested matter or an adversary proceeding (e.g., motions filed pursuant to F.R.Bankr.P. 501 1(b), 7012, 7037, and 7056) shall be accompanied by a separate supporting brief.

N.D. Ind. L.B.R. B-7007-1(a). The local rule is derived from Federal Rule of Bankruptcy Procedure 7007, which states simply that "Rule 7 F.R.Civ.P. applies in adversary proceedings." Federal Rule of Civil Procedure 7, in turn, sets forth the pleadings required to initiate an adversary proceeding and general requirements concerning motions. It also forbids the use of demurrers, pleas and exceptions for insufficiency of a pleading.

A motion for relief from stay is a contested matter, not an adversary proceeding. *See* F.R.Bankr.P. 4001, 9014; *In re Northwest Aggregate Constr. Co., Inc.*, 72 B.R. 317, 318-19 (N.D. Ill. 1987). Because Bankruptcy Rule 7007 applies Rule 7 pleadings procedures to motions filed in adversary proceedings, it does not apply in this case. *See In re Castle*, 289 B.R. 882, 884 n. 1 (Bankr. E.D. Tenn. 2003) (finding that the debtor's reliance on its local 7007 rule was misplaced because the rule applies only to motions filed in adversary proceedings); *In re Farmers'Co-op of Arkansas and Oklahoma, Inc.*, 43 B.R. 619, 620 (Bankr. W.D. Ark. 1984) (finding that "the proceedings regarding contested matters are governed by Rule 9014 of the Bankruptcy Rules" and that "Rule 9014 does not make applicable Rule 7007 or Rule 7008 to contested matters; hence, the rules of pleadings generally applicable to adversary proceedings are absent here"). *8

This court's local rule B-7007-1 covers motions filed within either contested matters or adversary proceedings, such as motions for abstention, for judgment on the pleadings, for compelling discovery, and summary judgments. As the creditors noted, however, the rule applies only to motions filed within a contested matter or an adversary proceeding and does not apply to the contested matter itself. A motion for relief from the automatic stay initiates a contested matter. For that reason, Rule B-7007-1 is inapplicable.

The debtor's desire to file a brief in response to the creditors' memoranda of law was denied by this court, both because the debtor's Objection had covered some of the arguments and because stay litigation is intended to be an expedited determination to preserve the claims of creditors. The Seventh Circuit Court of Appeals has made clear that "[h]earings to determine whether the stay should be lifted are meant to be summary in character." *In re Vitreous Steel Prods. Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990); *see also In re McGaughey*, 24 F.3d 904, 906 (7th Cir. 1994). Post-hearing briefs in this case were completely unnecessary, and the court in its discretion denied them. The court has not found any reason to change its position upon reconsideration of the issue.

B. *Choice of Law*

The debtor asserted that the court further erred by choosing to follow the law of the state of Michigan when the contracts between the parties state that Indiana law is controlling. According to the debtor, the creditors "waived their right to rely on Michigan law when they executed contracts which specify that Indiana law applies." R. 74 at 6; *see also* R. 25 at 12-13.

The court finds that the construction contracts at issue contain a provision that Indiana law governs the contract:

> This agreement is being executed and delivered in the State of Indiana and shall be governed by and construed and enforced in accordance with the laws of the State of Indiana.

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9 *9

R. 56, Ex. A, p. 10. Because the contracting parties chose the laws of Indiana to govern the contract, the court gives weight to that choice.[5] It is the beginning but not necessarily the end of the choice of law determination. The Supreme Court of Indiana has counseled that "[o]rdinarily a choice of law issue will be resolved only if it appears there is a difference in the laws of the potentially applicable jurisdictions." *Allen v. Great American Reserve Ins. Co.*, 766 N.E.2d 1157, 1162 (Ind. 2002) (resolving the choice of law issue even though there was an express provision in the contract). In this case, there are differences in the laws of Indiana and Michigan concerning the regulation of home builders. The court believes it therefore must balance the expectations of the contracting parties with a regard for the interests of Indiana and Michigan. *See Chrysler Corp. v. Skyline Industrial Servs., Inc.*, 528 N.W.2d 698, 704 (Mich. 1995).

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[5] The court notes, as well, that a federal bankruptcy court generally applies the choice of law rules of the state in which the court sits. *See In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1015 (7th Cir. 2002) (citing *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941)).

The Restatement (Second) of Conflicts of Laws provides two exceptions to the general rule that the choice of law under the contract applies. Section 187(2) provides:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice by the parties.

