

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

In re:	§	
	§	Case No. 19-10653
INNOVA GLOBAL LTD.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10654
INNOVA GLOBAL OPERATING LTD.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10655
INNOVA GLOBAL LIMITED PARTNERSHIP,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10656
1938247 ALBERTA LTD.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10657
INNOVA GLOBAL HOLDINGS LIMITED PARTNERSHIP,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10658
INNOVA GLOBAL INC.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	

In re:	§	
	§	Case No. 19-10659
INNOVA GLOBAL LLC,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10660
BRADEN MANUFACTURING, L.L.C.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	

**RECEIVER'S EMERGENCY EX PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND RELIEF PURSUANT TO SECTIONS 105(A) AND 1519
OF THE BANKRUPTCY CODE**

PricewaterhouseCoopers Inc., LIT, (“**PWC**”) solely in its capacity as court-appointed receiver (the “**Receiver**”) of (1) Innova Global Ltd., (2) Innova Global Operating Ltd., (3) Innova Global Limited Partnership, (4) 1938247 Alberta Ltd., (5) Innova Global Holdings Limited Partnership, (6) Innova Global Inc. (formerly AEM Emissions Management Inc., formerly ATCO Emissions Management Inc.), (7) Innova Global LLC (formerly AEM Noise Management LLC, formerly ATCO Noise Management LLC), and (8) Braden Manufacturing, L.L.C. (collectively, “**Innova**” or **Debtors**”) based upon the Receivership Order dated April 1, 2019, entered by the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada, Court File No. 1901-04589 (the “**Canadian Court**” and the “**Canadian Proceedings**”), and as authorized foreign representative of the above-captioned Debtors, by and through its undersigned counsel, files this *Emergency Ex Parte Application for Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “**Application**”), and respectfully states:

I.
JURISDICTION, VENUE, AND CORE ALLEGATIONS

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

II.
EMERGENCY RELIEF REQUESTED

2. The Receiver seeks emergency provisional relief under Bankruptcy Code sections 1519 and 105(a), staying execution against the Debtors' assets until and through the Court's consideration of the Receiver's *Expedited Petition for Recognition as a Foreign Main Proceeding, or in the Alternative, Foreign Nonmain Proceeding, Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief* (the "**Petition**"), filed contemporaneously with this Application. The Receiver requests immediate relief for authority to deal with the Debtors' employees, contractors, creditors, vendors, etc. in the United States. Prior to entry of a recognition order, the Debtors do not have the protections of the Bankruptcy Code, including the automatic stay provisions. Accordingly, emergency provisional relief is necessary to prevent creditors and other parties from continuing litigation or taking action against the Debtors' U.S. assets that could prejudice and disrupt the Canadian Proceedings (defined below), thereby interfering with the Receiver's ability to conduct an orderly liquidation.

III.
SUPPORT FOR THIS APPLICATION

3. The Receiver requests that the Court take judicial notice of the exhibits contained in the appendix of exhibits that is attached to this Application.¹ *See State of Fla. Bd. of Trustees*

¹ This Application with all attachments can be found at: pwc.com/car/innova.

of Internal Imp. Trust Fund v. Charley Toppino & Sons, Inc., 514 F.2d 700, 704 (5th Cir. 1975) (court may take judicial notice of its own files and records); FED. R. EVID. 201.

IV. BACKGROUND

A. The Structure and General Operations of the Debtors.

4. There are eight entities that are Chapter 15 debtors, five of which are Canadian entities, and three of which are either direct or indirect subsidiaries of the Canadian parent.

B. Business Operations of the Debtors.

5. The Debtors are in the business of providing construction, engineering and related services to clients in multiple jurisdictions around the world. Their operations can roughly be divided into the following five (5) divisions:

- Noise Management (“**Noise**”): Provides industrial noise management solutions for permanent and temporary industrial facilities and field equipment. Noise is based in Calgary, Alberta, with sale offices throughout the US and Canada and performs work on a worldwide basis;
- Environmental Services (“**ES**”): provides environmental solutions to meet air emissions, regulator, and performance standards as well as other services and solutions to the gas turbine industry. ES is based in Ontario and Oklahoma, and carries on operations under Braden Manufacturing LLC;
- Heat Recovery Steam Generator (“**HRSG**”): develops systems that recover heat from hot gas steam and is based in Minnesota;
- St. George Steel (“**SGS**”): is a standalone fabricator for large-scale projects;

- Braden Europe (“**BEUR**”): designs, manufactures and installs and retrofits auxiliary equipment for gas turbines in the European marketplace.

