

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

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

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

**PETITION FOR EXPEDITED HEARING AND RECOGNITION AS FOREIGN MAIN PROCEEDINGS, OR ALTERNATIVELY AS FOREIGN NONMAIN PROCEEDINGS, PURSUANT TO SECTIONS 1515 AND 1517 OF THE UNITED STATES BANKRUPTCY CODE AND RELATED RELIEF**

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, respectfully files the official form petition and this petition (together, the “**Petition**”) pursuant to section 1515 of title 11 of the United States Code (the “**Bankruptcy Code**”) for entry of an order recognizing the Canadian Proceedings as foreign main proceedings

pursuant to section 1517 of the Bankruptcy Code, thereby granting related relief pursuant to section 1520 of the Bankruptcy Code and additional relief pursuant to section 1521 of the Bankruptcy Code. In the alternative, should the Court not recognize the Canadian Proceedings as foreign main proceedings (either in whole or in part), the Receiver seeks recognition of the Canadian Proceedings as foreign nonmain proceedings, as defined in section 1502(b) of the Bankruptcy Code, and seeks additional relief available under section 1521 of the Bankruptcy Code.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and (b) and 1334(a) and (b) and 11 U.S.C. §§ 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this district pursuant to 28 U.S.C. § 1410(3).

### **INTRODUCTION**

2. The Debtors are a group of Canadian-based companies that have been placed into a receivership proceeding under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (“**BIA**”), and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2. As such, these are foreign proceedings within the meaning of 11 U.S.C. § 101(23). Petitioner is the Canadian court-appointed receiver, who is a foreign representative within the meaning of 11 U.S.C. § 101(24). As petitioner, the Receiver seeks recognition of the foreign proceedings as foreign main proceedings under 11 U.S.C. §§ 1515, 1517 and 1520.

3. The Receiver also seeks certain injunctive relief pursuant to 11 U.S.C. §§ 1520 and 1521 to protect the Debtors and their assets and creditors.

### **EXPEDITED RELIEF REQUESTED**

4. The Receiver seeks expedited relief in order to obtain legal authority and control over the Debtors' assets located in the United States so as to avoid loss and to maximize the potential return to creditors. Furthermore, "[a] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time." 11 U.S.C. § 1517(c).

### **SUPPORT FOR THIS PETITION**

5. The Receiver attaches the following Exhibits to this Petition.

**Table 1:**

<b>Exhibit</b>	<b>Description</b>
A	Form of Order Granting Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief

6. The Receiver also requests that the Court take judicial notice of the appendix of exhibits (the "**Appendix**") that is attached to *Receiver's Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(A) and 1519 of the Bankruptcy Code*, which was filed contemporaneously herewith.

### **BACKGROUND**

#### **I. The Structure of the Debtors**

7. 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. They are described below:

#### **Canadian Entities**

INNOVA GLOBAL LTD.

Jurisdiction of Organization: Alberta, Canada.

Owned By: Owned 100% by TRIEMISSIONS HOLDINGS (US) LIMITED PARTNERSHIP (the Chief Executive Office for TRIEMISSIONS HOLDINGS (US) LIMITED PARTNERSHIP is Chief

Executive Office: 4600, 400 - 3 Avenue SW Calgary, AB T2P 4H2 (1,790,004.64 common shares issued to TriEmissions Holdings (US) Limited Partnership).

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3.

Directors. Prior to resignation, the directors of INNOVA GLOBAL LTD. were CHAD DANARD, NORM ROKOSH, JON SPENCER, all of Calgary, AB.

Relationship to ATB: Borrower.

Authority for Receivership: Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2.

Comment: INNOVA GLOBAL LTD. is the ultimate parent of the Guarantors which includes the other Canadian Loan Parties.

#### INNOVA GLOBAL OPERATING LTD.

Jurisdiction of Organization: Alberta, Canada.

Owned By: Owned 100% by Innova Global Holdings Limited Partnership (49,127,219 common shares issued to Innova Global Holdings Limited Partnership).

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3

Directors: Prior to resignation, the directors of INNOVA GLOBAL OPERATING LTD. were CODY CHURCH, NORM ROKOSH, JON SPENCER, all of Calgary AB.

Relationship to ATB: Canadian Guarantor.

Authority for Receivership: Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2.

#### INNOVA GLOBAL LIMITED PARTNERSHIP

Jurisdiction of Organization: Alberta, Canada.

Largest Owners: 2,983,685 Class A Units, 2,604 Class B Units and 30,000,000 Class C Units issued to Innova Global Ltd.; 14,861,317 Class

A Units and 12,972 Class B Units issued to TriEmissions Holdings Limited Partnership

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3

Relationship to ATB: Canadian Guarantor.

Authority for Receivership: Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2.

1938247 ALBERTA LTD.

Jurisdiction of Organization: Alberta, Canada.

Owned by: Owned 100% by Innova Global Operating Ltd. (101 common shares issued to Innova Global Operating Ltd.)