*10

1 Restatement Conflict of Laws, 2d, § 187(2)(b).[6] It is clear that both Indiana and Michigan have significant interests in the contractual conflicts between the parties.

[6] Indiana and Michigan courts customarily have employed the Restatement (Second) of Conflict of Laws, including §§ 187 and 188, in analyses of breaches of contract. *See, e.g., Allen*, 766 N.E.2d at 1163; *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015, 1024 (Ind.Ct.App. 1999); *Chrysler Corp.*, 528 N.W.2d at 704. In Indiana choice-of-law analysis for tort cases, however, the Supreme Court of Indiana recently has clarified that "Indiana is still primarily a *lex loci* state" and that it did not adopt the policy approach of the Restatement (Second) of Conflict of Laws but rather cited to it with examples of factors that courts might consider. *Simon v. United States*, 805 N.E.2d 798, 802 (Ind. 2004). This court recognizes the criticisms of the second Restatement, *see id.* at 804, but finds its application in this case insightful and helpful.

In contract actions in Indiana, the governing law is the "law of the forum with the most intimate contacts to the facts," as determined by a consideration of such factors as the place of contracting; the place of contract negotiation; the

place of performance; the location of the subject matter of the contract; and the domicile, residence, nationality, place of incorporation and place of business of the parties. *Bedle v. Kowars*, 796 N.E.2d 300, 302 (Ind.Ct.App. 2003); *Employers Ins. of Wausau v. Recticel Foam Corp.*, 716 N.E.2d 1015, 1024 (Ind.Ct.App. 1999); *cf. In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1017 (7th Cir. 2002) (commenting that Indiana's choice-of-law rule for breach of warranty or consumer fraud suits focuses on the injury where the consumer is located rather than where the seller maintains its headquarters). Michigan's choice-of-law position is similar; it no longer chooses the law of the place of contracting, but rather focuses on the law of the place most intimately concerned with the outcome of the litigation. *See Chrysler Corp.*, 528 N.W.2d at 703 (approving the approach of §§ 187 and 188 of the Second Restatement, with their emphasis on examining the relevant contacts and policies of the interested states" because they "provide a sound basis for moving beyond formalism to an approach more in line with modern-day contracting realities"). The court therefore turns now, as it did at the hearing, to a consideration of which state has the most significant, relevant contacts and policies concerning these facts.

The court finds that, in this case, the plaintiffs live in Michigan and the debtor lists its place of business in Mishawaka, Indiana and in Macomb, Michigan. Two factors, the place of contracting
11 and the place *11 of negotiation, are not determinative, in the view of the court. The witnesses at the hearing did not emphasize where the negotiations occurred, and the court finds it likely from the testimony that some negotiating occurred in both states. The contracts were signed in Michigan by one party and in Indiana by two parties.[7] However, the parties contracted for home construction to be done in Michigan, on property located in Michigan, and the breaches occurred on that property. Therefore, the court finds that greater weight must be given to the location of the subject matter of the contract and to the place of performance of the contract. This court, following the method of analysis used in *Employers Ins. of Wausau*, 716 N.E.2d at 1024-25, determined that the number and quality of contacts favor Michigan over Indiana. For that reason, the court concluded at the hearing that the substantive law of Michigan applies to the construction contracts at issue. *See also Briggs Elec. Contracting Servs., Inc. v. Elder-Beerman Stores Corp. (In re Elder-Beerman Stores Corp.)*, 221 B.R. 404, (Bankr. S.D. Ohio 1998) (applying Michigan law, finding that Michigan had the most significant contact under the construction contract, where work was being done on Michigan property); *Travelers Ins. Companies v. Rogers*, 579 N.E.2d 1328, 1330-31 (Ind.App. 1991) (concluding Michigan law was applicable). The debtor has not succeeded in its burden of demonstrating a manifest error of law or fact that would cause the court to amend its determination.

> 7 The court's erroneous oral finding that all three parties signed their contracts in Michigan had little or no impact on the court's decision that the most significant contacts were in Michigan.