C. Events Leading to the Commencement of the Canadian Proceedings.

6. On April 1, 2019, ATB filed an Application (Receivership Order) in the Canadian Proceedings seeking the appointment of PWC as receiver under the Canadian Bankruptcy and Insolvency Act (“**BIA**”), the Judicature Act, R.S.A. 2000, c.J-2. (“**Judicature Act**”), the Business Corporations Act, R.S.A. 2000, c. B-9 (“**ABCA**”), and the Personal Property Security Act, R.S.A. 2000, c. P-7 (“**PPSA**”). On April 1, 2019, ATB Financial filed an application for receivership with the Court of Queen’s Bench of Alberta in the Judicial Centre of Calgary, Canada (the “**Canadian Court**”), resulting in the Receivership Order.

D. The Canadian Proceedings.

7. The Bankruptcy and Insolvency Act (“**BIA**”) is the one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.² Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (Can.). The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

8. The BIA also authorizes a court to appoint a receiver upon application by a secured creditor. *Id.* § 243(1). Such court-appointed receivers are given a mandate and specific powers as set out in the order appointing the receiver. These duties typically include: (1) taking possession and control of the property and assets of the debtor; (2) marketing and selling such

² The second federal legislation in Canada concerning bankruptcies and insolvencies is the Companies’ Creditors Arrangement Act (“**CCAA**”), which affords financially troubled corporations the opportunity to restructure their financial affairs through a “Plan of Arrangement.” Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Can.). The CCAA process is akin to Chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure operations rather than liquidate. *See In re Fracmaster, Ltd.*, 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).

property and assets in a commercially reasonable manner (whether as a going concern, en-bloc, or otherwise) and under the supervision and approval of the appointing court; and (3) distributing the proceeds of such sales to the stakeholders in accordance with the legal entitlement. The appointing court has broad discretion to authorize the receiver to “take any other action that the court considers advisable.” *Id.* § 243(1)(c).

9. A court-appointed receiver under the BIA is a “national” receiver, meaning that a receiver administers assets in each of Canadian’s ten provinces and three territories typically without further order of provincial courts. The BIA and its related legislation (the Companies’ Creditors Arrangement Act) are federal legislation. But provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters, similar to the interplay between state and federal law in the United States. Nonetheless, the BIA provides a statutory framework for a court-appointed receiver to carry out its mandate on a national basis rather than relying on the various provincial statutes or courts for its authority.

10. On April 1, 2019, the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA, section 13(2) of the Judicature Act, section 99(a) of the ABCA and section 65(7) of the PPSA against the Debtors. The Receivership Order empowers and authorizes the Receiver to take numerous steps involving the property of the entities subject to the Canadian Proceeding. Likewise, the Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. Additionally, the Receivership Order imposes a stay of proceedings against the Receiver, the Debtors, or the Debtors’ property similar to the protections available under 11 U.S.C. § 362(a).

11. Pursuant to the ability to operate the Debtors’ business, the Receivership Order grants the Receiver power to terminate all of the Debtors’ employees. Finally, the Receivership

Order includes a request by the Canadian Court for “aid and recognition by any court . . . having jurisdiction in Canada, the United States . . . , and any other jurisdiction in which the [Debtor’s property] may be located, to give effect to [the Receivership Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership Order].”

E. The Chapter 15 Cases.

12. Contemporaneously with the filing of this Application, the Receiver filed Official Form No. 401 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. § 1504, 1509(a) and 1515(a).

13. Pursuant to the Receivership Order, the Receiver is a foreign representative in a foreign proceeding, and hereby seeks relief under Chapter 15 of the Bankruptcy Code.

**V.
ARGUMENT AND AUTHORITIES**

A. Provisional Relief Authorized by Bankruptcy Code Section 1519.

14. The Receiver has contemporaneously filed expedited petitions for recognition for each Debtor, seeking a recognition and a ruling that the Canadian Proceedings are foreign main proceedings (or alternatively, nonmain proceedings) under 11 U.S.C. §§ 1517(b)(1) and 1520. Although “[a] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time,”³ there is necessarily a gap between the time the petition for recognition is filed and the time the Court makes a decision on whether a proceeding should be recognized, and if so, whether such proceeding is a foreign main proceeding or a foreign nonmain proceeding.

³ 11 U.S.C. § 1517(c).

