

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NORTH DAKOTA

In re:	§	
	§	Chapter 15
	§	
BALANCED ENERGY OILFIELD SERVICES INC., <i>et al.</i> ¹	§	Case No. 22-30100
	§	
Debtors in a Foreign Proceeding.	§	(Joint Administration Pending)
	§	

RECEIVER’S EMERGENCY APPLICATION FOR RELIEF PURSUANT TO SECTIONS 105(A) AND 1519 OF THE BANKRUPTCY CODE

FTI Consulting Canada Inc. (“FTI”), solely in its capacity as court-appointed receiver and manager (“Receiver” or “Foreign Representative”) of Balanced Energy Oilfield Services Inc. (“BCAN”), Balanced Energy Holdings Inc. (“BEH”), and Balanced Energy Oilfield Services (USA) Inc. (“BUSA”) (collectively, the “Balanced Energy” or “Debtors”) pursuant to the *Receivership Order* dated March 7, 2022 (the “Receivership Order”),² entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2201-02699 (the “Canadian Court” and the “Canadian Proceeding”) pending under Canada’s *Bankruptcy and Insolvency Act* (“BIA”), and as authorized foreign representative of the Debtors, respectfully submits this *Receiver’s Emergency Application for Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Application”) seeking emergency provisional relief under Bankruptcy Code sections 1519 and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), and respectfully states:

¹ Simultaneous chapter 15 petitions are filed by the Receiver for affiliated debtors Balanced Energy Oilfield Services Inc., Balanced Energy Holdings Inc., and Balanced Energy Oilfield Services (USA) Inc.; the Receiver seeks joint administration of these proceedings.

² A true and correct copy of the Receivership Order is attached as Exhibit A to the Official Form 401 Petition and can also be downloaded free of charge at FTI’s website: <http://cfcanada.fticonsulting.com/balancedenergy> and is incorporated herein for all purposes.

I. PRELIMINARY STATEMENT

1. The Debtors are companies that provide coiled tubing services to national oil companies, energy companies, and independent exploration and production companies in Canada and the United States. BCAN and BEH are entities organized under the laws of Alberta, Canada. BUSA, a Delaware entity and wholly owned subsidiary of BEH, is a Balanced Energy operating company which, until recently, conducted business in the United States. BCAN and BUSA are borrowers under certain secured credit facilities with a Canada-organized and based lender, National Bank of Canada (“NBC” or “Lender”), and pursuant to loan documents governed by Canadian law. BEH is a guarantor to the credit facilities.

2. On March 1, 2022, as a result of various defaults, NBC brought its *Application (Appointment of Receiver)* in the Canadian Court seeking appointment of the Receiver for the Debtors pursuant to the BIA. On March 7, 2022, the Receiver was appointed pursuant to the Receivership Order entered by the Canadian Court to jointly administer the Debtors’ estates. The Receivership Order provides similar rights, powers, and duties to the Receiver as those afforded to a liquidating trustee under title 11 of the United States Code (the “Bankruptcy Code”), including control over the Debtors’ assets and affairs, a stay of all collection activities and legal actions against the Debtors, and authority to seek recognition and comity with respect to the Receivership Order in foreign jurisdictions, including the United States.

3. Accordingly, the Receiver files the Petition, and the related Debtors’ petitions, and seeks the full extent of protections afforded by chapter 15 of the Bankruptcy Code to facilitate the ongoing administration of the Canadian Proceeding, specifically with respect to the Debtors’ assets located in the United States, and to assist the Receiver in carrying out its duties set forth in the Receivership Order. This chapter 15 case serves an important function in supporting the Receiver’s full and fair administration of the Debtors’ estates for the benefit of all creditors in

accordance with the BIA and operative Canadian law, including by recognition of the stay of proceedings set forth in the Receivership Order and as permitted by section 362 of the Bankruptcy Code. As of this filing, the Receiver is aware of three pending actions in the United States filed by creditors of one or more of the Debtors, which seek to impair the Debtors' assets and/or to liquidate claims through litigation, and thus respectfully, should be stayed through recognition of the Canadian Proceeding.