The court noted at the hearing that the undisputed facts in this case seem to demonstrate that the debtor MSC was not properly licensed as a residential builder under Michigan laws when it constructed the homes of the creditors. *See* M.C.L. § 339.601; *Annex Constr., Inc. v. Fenech*, 477 N.W.2d 103, 104 (Mich.Ct.App. 1991) (per curiam). The creditors pointed out that "contracts by a residential builder not duly licensed are not only voidable but void." Bilt-More Homes, Inc. v. French, 130 N.W.2d 907, 910 (Mich. 1964). The case law in Michigan strongly indicates that parties cannot be bound by the terms of a void contract. *See Offerdahl v. Silverstein*, 569 N.W.2d 834, 836 (Mich.App. 1997). The court is aware of the position of the Michigan Supreme Court that courts should not "create an equitable remedy for
12 a hardship created by an unambiguous, *12 validly

enacted legislative decree." *Stokes v. Millen Roofing Co.*, 649 N.W.2d 371, 377 (Mich. 2002). The debtor seems to concede the validity of these arguments in this court, but it has the right to raise defenses and challenges to the Michigan laws. The only determination made in this court is that the final interpretation of the laws of Michigan must be made in Michigan's courts, not here.[8]

[8] Even if the court had followed Indiana law, the debtor might not have fared better, for the laws of each state regulate limited liability companies. Indiana's limited liability companies, like MSC, are required to follow strict regulations under the state's licensing authorities. For example, Indiana, like Michigan, requires that a "foreign limited liability company may not transact business in Indiana until it obtains a certificate of authority from the secretary of state." Ind. Code § 23-18-11-2. Moreover, a "foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a court proceeding in Indiana until it obtains a certificate of authority." Ind. Code § 23-18-11-3. Had the tables been turned, had MSC been licensed as an LLC in Michigan and had built homes in Indiana without obtaining a certificate of authority, it would have been subject to the same statutory restrictions that it finds imposed on it in Michigan. *Compare* M.C.L. § 450.5007 with Ind. Code § 23-18-11-3. The court finds that the pertinent limited liability company laws of these two states are not in conflict. However, Indiana does not have specific laws, similar to those in Michigan, regulating residential builders. The court will not allow MSC to contract around statutory requirements by claiming to be governed by the laws of Indiana in order to avoid the explicitly relevant and applicable laws of the state of Michigan, where MSC was conducting its residential building business as a foreign limited liability company.

C. *"Cause" to Lift the Automatic Stay*

The debtor claimed that the court erred in failing to address the factors required for finding that "cause" exists for granting relief from the automatic stay. Following the factors set forth in *International Business Machines v. Fernstrom Storage Van Co. (In re Fernstrom Storage Van Co.)*, 938 F.2d 731, 735 (7th Cir. 1991), the debtor argued that the reasons for denying the creditors' motions for relief from the stay weigh in its favor: (1) great prejudice will result to MSC if the creditors are allowed to bring suit in Michigan; (2) MSC will suffer enormous hardship if the creditors are allowed to litigate in Michigan because Michigan law precludes MSC from recovering its claims against the creditors; and (3) MSC has a probability of prevailing on the merits if the claims are litigated in the bankruptcy court and MSC can focus on the amounts the creditors owe to the bankruptcy estate. *See* R. 75 at 7. *13

13

The automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362(a), halts or stays prepetition proceedings brought against the debtor such as the suit brought by the Campbells in Michigan. However, the stay may be terminated, modified, or conditioned "for cause," and that term, undefined in the Bankruptcy Code, "is determined on a case-by-case basis." *In re Fernstrom Storage*, 938 F.2d at 735. Whether cause exists to terminate the stay is a matter committed to the discretion of the bankruptcy court. *In re C S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995). In order to prevail, the parties requesting relief from the stay must make a prima facie case that cause exists to modify or terminate the stay. *See id.* The Seventh Circuit presented a three-prong test, asking whether:

> a) any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,
>
> b) the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor, and

> c) the creditor has a probability of prevailing on the merits.

In re Fernstrom Storage, 938 F.2d at 735 (citing cases); *see also In re Petroleum Piping Contractors, Inc.*, 211 B.R. 290, 308 (Bankr. N.D. Ind. 1997) (reviewing the factors in *Fernstrom Storage* and in other cases). Courts have created other lists of factors that a bankruptcy court may consider in determining whether the stay should be modified or lifted. For example, the Fourth Circuit included these factors:

> (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary;
>
> (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and
>
> (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992). More recently, the Second Circuit listed twelve factors to consider under § 362(d). *See Schneiderman v. Bogdanovich (In re Bogdanovich)*, 292 F.3d 104, 110 (2d Cir. 2002). 14 *14