Accordingly, the Receiver seeks emergency provisional relief under 11 U.S.C. § 1519 and 11 U.S.C. § 105(a).⁴

15. The standard for such provisional relief is “where relief is urgently needed to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1519(a). Pending a determination by the Court on the petition for recognition, the following provisional relief under 11 U.S.C. § 1519(a) is available:

(1) staying execution against the debtor’s assets;

(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

11 U.S.C. § 1519(a). In turn, section 1521(a)(3)-(7) permits the Court to provisionally grant the following relief:

(3) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities [11 U.S.C. § 1521(a)(4)]; [and]

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724 (a) [11 U.S.C. § 1521(a)(7)].

11 U.S.C. § 1521(a).

⁴ Section 105(a) provides: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

B. Provisional Relief Sought by the Receiver.

16. Consistent with section 1519, the Receivership Order, and principles of comity, the Receiver requests the following provisional relief pending a determination on the Receiver's Expedited Petition for Recognition (collectively, the "**Provisional Relief**"):

- (a) The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtors, including any action or proceeding against PWC in its capacity as Receiver of the Debtors, be stayed. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7).
- (b) Execution against the assets of the Debtors be stayed. 11 U.S.C. § 1519(a)(1).
- (c) The administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States be entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtors, its creditors, the Receiver, and any other parties-in-interest. 11 U.S.C. § 1519(a)(2).
- (d) The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors be suspended unless authorized in writing by the Receiver or by Order of this Court. 11 U.S.C. §§ 1519(a)(3); 1521(a)(3).
- (e) The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtors. 11 U.S.C. §§ 1519(a)(3); 1521(a)(4).
- (f) Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.
- (g) The Receiver is authorized and empowered, but not obligated to
 - (i) maintain and continue to use, with the same account numbers, all of the Debtors' existing bank accounts at depository institutions in the United States (the "Bank Accounts");
 - (ii) treat the Bank Accounts for all purposes as debtor-in-possession accounts;
 - (iii) maintain and continue to use the Debtors' existing business forms, stationery and checks, all without the appellation "debtor-in-possession"; and
 - (iv) preserve the reporting and accounting mechanisms used by the Debtors in respect of the Bank Accounts.

- (h) The Receiver is authorized to maintain the Debtors' existing cash management system, to allow receipt and sending of transfers via the ACH or automatic clearing house system and by wire transfer (collectively, the "Cash Management System"), all subject to the terms and conditions of the Debtors' prepetition agreements with their depository institutions (including the right to pay all pre-petition and post-petition administrative fees associated with such Bank Accounts and Cash Management System), provided however, that no prepetition obligations of any kind to be paid except as authorized hereby.
- (i) This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through these Chapter 15 foreign proceedings, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.
- (j) The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in this case be waived.

C. Standard Applicable to Provisional Relief.

17. The standard for issuance of provisional relief under section 1519 of the Bankruptcy Code is the same as that which is required for an injunction. 11 U.S.C. § 1519(e).⁵ Accordingly, the following factors applicable to the issuance of an injunction apply to this Application:

- (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any damage the injunction might cause the opponent; and (4) that the injunction will not disserve the public interest.

Blue Bell Bio-Medical v. Cin-Bad, Inc., 864 F.2d 1253, 1256 (5th Cir. 1989); *see also Dallas Cowboy Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1187 (5th Cir. 1979).

The Receiver contends that these four factors are met.

⁵ However, an adversary proceeding need not be filed in order to obtain relief under section 1519. *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 858-59 (Bankr. C.D. Cal. 2008); *In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006).

(1) The Receiver has a substantial likelihood of success on the merits.

18. The Canadian Proceedings should be recognized, as other courts have recognized BIA proceedings as foreign proceedings and the proper documentation has been submitted. *See* 11 U.S.C. § 1515(b); *In re Calmena Energy Servs. Inc.*, No. 15-30786 (Bankr. S.D. Tex. March 5, 2015) ECF N. 17 (recognizing Canadian receivership proceeding as foreign proceeding); *In re Poseidon Concepts Corp.*, No. 13-15893 (Bankr. D. Colo. May 15, 2013), ECF No. 60 (same); *In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012) (the Court entered an Order recognizing the proceeding under the CCAA was a foreign main proceeding under Chapter 15 of the Bankruptcy Code); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010) (“It is clear that the Canadian Proceedings should be recognized as a foreign main proceeding.”); *In re Gandi Innovations Holdings, LLC*, 09-51782-C, 2009 WL 2916908 (Bankr. W.D. Tex. June 5, 2009) (unpublished disposition) (the “CCAA Proceeding is a foreign proceeding entitled to recognition under Chapter 15 of the Code.”).⁶