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3

Directors: The directors of 1938247 ALBERTA LTD. are CODY CHURCH, NORM ROKOSH, JON SPENCER, all of Calgary AB.

Relationship to ATB: Canadian Guarantor.

Authority for Receivership: Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2.

INNOVA GLOBAL HOLDINGS LIMITED PARTNERSHIP

Jurisdiction of Organization: Alberta, Canada.

Owned by: 1 unit issued to Innova Global Ltd.; 66,950,002 units issued to Innova Global Limited Partners

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3

Relationship to ATB: Canadian Guarantor.

Authority for Receivership: Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, and section 13(2) of the Judicature Act, R.S.A. 2000, c.J-2.

**US Subs**

INNOVA GLOBAL INC.

Jurisdiction of Organization: California, USA.

Owned by: Owned 100% by Innova Global Operating Ltd. (552,500 common shares issued to Innova Global Operating Ltd.).

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3.

Directors: The directors of INNOVA GLOBAL INC. are CODY CHURCH, NORM ROKOSH, JON SPENCER, all of Calgary AB.

Relationship to ATB: Guarantor.

Authority for Receivership: Judicature Act, R.S.A. 2000, c.J-2.

INNOVA GLOBAL LLC

Jurisdiction of Organization: Delaware, USA.

Owned by: Membership interests owned 100% by Innova Global Inc.

Chief Executive Office: 4000 - 4th Street SE, Suite 222, Calgary, Alberta T2G 2W3.

Relationship to ATB: Guarantor.

Authority for Receivership: Judicature Act, R.S.A. 2000, c.J-2.

BRADEN MANUFACTURING, L.L.C.

Jurisdiction of Organization: Delaware, USA.

Owned by: Membership interests owned 100% by Innova Global Inc.

Chief Executive Office: 5199 N Mingo Road Tulsa, Oklahoma 74117.

Relationship to ATB: Guarantor.

Authority for Receivership: Judicature Act, R.S.A. 2000, c.J-2.

**II. Business Operations of the Debtors**

8. 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.

### **III. Events Leading to the Commencement of the Canadian Proceedings**

9. The Applicant for the Receivership Order is secured creditor ATB Financial (“**ATB**”). The above eight entities in Table 2 shall be called the “**Loan Parties**.” ATB is the agent (the “**Agent**”, when acting in such capacity) on behalf of ATB, Canadian Imperial Bank of Commerce (“**CIBC**”), and Export Development Canada (“**EDC**”, EDC, CIBC, and ATB are collectively, the “**Lenders**”) under a group of loan documents called the Credit Agreement. It is alleged that the Loan Parties, as at March, 2019, were indebted to the Lenders in excess of CAN \$74 million (collectively, the “**Indebtedness**”). The Indebtedness is alleged to be secured pursuant to the terms of a series of security documents called the **Canadian Security**. The Debtors fell into default under the Credit Agreement. The parties unsuccessfully tried to resolve



the default, which resulted in ATB seeking and obtaining the Receivership Order. The details of these transactions and the history of ATB's relationship with the Debtors is provided in the as Exhibit 3 in the Appendix.

#### **IV. The Canadian Proceedings**

10. 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**") and the Business Corporations Act, R.S.A. 2000, c. B-9 ("**ABCA**").

11. The Bankruptcy and Insolvency Act ("**BIA**") is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.<sup>1</sup> 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.

12. The BIA also authorizes a court to appoint a receiver upon a secured creditor's application. *Id.* § 243(1). Such court-appointed receivers are given a mandate and specific powers as set out in the order appointing the receiver. These duties typically include: (1) taking possession and control of the property and assets of the debtor; (2) marketing and selling such property and assets in a commercially reasonable manner (whether as a going concern, en-bloc, or otherwise) and under the supervision and approval of the appointing court; and (3) distributing the proceeds of such sales to the stakeholders in accordance with the legal entitlement. The

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<sup>1</sup> 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).

appointing court has broad discretion to authorize the receiver to “take any other action that the court considers advisable.” *Id.* § 243(1)(c).

13. 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.

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

15. The ABCA is a provincial business corporations statute which governs corporations and body corporate constituted in Alberta. The ABCA allows the Court to appoint a receiver or receiver and manager and make any order it thinks appropriate in the circumstances. The ABCA expressly sets out the functions that a receiver may perform including but not limited

to receipt of income from the property of the debtor, paying liabilities, realizing on the security interest of the debtor and carrying on the business of the corporation, among other duties.

16. On April 1, 2019, the Canadian Court, Honorable Justice B.E.C. Romaine, entered the Receivership Order (the “**Receivership Order**”) pursuant to section 243(1) of the BIA and 13(2) of the Judicature Act. The Receivership Order specifically authorizes the Receiver to act as foreign representative for the Debtors for all purposes and pursuant to Chapter 15 of the Bankruptcy Code. Receivership Order ¶ 3. It empowers and authorizes the Receiver to take numerous steps involving the property of the entities subject to the Canadian Proceeding. *Id.* ¶3. Likewise, the Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. *Id.* ¶¶ 4-5. 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). *See id.* ¶¶7-8.