4. For the reasons set forth herein, the Supporting Declarations (defined below) and related filings, and pursuant to sections 1519 and 105(a) of the Bankruptcy Code, the Receiver requests entry of an order granting the provisional relief set forth herein and as authorized by chapter 15.

II. JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the District of North Dakota (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and sections 109 and 1501 of the Bankruptcy Code. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P).

6. These chapter 15 proceedings have been properly commenced pursuant to section 1504 of the Bankruptcy Code by filing of a petition pursuant to section 1515 of the Bankruptcy Code.

7. Venue is proper pursuant to 28 U.S.C. § 1410(2).

8. This Court has constitutional authority to enter final orders with respect to the relief requested herein. The Receiver further confirms its consent to this Court's entry of final orders or judgments on this Application if it is later determined that, in the absence of the consent of the parties, this Court does not have constitutional authority to enter final orders or judgments.

III. SUPPORT FOR THIS APPLICATION

9. In support hereof, the Receiver has caused to be filed, among other items, the (a) *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”); (b) *Declaration of Receiver in Support of the Verified Petition and this Application* (the “Receiver Declaration”); (c) *Declaration of Foreign Counsel* (the “Osler Declaration”); and together with the Receiver Declaration, the “Supporting Declarations”; and (d) any exhibits filed in support of this Application pursuant to applicable local rules. The Receiver further requests that the Court take judicial notice of its files in this case. Fed. R. Evid. 201.

10. The Receiver attaches a proposed form of order authorizing the Provisional Relief (as defined below) in support of the Receiver’s duties and powers pursuant to the Receivership Order and operative Canadian law.

IV. REQUEST FOR EMERGENCY RELIEF

11. Pursuant to Bankruptcy Rule 6003, within twenty-one (21) days immediately following the commencement of a case, the court is empowered to grant relief “to the extent that relief is necessary to avoid immediate and irreparable harm.” For this and the reasons stated herein, and in accordance with Local Rule 9006-1 and 9013-1, the Receiver respectfully requests emergency consideration of this Application.

12. 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 Verified Petition. Prior to entry of a recognition order, the Debtors do not benefit from the protections of the Bankruptcy Code, including the automatic stay provisions, without provisional relief being granted. Accordingly, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and

equitable administration of the Debtors' estates consistent with the Receivership Order. Without such emergency provisional relief, the Debtors will be exposed to the risks and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order and prejudicial to the ability of the Receiver to fulfill its duties under applicable Canadian law.

13. Should the Court determine that a hearing on this Application is required or otherwise appropriate, the Receiver respectfully requests that such hearing be set as soon as possible and at the Court's earliest convenience.

V. BACKGROUND

A. The Debtors Business and Corporate Structure

14. BCAN and BEH are companies incorporated pursuant to the laws of the Province of Alberta with their registered office in the City of Lethbridge in the Province of Alberta. BUSA is a company incorporated pursuant to the laws of the State of Delaware with its registered agent at The Corporation Trust Company, 1209 Orange Street, Wilmington, DE, 19801 and its principal office address at 2515 31st Street SE, Building 3, Minot, North Dakota, 58701. BUSA is a wholly owned subsidiary of BEH. The Debtors maintain a Canadian headquarters at 520 5 Ave SW #1550, Calgary, AB T2P 3R7, Canada. The Debtors' directors and officers reside(ed) in Canada and were/are employed by the Debtors in those respective capacities. Since entry of the Receivership Order, the Receiver has exercised complete control of the Debtors. Operations in the United States have been wound up and all employees laid off, but BUSA and the Debtors' estates continue to own various equipment that is located in the United States. BCAN has ongoing operations and approximately 65 employees in Canada.

15. The Debtors provide coiled tubing services ("CT Services") to national oil companies, energy companies, and independent exploration and production companies throughout

Canada and the United States. CT Services of the Debtors include, but are not limited to, drilling operations, well completions, and workovers.

16. The business of the Debtors has been negatively impacted since 2021 by the events surrounding the COVID-19 pandemic and the volatility in the oil and gas market. Such impact frustrated the Debtors' finances and ability to pay timely on its Financing Agreement (defined below), and the attempted Sales and Investment Solicitation Process (defined below).