19. Further, the Receiver is a proper “foreign representative” because it constitutes a “person or body” as defined under Section 101(41) of the Bankruptcy Code. The Receiver has also been authorized in the Canadian Proceedings to act as the Debtors’ foreign representative. *See* Receivership Order (“Each of the Applicants and the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body,

⁶ For numerous other examples of U.S. courts recognizing Canadian insolvency proceedings a “foreign proceedings,” see *In re GasFrac Energy Servs., Inc.*, No. 15-50161 (Bankr. W.D. Tex. Feb. 2, 2014), ECF No. 46; *In re Angiotech Pharm., Inc.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011), ECF No. 83; *In re Canwest Global Communications Corp., et al.*, No. 09-15994 (Bankr. S.D.N.Y. Nov. 3, 2009), ECF No. 30; *In re SemCanada Crude Co.*, No. 09-12637 (Bankr. D. Del. Aug. 27, 2009), ECF No. 30; *In re Quebecor World Inc.*, No. 08-13814 (Bankr. S.D.N.Y. July 1, 2009), ECF No. 12; *In re Biltrite Rubber (1984) Inc., et al.*, No. 09-31423 (Bankr. N.D. Ohio Apr. 2, 2009), ECF No. 58; *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. Aug. 6, 2008), ECF No. 37; *In re Destinator Techs., Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008), ECF No. 43.

wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order. . . .”). The Court is therefore entitled to presume that the Receiver is a proper “foreign representative.” *See* 11 U.S.C. § 1516(b).⁷

20. The Receiver also contends that the center of main interests for the Debtors is in Canada, since, among other things, the headquarters and management for the Debtors (and therefore the strategic decision-making) are located and/or occur in Canada; and the amount of debt is overwhelmingly held by Canadian creditors, primarily under the Loan Facility which is governed by Canadian law.

21. Upon recognition as foreign main proceedings, most of the Provisional Relief is granted automatically under section 1520, including:

(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(3) unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

11 U.S.C. § 1520(a).

22. Even if the Court were to determine that the Canadian Proceeding was a foreign nonmain proceeding for one or both of the Debtors, the Court could still order protective relief to the Receiver during the pendency of the Chapter 15 cases. The Court has the discretion to grant

⁷ Various courts have previously considered a receiver appointed pursuant to BIA § 243(1) to be a duly authorized “foreign representative.” *See, e.g., In re Poseidon Concepts Corp.*, No. 13-15893 (Bankr. D. Colo. May 15, 2013), ECF No. 60 (recognizing Canadian receivership proceeding as foreign proceeding); *In re Baronet U.S.A. Inc.*, No. 07-13821 (Bankr. S.D.N.Y. Jan. 1, 2008), ECF No. 15 (same).

“any appropriate relief,” whether the Canadian Proceedings are foreign main proceedings or foreign nonmain proceedings. 11 U.S.C. § 1521(a). Such relief includes:

- (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);
- (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor’s assets located within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a). Additionally, a court may “entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative.” 11 U.S.C. § 1521(b).

23. Here, the Provisional Relief requested is consistent with the Receivership Order and is authorized by this Court’s discretionary authority under section 1519 and principles of comity.

24. Moreover, comity is a central tenet of Chapter 15. *Firefighters’ Retirement Sys. v. Citco Grp. Ltd.*, 796 F.3d 520, 525 (5th Cir. 2015); *Ad Hoc Group of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The U.S.

Supreme Court defines comity as “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 143 (1895).

25. Exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a fellow common law jurisdiction with procedures akin to those in the United States. *See, e.g., In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010); *In re Blackwell*, 270 B.R. 814, 823 (Bankr. W.D. Tex. 2001); *In re Singer*, 205 B.R. 355, 357 (Bankr. S.D.N.Y. 1997).

26. The extension of comity to orders issued in Canadian insolvency proceedings is exceedingly common. *See, e.g., In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010); *In re Gandi Innovations Holdings, LLC*, No. 09-51782, 2009 WL 2916908, at *1 (Bankr. W.D. Tex. June 5, 2009); *In re Petition of Ernst & Young, Inc.*, 383 B.R. 773, 777 (Bankr. D. Colo. 2008).⁸ Indeed, the BIA is similar to Chapter 7 of the Bankruptcy Code, as both are statutory regimes intended to facilitate the liquidation of a debtor, provide a “breathing spell” from creditors’ collection efforts and a centralized process to assert and resolve claims against the debtor’s estate, and provide a fair and equitable process for distribution to creditors in order of priority. *Metcalfe & Mansfield Alternative Investments*, 421 B.R. at 698 (“The U.S. and Canada share the