17. The Receivership Order includes a request by the Canadian Court for “aid and recognition of any court . . . having jurisdiction in Canada or in any foreign jurisdiction . . . , to give effect to [the Receivership Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership Order].” *Id.* ¶30.

## **V. Resignation of Directors of Canadian Debtors**

18. Each of the directors of the Debtors<sup>2</sup> have resigned.

## **VI. The Chapter 15 Cases**

19. Contemporaneously with the filing of this Petition for Recognition, 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).

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<sup>2</sup> (1) Innova Global Ltd., (2) Innova Global Operating Ltd., (3) Innova Global Limited Partnership, (4) 1938247 Alberta Ltd., (5) Innova Global Holdings Limited Partnership.

20. 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.

## **VII. Canadian Connections**

21. The Debtors are managed primarily out of Canada, although business between the US and Canada is intertwined. The majority of treasury functions for all of the Debtors are operated out of Canada.

22. The majority of Canadian employees have been terminated. US employees are uncertain whether they will be paid, and the Receiver has neither terminated US employees nor asked US employees to work because of uncertainty whether the Receiver's authority will be recognized in the US.

23. The Calgary staff processes payroll for all the Debtors.

24. The majority of bank accounts for the Debtors are in Canada.

25. The Receiver seeks immediate authority from the Court to deal with the US operations with respect to employees, contractors, vendors, creditors, etc. and the temporary management of on-going projects and ultimately wind down the business.

## **RELIEF REQUESTED**

26. The Receiver hereby respectfully requests that this Court enter an order pursuant to Sections 105, 1507, 1517, 1520 and 1521 of the Bankruptcy Code, substantially in the form of the proposed order attached hereto as Exhibit A (the "**Proposed Order**"), providing the following relief:

- Recognition of the Canadian Proceedings as a foreign main proceeding as defined in Section 1502(4) of the Bankruptcy Code;
- Granting the Receiver the relief afforded under Section 1520 of the Bankruptcy Code as is provided by right upon the recognition of the Canadian Proceedings as a foreign main proceeding;

- Granting further additional relief as authorized by Section 1521 of the Bankruptcy Code including, without limitation:
  - Staying 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, to the extent not stayed under Section 1520(a) of the Bankruptcy Code;
  - Staying execution against the assets of the Debtors to the extent not stayed under Section 1520(a) of the Bankruptcy Code;
  - Suspending the right to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code by any person or entity other than the Receiver unless authorized in writing by the Receiver or by Order of this Court;
  - Providing for 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, and finding that such information is required in the Canadian Proceedings under the law of the United States; and
  - Entrusting the administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States to the Receiver;
- Otherwise granting comity to and giving full force and effect to the Canadian Court, the Canadian Proceedings, and the Receivership Order; and
- Awarding the Receiver such other and further relief as this Court deems just and appropriate.

27. The Receiver respectfully submits that the Canadian Proceedings should be recognized as a foreign main proceeding as defined in Section 1502(4) of the Bankruptcy Code. If, however, the Court determines the Canadian Proceedings are not foreign main proceedings (either in whole or in part), the Receiver seeks recognition of the Canadian Proceedings as a foreign nonmain proceeding, as defined in Section 1502(5) of the Bankruptcy Code, and requests that the Court grant the relief requested above under the Court's discretion pursuant to Section 1521 of the Bankruptcy Code.

**BASIS FOR RELIEF REQUESTED**

**I. Statutory Authority**

28. A Chapter 15 case is commenced when a foreign representative files a petition for recognition of a foreign proceeding under 11 U.S.C. § 1515; *In re Oversight & Control Comm'n of Avanzit, S.A.*, 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008). The petition must be accompanied by certain documentary evidence, which the court may presume to be authentic. 11 U.S.C. § 1516(b). The Court must grant the request for recognition if it finds:

- (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;
- (2) the foreign representative applying for recognition is a person or body; and
- (3) the petition meets the requirements of section 1515.

11 U.S.C. § 1517(a).

29. A decision or certificate from a foreign court indicating the foreign proceeding is a “foreign proceeding,” as defined in section 101(23) of the Bankruptcy Code, is presumptively correct. 11 U.S.C. § 1516(a). Similarly, a decision or certificate from a foreign court indicating that the foreign representative is a “foreign representative,” as defined in section 101(24), is presumptively correct. *Id.*

30. As stated above, (a) the Canadian Proceedings are foreign proceedings under the definition of 11 U.S.C. § 101(23), (b) the Receiver is a foreign representative under the definition of 11 U.S.C. § 101(24) and is a “person” under the definition of 11 U.S.C. § 101(41), and (c) the petition meets the requirements of Section 1515, namely, the evidence of the foreign proceedings and the foreign representative has been provided.<sup>3</sup> See Receivership Order.