17. As of this filing, the Receiver has determined that it is in the best interest of the Canadian estates and all stakeholders to conduct a sales process and continue the Balanced Energy business (in some appropriate form) in order to preserve jobs and realized any enterprise value. The Receiver prepared a sales process motion which was approved by the Canadian Proceeding on March 30, 2022, and which approved a stalking-horse bid and bid process (described in more detail below).

B. The Finance Agreement

18. BCAN and BUSA, as borrowers (the "Borrowers"), and NBC entered into that certain *Offer of Financing* dated June 8, 2020 and accepted by the Borrowers on June 10, 2020 (the "Offer of Financing"), along with that certain *Forbearance Agreement* dated March 2, 2021, the *First Amending Agreement* dated March 31, 2021, the *Second Amending Agreement* dated June 30, 2021, the *Third Amending Agreement* dated August 18, 2021, and the *Fourth Amending Agreement*, dated August 27, 2021.

19. Lender also advanced additional funds to BCAN pursuant to that certain Offer of Financing dated June 25, 2021 respecting a Highly Affected Sectors Availability Program Term Loan ("HASCAP Offer of Financing"; together with the Offer of Financing, the Forbearance Agreement, the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement and the Fourth Amending Agreement, the "Financing Agreement").

Pursuant to the Financing Agreement, Lender asserts that, as of January 26, 2022, the total indebtedness of the Borrowers to the Lenders, inclusive of interest, was approximately (a) demand revolving operating line of credit in the amount of CAD \$18,853,775.30; (b) BCAP demand loan in the amount of CAD \$4,687,139.14; (c) other outstanding credit card balances in the amount of CAD \$154,802.80; and (d) HASCAP term loan in the amount of CAD \$1,003,397.26 (collectively, the “Indebtedness”).

20. BEH executed a guarantee and a General Security Agreement (“GSA”) in connection with the Financing Agreement, which the Lender asserts obligates BEH—on a secured basis—for the Indebtedness. BUSA and BEH executed a guarantee in connection with the HASCAP Offer of Financing and granted GSA’s in favor of Lender as security for indebtedness under the HASCAP Offer of Financing.

21. Pursuant to the Financing Agreement, a Business Credit Availability Program (BCAP) demand loan (the “BCAP Loan”) was issued to the Borrowers in the amount of CAD \$4,000,000.00, and increased to CAD \$5,175,000.00 pursuant to the terms of the Third Amending Agreement. The BCAP Loan was issued under the Economic Development Corporation (“EDC”) backed demand loan program to provide additional liquidity for the working capital needs of the Debtors during the COVID-19 pandemic. On February 25, 2021, under a BCAP guarantee granted by EDC and the BCAP Loan, EDC guaranteed 80% of the indebtedness owing under the BCAP Loan in favor of NBC.

22. Pursuant to the HASCAP Offer of Financing, the HASCAP Facility was issued to the Debtors in the amount of CAD \$1,000,000.00 pursuant to the Highly Affected Sectors Availability Loan Guarantee Program. On January 19, 2021, pursuant to a HASCAP guarantee agreement granted by Business Development Corporation (“BDC”) and the HASCAP Offer of

Financing, BDC guaranteed loans issued under the HASCAP Facility to support BCAN's business during the pandemic.

C. The Forbearance Term and Debtors' Financial Difficulties

23. Beginning in December 2020, BCAN began experiencing financial difficulty and defaulted under the terms of the Offer of Financing. As a result, on March 2, 2021, Lender entered into that certain Forbearance Agreement with BCAN and the related guarantors to provide the parties an opportunity to find alternative financing or other sources of equity. The latest extension resulted in forbearance to December 31, 2021.

(1) Cash Flow Shortfall

24. On August 18, 2021, in accordance with the Third Amending Agreement, the Debtors provided a budget for the period of July 1, 2021 to December 31, 2021 (the "Revised Budget").

25. FTI completed a cumulative variance analysis respecting the Revised Budget which illustrated a negative revenue variance, and a cumulative EBITDA lower than projected, resulting in the Debtors failing to meet certain requirements under the Forbearance Agreement (including its EBITDA covenant). This underperformance continued and the Debtors experienced liquidity constraints throughout 2021.