⁸ For numerous other examples, *see, e.g., In re Calmena Energy Svcs., Inc.*, No. 15-30786 (Bankr. S.D. Tex. Mar. 5, 2015), ECF No. 17; *In re Poseidon Concepts Corp.*, No. 13-15893 (Bankr. D. Colo. May 15, 2013), ECF No. 60; *In re GASFRAC Energy Svcs., Inc.*, No. 15-50161 (Bankr. W.D. Tex. Feb. 2, 2014), ECF No. 46; *In re Angiotech Pharm., Inc.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011), ECF No. 83; *In re Canwest Global Comms. Corp.*, No. 09-15994 (Bankr. S.D.N.Y. Nov. 3, 2009), ECF No. 30; *In re SemCanada Crude Co.*, No. 09-12637 (Bankr. D. Del. Aug. 27, 2009), ECF No. 30.

same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.”).

27. Courts within the Fifth Circuit have recently granted provisional and final relief substantially similar to the Provisional Relief sought by this Application. *See In re Calmena Drilling Services, LLC et al.*, Case NO. 15-30786, Dkt. No. 17 (Bankr. S.D. Tex. Mar. 5, 2015); *In re GASFRAC Energy Svcs., Inc.*, No. 15-50161 (Bankr. W.D. Tex. Jan. 30, 2015), ECF No. 43; *In re Veris Gold Corp.*, No. 14-51015 (Bankr. D. Nev. Jan. 16, 2015), ECF No. 242.

(2) There is a substantial threat of irreparable injury if the interim relief is not granted.

28. The Receivership Order provides for a stay against seizure of assets and litigation akin to the automatic stay embodied in section 362(a) of the Bankruptcy Code. The Receivership Order and papers submitted in conjunction therewith establish that the Debtors are presently insolvent and unable to pay their debts as they become due. The Receiver is concerned that these facts may cause creditors to seek prejudgment attachments and other remedies against the Debtors and their assets in the United States, thereby disrupting the Canadian Proceedings and interfering with the Receiver’s ability to conduct an orderly liquidation. *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (“It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury.”); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”).

(3) The threatened injury to the Debtors outweighs any damage the interim relief would cause to an opponent.

29. The Provisional Relief will benefit the Debtors' creditors by ensuring an equitable and orderly distribution of assets and facilitate the Canadian Proceeding. *See, e.g., In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y.), ECF No. 5 (stating that failing to issue a restraining order against creditors could, *inter alia*, "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors.").

(4) The Provisional Relief will not disserve the public interest.

30. The Provisional Relief will not disserve the public interest because it is *in* the public interest for the Provisional Relief to be granted. *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F.Supp. 1255, 1259 (S.D.N.Y. 1979), *aff'd* 614 F.2d 1286 (2d Cir. 1979) ("American public policy would be furthered, for the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction."); *see also Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) ("The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization."). The Provisional Relief will facilitate a cross-border liquidation that will provide a benefit to the Debtors' creditors and other stakeholders. *See, e.g., Cunard S.S. Co. Ltd. v. Salen Reefer Svcs. A.B.*, 773 F.2d 452, 458 (2d Cir. 1985) ("The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.").

D. No Bond.

31. The Receiver respectfully suggests that no bond be required under Fed. R. Bankr. P. 7065 and Fed. R. Civ. P. 7065(c). A temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c). Fed. R. Bankr. P. 7065. The Receiver, who is carrying out his duties under the BIA and the Receivership Order, is akin to a trustee, and any bond would necessarily come from the Debtors' assets.

**VI.
PRAYER**

Wherefore, the Receiver respectfully requests entry of an Order, substantially similar to the attached proposed order, granting the requested Provisional Relief, and for all other and further relief to which the Receiver is justly entitled.

Dated: April 4, 2019

Respectfully submitted,

ROSENSTEIN, FIST & RINGOLD

/s/ John E. Howland
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and

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Steve A. Peirce
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300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792
Telephone: (210) 224-5575
Facsimile: (210) 270-7205

COUNSEL FOR CANADIAN RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that contemporaneously with the filing of the foregoing, I directed noticing agent Stretto to serve a copy of the foregoing, without the attachments, on parties in interest in this case. This document with all attachments can be found at: pwc.com/car/innova. The Receiver will supplement this certificate of service with proof of service and a copy of such service list.