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<sup>3</sup> The term “person” includes individual, partnership, and corporation. 11 U.S.C. § 101(41).

Accordingly, the requirements for recognition of the Canadian Proceedings as foreign proceedings is met.

## **II. Rule Requirements for Recognition of the Canadian Proceedings**

31. A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. Fed. R. Bankr. P. 1004.2(a). The center of main interests for each of the Debtors is Alberta, Canada. This has been provided in the Debtors' Official Form 401 Petitions.

32. The petition for recognition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending. Fed. R. Bankr. P. 1004.2(a). The Debtors are debtors in the foreign proceedings described in the Receivership Order. This information has also been provided in the Debtors' Official Form 401 Petitions.

33. A foreign representative filing a petition for recognition under chapter 15 shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. Fed. R. Bankr. P. 1007(a)(4). Such a corporate ownership statement has been filed contemporaneously herewith.

34. A foreign representative filing a petition for recognition under chapter 15 shall file with the petition (unless the court orders otherwise), a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under §1519 of the Code. Fed. R. Bankr. P. 1007(a)(4). A Rule 1007(a)(4) List has been filed contemporaneously herewith.

## **III. Requirements for a Petition for Recognition**

35. A petition for recognition shall be accompanied by any one of the following:

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

36. Accordingly, in compliance with 11 U.S.C. § 1515(b), included in the Appendix is the Receivership Order from the Canadian Proceedings, which may be presumed authentic. 11 U.S.C. § 1516(b).

#### **IV. The Canadian Proceedings are Pending “Foreign Proceedings”**

37. “Foreign proceeding” is defined in the Bankruptcy Code as “a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” 11 U.S.C. § 101(23).

38. The Canadian Proceedings fall squarely within the definition of “foreign proceeding.” Prior to the passage of Chapter 15, United States courts recognized cases filed under Canada’s federal bankruptcy and insolvency statutes, the BIA and the CCAA, to be “relating to insolvency.” *See Tradewell, Inc. v. American Sensors Electronics, Inc.*, 1997 WL 423075 n. 1 (S.D.N.Y. 1997) (noting that the “CCAA is a broad statute, the purpose of which is to ‘provide insolvent debtors with the opportunity to restructure their financial affairs with their creditors.’”). Moreover, since the passage of Chapter 15, cases filed under Canada’s insolvency schemes have consistently been recognized as “foreign proceedings.” *See, e.g., In re Calmena Energy Services Inc.*, No 15-30786 (Bankr. S.D. Tex. March 5, 2015) ECF No. 17 (recognizing



Canadian BIA 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.”).<sup>4</sup>

## **V. The Receiver Is a “Foreign Representative”**

39. Section 101(24) of the Bankruptcy Code defines “foreign representative” as “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.”

40. The Receiver may serve as the “foreign representative” because it constitutes a “person or body.” “Person” is defined under Section 101(41) of the Bankruptcy Code to include an individual, partnership or corporation. Because the Receiver is an incorporated entity, it

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<sup>4</sup> For numerous other examples of U.S. courts recognizing Canadian insolvency proceedings as “foreign proceedings,” see *In re ATK Oilfield Transportation Inc.*, No. 16-70042 (Bankr. W.D. Tex. Apr. 19, 2016) ECF No. 44, 2016); *In re Calmena Energy Services, Inc.*, No. 15-30786 (Bankr. S.D. Tex. March 5, 2015) ECF No. 17; *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 Metcalfe & Mansfield Alt. Invs., et al.*, No. 09-16709 (Bankr. S.D.N.Y. Jan. 5, 2010), ECF No. 28; *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 Technologies, Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008), ECF No. 43.

therefore qualifies as a “person” and can accordingly serve as a “foreign representative.” The Receiver has been specifically authorized in the Canadian Proceedings to act as the Debtors’ foreign representative. Receivership Order ¶¶3(j). Additionally, the Receivership Order specifically states “The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order. . . .” Receivership Order ¶31.

41. The Court is therefore entitled to presume that the Receiver is a proper “foreign representative.” *See* 11 U.S.C. § 1516(b). Additionally, 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); *In re Calmena Energy Services Inc.*, No 15-30786 (Bankr. S.D. Tex. March 5, 2015) ECF No. 17 (same); *In re ATK Oilfield Transportation Inc.*, No. 16-70042 (Bankr. W.D. Tex., April 1, 2016) ECF No. 44.

## **VI. The Canadian Proceedings Should Be Recognized As Foreign Main Proceedings Because Canada Is the Location of the Debtor’s Center of Main Interests**

42. A foreign proceeding shall be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has the center of its main interests. 11 U.S.C. § 1517(b). The term “center of main interests” (“**COMI**”) is not defined in the Bankruptcy Code. COMI, however, has been equated with a debtor’s principal place of business. *See Bear Stearns*, 374 B.R. at 129 (citing *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 633-34 (E.D. Calif. 2006)). t

**A. The COMI of the Debtors is Located In Canada Based Upon the Established COMI Factors**

43. There are five non-exhaustive factors in determining a debtor's COMI: (1) the location of those who actually manage the debtor (which could be the headquarters of a holding company); (2) the location of the debtor's headquarters; (3) the location of the debtor's primary assets; (4) the location of the majority of the debtor's creditors or the majority of creditors affected by the case; and (5) the jurisdiction whose law would apply to most disputes. *See Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1023 (5th Cir. 2010) (citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007)).