In this case, the court made clear that the cause for lifting the automatic stay was that the construction contracts at the center of the debtor's dispute with the creditors arguably were void. The court determined that the stay should be lifted to permit the state court, with the expertise to decide such issues, to answer that question. The debtor may have defenses to the creditors' claims that the contracts are void, and the state court, rather than this court, is in the best position to judge the merits of those defenses. Once the state court decision is rendered, this federal bankruptcy court will accept it and apply it to the bankruptcy proceedings before it. *See In re Williams*, 144 F.3d 544, 550 (7th Cir. 1998) (pointing out that a bankruptcy court's determination in narrow areas of state law in which it has no particular expertise "would not be a particularly efficient use of judicial resources").

The court finds that it properly found at the hearing that cause exists to lift the automatic stay in this case and, upon its reconsideration, it finds no reason to alter or to amend its judgment.

D. *Manifest Injustice*

The debtor was concerned that this court did not understand "the harsh impact" of permitting the creditors to file litigation against the debtor in Michigan. R. 74 at 2. The debtor asserted that the "simple failure to change the name on the Michigan Builders License . . . absolutely precludes the debtor from attempting to recover anything" from the creditors and thus jeopardizes its ability to fund a successful chapter 11 reorganization. *Id.* at 3-4. It asked this court to deny the creditors' motions for relief from the stay and to retain jurisdiction over the disputes "to ensure that the Debtor can actually litigate the merits of its collection claims and to prevent injustice to the bankruptcy estate" and its other creditors, such as the subcontractors and suppliers and others. *Id.* at 6; *see also* R.75 at 8-9. Relying on *In re Federal Press Co.*, 117 B.R. 942 (Bankr. N.D. Ind. 1990), and 11 U.S.C. § 105, the debtor asked the court, using its equitable authority, to reconsider the hardship MSC would suffer and to deny the motions for relief from stay so that MSC can continue its pending adversary proceeding collection actions against the creditors and can recover estate assets for the benefit of all creditors. 15 *See* R.75 at 9-11. *15

The court assures the debtor that it understands the nature of its ruling concerning the creditors' motions to lift the automatic stay. It did not have before it the debtor's collection claims against

these same creditors, but it was cognizant that the claims each party has asserted against the other are based upon the contractual relationship between the creditors and MSC. The court has lifted the automatic stay so that Michigan courts may apply the laws of their state to determine whether those contracts with MSC, which appears to be an unlicensed residential builder, are void. That fundamental issue cannot be avoided. This court cannot consider which party will collect from the other until the germane question of the validity of the construction contracts is answered. As the Seventh Circuit made clear in *In re Williams*, a bankruptcy court does not abuse its discretion in modifying the automatic stay in cases where "all roads lead to state court":

> Had the bankruptcy court not modified the stay so that the [state court] case could go forward, likely it would then have to determine the merits to [the debtor's] right of possession [of the leased property]. With no particular expertise under this narrow area of state law, this would not be a particularly efficient use of judicial resources. Tenants might be encouraged to file a bankruptcy petition not only to forestall an eviction, but also to seek a more favorable forum for what might otherwise be a foregone conclusion.

In re Williams, 144 F.3d at 550 (stating that "[t]he sooner those issues are resolved, the sooner the parties can move on: either the landlord will be able to get its writ of possession and evict the tenant or the tenant can try to assume the now-valuable lease as part of her plan"). Moreover, the court is not persuaded to follow the well-reasoned decision *In re Federal Press Company*, 117B.R. 942(Bankr. N.D. Ind. 1990), because the facts of that case are so distinct from those herein. *Federal Press Company* involved a post-petition tort action against the debtor, one of 57 different tort claims already filed against the debtor, with more possible claims. It simply cannot be compared to the prepetition claims raised herein.

The court concludes that the debtor, by filing its motion to alter or amend judgment, actually took the opportunity to reargue the merits of its case. MSC has failed to present to the court any newly discovered evidence or a manifest error of law or fact that would justify an altering of the court's determination to lift the stay in this proceeding.

16 *16

Conclusion

For the reasons that were presented above, the court denies the Debtor's Motion to Alter or Amend Judgment Granting Motions for Relief from Stay filed by the chapter 11 debtor Mark Scott Construction, LLC. The court finds that the debtor has failed in its burden of demonstrating to the court a clear error of law or fact that must be corrected or manifest injustice that must be prevented. Accordingly, the debtor's motion is denied.

SO ORDERED.