/s/ John E. Howland

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

In re:	§	
	§	Case No. 19-10653
INNOVA GLOBAL LTD.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10654
INNOVA GLOBAL OPERATING LTD.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10655
INNOVA GLOBAL LIMITED PARTNERSHIP,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10656
1938247 ALBERTA LTD.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10657
INNOVA GLOBAL HOLDINGS LIMITED PARTNERSHIP,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10658
INNOVA GLOBAL INC.,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	Joint Administration Pending
	§	

In re:	§	
	§	Case No. 19-10659
INNOVA GLOBAL LLC,	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	
In re:	§	
	§	Case No. 19-10660
BRADEN MANUFACTURING, L.L.C.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Pending
	§	

**ORDER GRANTING RECEIVER’S EMERGENCY EX PARTE
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND RELIEF
PURSUANT TO SECTIONS 105(A) AND 1519 OF THE BANKRUPTCY CODE**

THIS MATTER comes before the Court for consideration of the *Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(A) and 1519 of the Bankruptcy Code* (the “**Application**”), which PricewaterhouseCoopers Inc., LIT (“**PWC**”) filed in the above-styled and numbered Chapter 15 cases as the court-appointed receiver (the “**Receiver**”) and authorized foreign representative of the above-captioned Debtors. Upon consideration of the (i) the Application, (ii) the *Petition for Expedited Hearing and Recognition as a Foreign Main Proceeding, or in the Alternative, Foreign Nonmain Proceeding, Pursuant to Sections 1515 and 1517 of the Bankruptcy Code and Related Relief* (the “**Petition**”), (ii) the exhibits to such Application and Petition, (iii) the Receivership Order entered in the Canadian Proceeding (the “**Receivership Order**”), (iv) all other documents filed in support thereof (collectively, the “**Supporting Papers**”), and (v) the exhibits introduced at such hearings, testimony of witnesses, and the arguments of counsel, this Court finds and concludes as follows:

1. Notice was proper (or that to the extent that notice was insufficient, this Order should be issued without notice to avoid irreparable harm to the Debtors), and that no party in interest made any response in opposition to the Application, or, if so, the relief requested in any such response was denied for the reasons stated on the record, and further finds that the relief requested in the Application should be granted on a provisional basis.

2. The “**Debtors**” are the following entities: (1) Innova Global Ltd., (2) Innova Global Operating Ltd., (3) Innova Global Limited Partnership, (4) 1938247 Alberta Ltd., (5) Innova Global Holdings Limited Partnership, (6) Innova Global Inc. (formerly AEM Emissions Management Inc., formerly ATCO Emissions Management Inc.), (7) Innova Global LLC (formerly AEM Noise Management LLC, formerly ATCO Noise Management LLC), and (8) Braden Manufacturing, L.L.C. (collectively, “**Innova**” or “**Debtors**”).

3. On April 1, 2019, ATB Financial (“**ATB**” or “**Lender**”) filed an application pursuant to the Bankruptcy and Insolvency Act (Canada) (the “**BIA**”) in the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary (the “**Canadian Court**”) Court File No. 1901-04589, seeking the appointment of PricewaterhouseCoopers Inc., LIT as receiver and manager over all of the assets of the Debtors (the “**Canadian Proceedings**”).

4. On April 1, 2019, the Canadian Court, Honorable Justice B.E.C. Romaine, entered the Receivership Order pursuant to which PricewaterhouseCoopers Inc., LIT was appointed to serve as the Receiver and foreign representative for the Debtors.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and Sections 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

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

7. The Receiver is a person within the meaning of Section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtors within the meaning of Section 101(24) of the Bankruptcy Code.

8. This case was properly commenced pursuant to Sections 1504 and 1515 of the Bankruptcy Code. The notice of the Application was sufficient given the circumstances of these cases and the potential for irreparable harm to the Debtors.

9. There is a substantial likelihood that the Court, upon final consideration, will find that the Canadian Proceedings are foreign proceedings within the meaning of Section 101(23) of the Bankruptcy Code.

10. There is a substantial likelihood that the Court, upon final consideration, will find the Canadian Proceedings are entitled to recognition by this Court pursuant to Section 1517 of the Bankruptcy Code.

11. There is a substantial likelihood that the Court, upon final consideration, will find that the Canadian Proceedings will be entitled to recognition as foreign main proceedings pursuant to Section 1502(4) of the Bankruptcy Code and will be entitled to recognition as foreign main proceedings pursuant to Section 1517(b)(1) of the Bankruptcy Code.

12. Relief is urgently needed to protect the assets of the Debtors or the interests of the creditors pursuant to 11 U.S.C. § 1519(a). Therefore, the Receiver is entitled to the provisional relief afforded under Section 1519 of the Bankruptcy Code.