44. The first factor, and, the most important, the location of those who manage the debtor, the "nerve center," or "principal place of business" of the Debtors, favors Canada as their COMI. In determining COMI under Chapter 15, bankruptcy courts have utilized the "nerve center" test established in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). *See In re Think3 Inc.*, 2011 Bankr. LEXIS 5349, 17-18 (Bankr. W.D. Tex. Sept. 12, 2011), citing and quoting *Hertz Corp.*, 559 U.S. 77 (2010) ("[C]ourts have often equated a corporate debtor's COMI with the debtor's 'principal place of business'... Recently, the U.S. Supreme Court held that a corporation's 'principal place of business' is the place where a corporation's officers direct, control, and coordinate the corporation's activities, otherwise known as its 'nerve center.'"); *In re Gandi Innovations Holdings, LLC*, 2009 Bankr. LEXIS 2751, 4-5 (Bankr. W.D. Tex. June 5, 2009) ("While the evidence regarding center of main interest is mixed, the court finds that the 'nerve center' for the [Debtors] is [in] Canada...the court concludes that, in these circumstances, the court should find that the center of main interests for [a Texas incorporated entity] should be Canada."); *In re Suntech Power Holdings Co.*, 520 B.R. 399 (Bankr. S.D.N.Y. 2014) ([T]he court may consider the location of the debtor's 'nerve center,' including from where the debtor's

activities are directed and controlled, in determining a debtor's COMI.”); *In re British Am. Isle of Venice, Ltd.*, 441 B.R. 713, 720 (Bankr. S.D. Fla. 2010) (“in analyzing COMI courts have drawn a parallel to the ‘nerve center’ analysis described in a [*Hertz Corp.*]”) (court applied nerve center analysis in COMI inquiry).

45. The Debtors’ operations and strategy are actively controlled and executed from Canada. *See Avalos v. Cont'l Airlines, Inc.*, 2011 U.S. Dist. LEXIS 62527, 5-7 (S.D. Tex. June 10, 2011) (“Continental has presented conclusive evidence that its...main activities — including management, human relations, legal services, payroll, and employee services — are all directed from [Chicago].”) (Court found nerve center was in Chicago); *McCurdy v. Hydradyne, LLC*, 2013 U.S. Dist. LEXIS 163974, 6-8 (W.D. La. Nov. 18, 2013) (“LOR makes all business decisions affecting the operations, management, and ownership of its business interests in Atlanta.”) (nerve center was Atlanta); *Ebert v. Desco Corp.*, 2010 U.S. Dist. LEXIS 56165 (N.D. W. Va. June 8, 2010) (“Under the ‘nerve center’ test...[t]he operational and financial management of the company is directed and controlled from Columbus, Ohio; mergers and acquisition functions performed by or for Bellofram Corporation are handled or managed from Columbus, Ohio; and administrative functions such as employee benefits, payroll administration, and legal services are performed in Columbus, Ohio.”) (nerve center was Ohio). *See also Balachander v. AET Inc.*, 2011 U.S. Dist. LEXIS 109787 (S.D. Tex. Sept. 27, 2011) (adopting test from *Central West Virginia Energy Company v. Mountain State Carbon, LLC*, 636 F.3d 101 (4th Cir. 2011) (“the principal place of business...was not where the corporation's day-to-day management activities took place, but rather where the corporation's high-level officers directed, controlled, and coordinated its activities.”)).

46. The four remaining factors also indicate that the Debtors' COMI is in Canada. With respect to the location of the debtors' headquarters, the Debtors have various offices in the United States and Canada. The amount of debt is overwhelmingly held by Canadian creditors, notably under the ATB Loan Facility. The final factor, the jurisdictional law governing most disputes, also favors Canada as the Debtors' COMI. Major decisions regarding the Debtors are made in Canada. Also, the Loan Facility, which represents the overwhelming largest part of the Debtors' liabilities, is governed primarily by Canadian law.

47. Accordingly, the Receiver requests that the Canadian Proceedings be recognized as a foreign main proceeding. *See Klytie's Developments, Inc.*, 383 B.R. at 781 (finding COMI in Canada notwithstanding the fact that two standards – the location of the debtors' creditors and applicable law – yielded inconclusive results); *In re Gandi Innovations Holdings, LLC*, 2009 Bankr. LEXIS 2751, 4-5 (Bankr. W.D. Tex. June 5, 2009) (finding mixed factors for COMI, but finding that as “nerve center” for Canadian debtor group was in Canada and [Texas incorporated entity] was controlled through Canada that COMI for [entity] was in Canada.”).

## **VII. Alternatively, the Canadian Proceedings Should Be Recognized As Foreign Nonmain Proceedings**

48. In the event this Court does not recognize the Canadian Proceedings as foreign main proceedings, the Receiver submits that the Canadian Proceedings should be recognized as a foreign nonmain proceedings.

49. The Canadian Proceedings shall be recognized as a foreign nonmain proceeding if the Debtors have an establishment in Canada. 11 U.S.C. § 1517(b)(2). “Establishment” is defined as any place of operations where the debtor carries out a nontransitory economic activity. 11 U.S.C. § 1502(2). When it is apparent that an entity conducts operations in the country where

a foreign proceeding is pending, Courts will recognize the proceeding as a foreign nonmain proceeding if foreign main proceeding recognition is denied. *See e.g., SPhinX*, 351 B.R. at 122.

50. Based upon the facts previously set forth, the Debtors hold an “establishment” in Canada, and therefore the Receiver alternatively submits that recognition as a foreign nonmain proceeding is warranted.

## **VIII. Relief Requested**

### **A. Automatic Relief When a Foreign Proceeding is Main**

51. Certain relief is automatic when a foreign proceeding is recognized as main. 11 U.S.C. § 1520(a). Upon recognition of a foreign proceeding that is a foreign main proceeding—

(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).

52. Accordingly, pursuant to 11 U.S.C. § 1520(a), the Receiver seeks such relief in the Proposed Order attached hereto as Exhibit A.

### **B. Automatic Relief Whether or not Foreign Proceeding is Main**

53. Certain relief is automatic upon recognition of a foreign proceeding, whether main or nonmain. Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party. 11 U.S.C. § 1524. Upon recognition of a foreign proceeding, the foreign

representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724 (a). 11 U.S.C. § 1523(a). Accordingly, the Receiver seeks such relief in the form of Proposed Order attached hereto as Exhibit A.

**C. Discretionary Relief to Protect Creditors and the Debtors**

54. Certain discretionary relief is available upon recognition of a foreign proceeding under 11 U.S.C. § 1521 as discussed below. The court may grant relief under section 1521 only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected. 11 U.S.C. § 1522(a). The Receiver contends that the discretionary relief requested is for the protection of the creditors and the Debtors.

**D. Discretionary Relief Whether or Not a Foreign Proceeding is Main**

55. “Any appropriate” discretionary relief is available upon recognition of a foreign proceeding, whether or not a foreign proceeding is main. 11 U.S.C. § 1521(a) (“Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief”). In granting relief under 11 U.S.C. § 1521 to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding. 11 U.S.C. § 1521(c). That 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 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).

56. In addition, under 11 U.S.C. § 1521(b), upon recognition of a foreign proceeding, whether main or nonmain, the court may entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected. Accordingly, the Receiver seeks the above relief in the Proposed Order attached hereto as Exhibit A.

#### **E. Injunction Standards**

57. Certain relief under section 1521 (the "**1521 Relief**") may require the application of standards for injunctive relief. The standards, procedures, and limitations applicable to an injunction may apply to relief under the following:

11 U.S.C. §§ 1521(a)(1)(concerning staying of proceedings not already stayed by section 1520(a));

1521(a)(2)(concerning staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a)),



1521(a)(3)(concerning 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)); and

1521(a)(6)(concerning extending relief granted under section 1519(a)).

11 U.S.C. § 1521(e).

**F. Factors for Injunctive Relief**

58. The Receiver contends that it is not required that an adversary proceeding be filed and served on all parties in interest in order to obtain injunctive relief under chapter 15. *In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006) (adversary proceeding not required for Chapter 15 injunctive relief).

59. The factors for injunctive relief are stated in *Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1187 (5th Cir. 1979). They are discussed below.

60. **A substantial likelihood of success on the merits.** There is no difficult real issue on whether the Canadian Proceedings should be recognized, as other courts have recognized BIA proceedings and the proper documentation has been submitted. The Receiver also contends that the center of main interests is in Canada, since the management is in Canada. Accordingly, there is a substantial likelihood that the mandatory relief under Section 1520 will be ordered.

61. **A substantial threat of irreparable injury if the injunction is not issued.** The Receivership Order provides for a stay against seizure of assets and litigation similar to the automatic stay of 11 U.S.C. § 362(a). The Receivership Order and papers submitted in conjunction therewith, establishes that the Debtors are currently 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. The Receiver will seek to liquidate the Debtors' assets for the benefit of

stakeholders. If the 1521 Relief is not ordered, the orderly liquidation of assets could be jeopardized.

62. **That the threatened injury to the movant outweighs any damage the injunction might cause to the opponent.** Any threatened injury to the Debtors outweighs any damage the injunction might cause to the opponents. The 1521 Relief would actually benefit the Debtors' creditors by ensuring an orderly distribution of assets and facilitate the Canadian Proceedings. *See In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y.) (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.").