13. The relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.

14. As described above, the Receiver has a substantial likelihood of prevailing on the merits. Even if the Canadian Proceedings are “foreign nonmain proceedings,” there is a substantial likelihood that the Receiver will be able to demonstrate that he is entitled to relief under 11 U.S.C. § 1521(a).

15. There is a substantial threat of irreparable injury if the injunction does not issue.

16. Any threatened injury to the Debtors outweighs any damage the injunction might cause to the opponents. The injunctive relief would actually benefit the Debtors’ creditors by ensuring an equitable and orderly distribution of assets and facilitate the Canadian Proceedings.

17. The injunction will not disserve the public interest. The injunctive relief is in the public interest. It sets to facilitate a cross-border reorganization that will provide a benefit to the estates of the Debtors. The injunctive relief is supported by notions of comity and will allow the Receiver to craft a productive solution for the Debtors and their estates.

18. The Receiver, in its role as foreign representative of the Debtors, and the Debtors, are entitled to the full protections and rights available pursuant to Section 1519(a) of the Bankruptcy Code.

19. Permitting the Debtors’ current cash management system to continue pursuant to existing agreements between the Debtors and their existing depository and disbursement banks (collectively, the “**Banks**”) will facilitate the continued operations of the Debtors while the Canadian Proceedings and this proceeding are ongoing.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

All relief granted herein is on a provisional basis, subject to this Court’s recognition of the above-captioned bankruptcy cases as a foreign proceeding.

The commencement or continuation of any action or proceeding concerning the assets, rights, obligations, or liabilities of the Debtors, including any action or proceeding against the Receiver in its capacity as foreign representative of the Debtors, is hereby stayed in a manner coextensive with 11 U.S.C. § 362.

Execution against the assets of the Debtors is hereby stayed.

The administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order to the extent set forth herein shall apply to the Debtors, its creditors, the Receiver, and any other parties-in-interest.

The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors is hereby suspended unless authorized in writing by the Receiver or by Order of this Court.

The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtors.

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

The Receiver is authorized and empowered, but not obligated to (i) maintain and continue to use, with the same account numbers, all of the Debtors' existing bank accounts at depository institutions in the United States (the "**Bank Accounts**"); (ii) treat the Bank Accounts for all purposes as debtor-in-possession accounts; (iii) maintain and continue to use the Debtors' existing business forms, stationery and checks, all without the appellation "debtor-in-

possession”; and (iv) preserve the reporting and accounting mechanisms used by the Debtors in respect of the Bank Accounts.

The Receiver is authorized to maintain the Debtors’ existing cash management system, to allow receipt and sending of transfers via the ACH or automatic clearing house system and by wire transfer (collectively, the “**Cash Management System**”), all subject to the terms and conditions of the Debtors’ prepetition agreements with their depository institutions (including the right to pay all pre-petition and post-petition administrative fees associated with such Bank Accounts and Cash Management System), provided however, that no prepetition obligations of any kind to be paid except as authorized hereby.

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

The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in this case and is therefore waived.

This Order applies to all parties in interest in this Chapter 15 case and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

Any party in interest may make a motion seeking relief from, or modification of, this Order on not less than three (3) business days’ notice to the Receiver’s U.S. counsel:

John E. Howland
Rosenstein, Fist & Ringold

Park Centre
525 South Main, Suite 700
Tulsa, Oklahoma 74103
Email: johnh@rfrlaw.com

and

Steve A. Peirce
Norton Rose Fulbright US LLP
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792
Email: steve.peirce@nortonrosefulbright.com

(collectively, “**U.S. Counsel**”).

The notice required in paragraph 13 above on objections, if any, submitted for the purpose of opposing the Receiver’s request for a preliminary and permanent injunction sought in the Application must be made in writing describing the basis therefore, filed with the Court and served on the U.S. Counsel in a manner whereby such notice or objections are actually received by U.S. Counsel at least three (3) business days prior to (i) any hearing scheduled on any motion seeking relief from, or modification of this Order, or (ii) the hearing date scheduled in paragraph 15 above for the hearing on the preliminary and permanent injunction.

If no objections to the Receiver’s request for a preliminary and permanent injunction are made as herein provided, the Court may enter an order granting the preliminary and permanent injunction requested in the Application without holding a hearing.

To the extent of any conflict or inconsistency between this Order and the Receivership Order, the Receivership Order as amended, supplemented, or modified shall control.