63. **That the injunction will not disserve the public interest.** The 1521 Relief will not disserve the public interest. The 1521 Relief is in the public interest. It seeks to facilitate a cross-border reorganization that will provide a benefit to the estates of the Debtors. The 1521 Relief is supported by notions of comity and will allow the Debtors to craft a productive solution for their estates.

64. In sum, the relief sought 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.

## **IX. No Bond**

65. 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.

66. In the event that the Court finds that the Canadian Proceedings are foreign nonmain proceedings, the relief requested herein is still appropriate because the relief is discretionary. *See* 11 U.S.C. § 1521 (“Upon recognition of a foreign proceeding, whether main or nonmain . . . the court may, at the request of the foreign representative, grant any appropriate relief . . .”). The Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtors' estate. Without such relief, the Debtors will be exposed to the risk of voluminous litigation and other actions against the estate, its assets and the Receiver in the United States, which would result in a “race to the courthouse” among creditors and other parties in interest, and thus, threaten the Debtors' reorganization efforts.

## **X. Comity**

67. If the court grants recognition, and subject to any limitations that the court may impose consistent with the policy of Chapter 15, a court in the United States shall grant comity or cooperation to the foreign representative. 11 U.S.C. § 1509(b)(3). Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee. 11 U.S.C. § 1525(a).

68. Accordingly, the Receiver seeks comity and cooperation of this Court with respect to the Canadian Court and its Receivership Order.

69. A central tenet of Chapter 15 is the importance of comity in cross-border insolvency proceedings. *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).

70. The Supreme Court defined comity as follows:

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

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

71. The exceptions to comity are construed especially narrowly when the foreign jurisdiction is like Canada, a sister common law jurisdiction with procedures akin to those in the United States. *Clarkson Co. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (Clear and convincing evidence of fraud is required to successfully attack a foreign judgment; the court held that it would contravene the public policy of New York and the doctrine of comity not to recognize the Canadian judgment in these circumstances); see also *In re Petition of Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) (stating that “Courts in the United States uniformly grant comity to Canadian proceedings” and noting that Canada is a sister common law jurisdiction with the United States).

72. The extension of comity to Canadian orders has continued since the 2005 enactment of Chapter 15. See *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010)(extending comity to Canadian CCAA order providing for a third party release and citing numerous cases where American courts have extended comity to Canadian judgments); *Raymond Chabot, Inc. v. Serge Côté Family Trust*, 2014 U.S. Dist. LEXIS 117128, 6 (D.S.C. Aug. 22, 2014) (entering temporary restraining order assisting Canadian bankruptcy receiver and noting “the widely-accepted view that Canadian judgments are entitled to recognition and enforcement here”); *Collins v. Oilsands Quest, Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012)(bankruptcy court enforced Canadian court stay from in CCAA noting “the question here is not whether this Court should grant a stay in the first instance, but whether

should accord comity and deference to the stay orders entered by the Alberta Court. The Court concludes that in light of the comity principles laid out above, the Court must defer to the procedures set forth in the Canadian Proceedings and enforce the stay.”).

### **CONCLUSION**

The Receiver respectfully requests that this Court recognize the Canadian Proceedings as foreign main proceedings, and grant the relief requested herein. The Receiver alternatively requests recognition as a foreign nonmain proceeding, and that the Court grant the relief requested herein.

Dated: April 4, 2019

Respectfully submitted,

**ROSENSTEIN, FIST & RINGOLD**

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**COUNSEL FOR CANADIAN RECEIVER**

**CERTIFICATE OF SERVICE**

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

/s/ John E. Howland

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

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

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

**ORDER GRANTING PETITION FOR EXPEDITED HEARING AND RECOGNITION  
AS FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS 1515 AND 1517 OF  
THE UNITED STATES BANKRUPTCY CODE AND RELATED RELIEF**

THIS MATTER comes before the Court for consideration of the *Petition for Expedited Hearing and Recognition as Foreign Main Proceeding, or Alternatively as Foreign Nonmain Proceeding, Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief* (the “**Petition**”), 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 Petition, the evidence presented and the arguments of counsel, the Court finds and concludes as follows:

1. Notice was proper and no party in interest made any response in opposition to the Petition, 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 Petition should be GRANTED.<sup>5</sup>

<sup>5</sup> All terms not otherwise defined herein shall have the meanings provided in the Petition.



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.

3. On April 1, 2019, ATB Financial (“**ATB**”) filed an application for the appointment of a receiver pursuant to Canada’s Bankruptcy and Insolvency Act (“**BIA**”) in the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary (the “**Canadian Court**”) in the proceeding styled *ATB Financial v. Innova Global Ltd et. al*, Alberta Court of Queen’s Bench File No. Court File No. 1901-04589 (the “**Canadian Proceedings**”).

4. On April 1, 2019, the Canadian Court, Honorable Justice B.E.C. Romaine, granted a Receivership Order in Alberta Court of Queen’s Bench File No. Court File No. 1901-04589 (the “**Receivership Order**”) appointing PWC as the receiver and manager of 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.

9. The Canadian Proceedings are foreign proceedings within the meaning of Section 101(23) of the Bankruptcy Code.

10. The Canadian Proceedings are entitled to recognition by this Court pursuant to Section 1517 of the Bankruptcy Code.

11. The Canadian Proceedings are entitled to recognition as a foreign main proceeding pursuant to Section 1502(4) of the Bankruptcy Code and are entitled to recognition as a foreign main proceeding pursuant to Section 1517(b)(1) of the Bankruptcy Code. The Debtors' centers of main interests are in Canada.

12. The Receiver is entitled to the relief afforded under Section 1520 of the Bankruptcy Code.

13. There is a substantial likelihood that with the relief granted herein, the Receiver will be able to successfully liquidate the remaining assets of the Debtors' under the provisions of the Bankruptcy Code in the above-referenced chapter 15 bankruptcy cases and the BIA in the Canadian Proceeding, which will benefit all stakeholders.

14. Relief is needed to protect the assets of the Debtors or the interests of the creditors pursuant to 11 U.S.C. § 1521. Therefore, the Receiver is entitled to the additional relief afforded under Section 1521 of the Bankruptcy Code (the "**1521 Relief**").

15. There is a substantial threat of irreparable injury if the 1521 Relief is not issued.

16. Any threatened injury to the Debtors and their assets outweighs any damage the injunction might cause to the opponents. The 1521 Relief would actually benefit the Debtors' creditors by ensuring an equitable and orderly distribution of assets and facilitate the Canadian Proceedings.

17. The 1521 Relief will not disserve the public interest. The 1521 Relief is in the public interest. It sets to facilitate a cross-border proceeding that will provide a benefit to the estates of the Debtors. The 1521 Relief is supported by notions of comity and will allow the Receiver to maximize the value available from the Debtors' estates.

18. As a result, 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 1521 of the Bankruptcy Code.

19. 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.

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS**

1. The Canadian Proceedings are hereby recognized as foreign main proceedings pursuant to Section 1517 of the Bankruptcy Code.

2. The Receivership Order is consistent with the public policy of the United States and is therefore granted comity. The terms of the Receivership Order granted in the Canadian Proceedings under the BIA on April 1, 2019 is given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under Section 1520 of the Bankruptcy Code including the following:

- (a.) Sections 361 and 362 of the Bankruptcy Code apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States.
- (b.) Sections 363, 549 and 552 of the Bankruptcy Code apply to a transfer of an interest of the Debtors in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate.

(c.) the Receiver may, but is not obligated to, operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by 11 U.S.C. §§ 363 and 552; and

(d.) Section 552 of the Bankruptcy Code applies to property of the Debtors that is within the territorial jurisdiction of the United States.

4. Pursuant to Section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which a Debtor is a party.

5. Pursuant to Section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning any of the Debtors pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a).

6. The following additional relief is granted pursuant to Section 1521 of the Bankruptcy Code:

- (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, to the extent not stayed under Section 1520(a) of the Bankruptcy Code, is hereby stayed;
- (b.) Execution against the assets of the Debtors to the extent not stayed under Section 1520(a) of the Bankruptcy Code is hereby stayed;
- (c.) 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 shall apply to the Debtors, its creditors, the Receiver, and any other parties-in-interest;
- (d.) The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court.
- (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.
- (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.

7. Pursuant to 11 U.S.C. § 1521(a)(6), to the extent not superseded by this Order, the findings and relief granted in that certain *Order Granting Receiver's Emergency Ex Parte*

*Application for Temporary Restraining Order And, After Notice And a Hearing, Preliminary Injunctive Relief, Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* will continue in full force until otherwise ordered by the Court.

8. ATB Financial (“**ATB**”) has consented to the Receiver’s use of ATB’s cash collateral, subject to the budget agreed upon by ATB and the Receiver, in connection with these Chapter 15 cases (the “**Cash Collateral**”). ATB is entitled to adequate protection for its interest in its Cash Collateral from any diminution in value resulting from the use, sale or lease of ATB’s Cash Collateral. Accordingly, ATB is hereby granted valid, binding, enforceable and perfected liens and security interests (the “**Adequate Protection Liens**”) in all assets of the Debtors within the territorial jurisdiction of the United States to secure, and an allowed administrative expense claim (to the extent that section 503 may apply to these cases) against the Debtors (the “**Adequate Protection Claim**”) for the amount of their indebtedness equal to any diminution in the value of in ATB’s Cash Collateral subsequent to the date of the filing of the Petitions for Recognition resulting from the use, sale or lease of ATB’s Cash Collateral. Nothing herein shall prejudice, impair or otherwise affect the rights of ATB to seek any other or supplemental relief (retroactive to the petition date) in respect of their adequate protection rights.

9. 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.

10. 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.

11. 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.