APPENDIX OF EXHIBITS

Exhibit	Description	Comment
1	Receivership Order entered by the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada	Entered April 1, 2019
2	Application of ATB Financial in Canadian Proceeding seeking appointment of receiver	File-stamped April 1, 2019
3	Affidavit of Alex Corbett in support of Application for Receiver (without exhibits)	File-stamped April 1, 2019
4	Affidavit of Katie Doran in support of Application for Receiver (without exhibits)	File-stamped April 1, 2019, 2019
5	Declaration of Foreign Counsel	
6	Declaration of Foreign Representative	
7	Secretary of State Searches	
8	Corporation Organizational Chart	
9	F.R.Cv.P. 65 Declaration of John E. Howland	

From: oknbcmecefmil@oknb.uscourts.gov
To: oknb_notices@oknb.uscourts.gov
Subject: 19-10655-R Application for Temporary Restraining Order
Date: Thursday, April 04, 2019 12:28:49 PM

*****NOTICE: This document constitutes an official stamp of the Court and, if attached to the document identified below, serves as a file stamped copy of the pleading. The first page of this document may be used in lieu of the Court's mechanical file stamp for the named document only, and misuse will be treated the same as misuse of the Court's official mechanical stamp. The Court's Electronic Document Stamp is a verifiable mathematical computation unique to the filed document and the Court's private encryption key. This alpha-numeric code assures that any change can be detected.**

**U.S. Bankruptcy Court
Northern District of Oklahoma**

Notice of Electronic Filing

The following transaction was received from John E. Howland entered on 4/4/2019 at 12:27 PM CDT and filed on 4/4/2019

Case Name:

Chapter: 15

Case Number: [19-10655-R](#)

Document Number: [3](#)

Docket Text:

Emergency Application for Temporary Restraining Order *and Relief Pursuant to Sections 105(A) and 1519 of the Bankruptcy Code*. Filed by John E. Howland on behalf of Paul J Darby. (Attachments: # (1) Exhibit Receivership Order entered by the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada # (2) Exhibit Application of ATB Financial in Canadian Proceeding seeking appointment of receiver # (3) Exhibit Affidavit of Alex Corbett in support of App for Receiver # (4) Exhibit Affidavit of Katie Doran in support of App for Receiver # (5) Exhibit Declaraton of Foreign Counsel # (6) Exhibit Declaration of Foreign Representative # (7) Exhibit Sec of State Searches # (8) Exhibit Corporation Organizational Chart # (9) Exhibit FRCvP Declaration of John E. Howland) (Howland, John)

Document description:Main Document

Original filename:Application for TRO.pdf

Electronic document Stamp:

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Document description:Exhibit Receivership Order entered by the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada

Original filename:Exhibit 1 - Receivership Order 04-01-19.pdf

Electronic document Stamp:

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Document description:Exhibit Application of ATB Financial in Canadian Proceeding seeking appointment of receiver

Original filename:Exhibit 2 - Filed Application 04-01-19.pdf

Electronic document Stamp:

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Document description:Exhibit Affidavit of Alex Corbett in support of App for Receiver

Original filename:Exhibit 3 - Filed Corbett Affidavit with selected exhibits 04-01-19.pdf

Electronic document Stamp:

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Document description:Exhibit Affidavit of Katie Doran in support of App for Receiver

Original filename:Exhibit 4 - Filed Katie Doran Affidavit with Exhibits 04-01-19.pdf

Electronic document Stamp:

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Document description:Exhibit Declaraton of Foreign Counsel

Original filename:Exhibit 5 - Declaration of Foreign Counsel.pdf

Electronic document Stamp:

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Document description:Exhibit Declaration of Foreign Representative

Original filename:Exhibit 6 - Declaration of Paul Darby.pdf

Electronic document Stamp:

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Document description:Exhibit Sec of State Searches

Original filename:Exhibit 7 - Sec of State Searches.pdf

Electronic document Stamp:

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Document description:Exhibit Corporation Organizational Chart

Original filename:Exhibit 8 - Corporate Organization.pdf

Electronic document Stamp:

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Document description:Exhibit FRCvP Declaration of John E. Howland

Original filename:Exhibit 9 - Declaration of JEH.pdf

Electronic document Stamp:

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19-10655-R Notice will be electronically mailed to:

John E. Howland on behalf of Foreign Representative Paul J Darby
johnh@rflaw.com, lisaeidson@rflaw.com

Office of the United States Trustee
USTPRegion20.TU.ECF@usdoj.gov

19-10655-R Notice will not be electronically mailed to:

The following is the list of parties who are not on the list to receive e-mail notices for this case (who MAY therefore require manual noticing):