26. On November 16, 2021 and November 26, 2021, respectively, the Debtors provided their 2022 cash flow forecast (the "2022 Forecast") and their proposed operational and structural changes to improve the Debtors' profitability. The 2022 Forecast and proposed operational changes included liquidating a portion of the Debtors' assets and pursuing financing from a third-party source to pay down the Indebtedness and generate additional revenue and cash for the Debtors. However, the 2022 Forecast also demonstrated that there would be a continued negative cash flow and insufficient funds under the Financing Agreement for the Debtors to operate.

27. Due to the financial circumstances and projections of the Debtors under the Revised Budget and the 2022 Forecast, and given the anticipated reduction in revenue and insufficient funds to continue operating as a going concern.

(2) **Investment Solicitation Process**

28. On February 9, 2021, BEH retained BDO Canada LLP (“BDO”) to provide the following services: (i) transactional advisory services to BEH in considering potential financing options; (ii) assistance and advice to BEH with the evaluation and negotiation of potential transactions and closing of a transaction; and (iii) to manage and assist with any due diligence process as required by a potential investor and assist with communications and presentations with potential purchasers (collectively, the “Investment Solicitation Process”).

29. From February 2021 to July 2021, BDO sought potential investors in accordance with the Investment Solicitation Process. In July 2021, BEH advised Lender that all avenues and options had been exhausted under the Investment Solicitation Process and no investors were identified.

(3) **Lender Demand and Notice of Intention to Enforce Security**

30. On January 26, 2022, Lender issued to the Debtors those certain demand letters and notices of intention to enforce its security pursuant to section 244 of the BIA (the “Demand Letters”), which demanded full payment of the Indebtedness.

31. Following the issuance of the Demand Letters and in accordance with Lender’s obligations under the Financing Agreement, Lender notified the EDC and BDC of alleged defaults of the Debtors under the Financing Agreement and the demand for full payment of the Indebtedness.

32. The Debtors have been and remain unable to pay the entire amount of the Indebtedness that is due and owing to Lender and, therefore, remain in payment Default under the Financing Agreement.

D. The Canadian Receivership Proceeding

33. On March 1, 2022, following approximately one year of extensive unsuccessful negotiations and an unsuccessful Investment Solicitation Process, Lender filed its *Statement of Claim* against the Debtors in the Canadian Court seeking judgment against the Debtors for the Indebtedness, and the appointment of the Receiver. In support thereof, Lender caused to be filed the *Affidavit of Dana Ades-Landy*, senior manager, special loans group for NBC (the “NBC Declaration”).

34. On March 7, 2022, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243(1) of the BIA.

35. The Receivership Order appointed the Receiver over the estates of the Debtors. The Receivership Order specifically authorizes the Receiver to act “as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.” (Receivership Order ¶ 31). It empowers and authorizes the Receiver to take various steps involving the property of the Debtors subject to the Canadian Proceeding. (Receivership Order ¶ 3). The Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. (Receivership Order ¶¶ 4-6). Additionally, the Receivership Order imposes a stay of initiation or continuation of proceedings against the Receiver, and the Debtors and their respective estates. (Receivership Order ¶¶ 7-11).

36. The Receivership Order also grants the Receiver a charge (the “Receiver’s Charge”) on all of the Debtors’ current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the

“Property”) to secure payment of the reasonable fees and expenses of the Receiver and its counsel. (Receivership Order ¶ 18). The Receiver’s Charge has the priority set forth in paragraph 18 of the Receivership Order.

37. The Receivership Order further authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms authorized therein. (Receivership Order ¶ 21) (the “Receivers Borrowing Charge”). That amount was subsequently increased to CAD \$1,750,000 by Order of the Canadian Court granted on March 30, 2022.

38. 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].” (Receivership Order ¶ 30).

E. Pending U.S. Civil Actions

(1) Rossco/Coach Civil Action

39. On March 10, 2022, Rossco Crane and Rigging, Inc. (“Rossco”) filed in the District Court for the State of North Dakota, County of Ward its *Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction* (the “TRO Motion,” initiating the “Rossco Crane Action”) against BUSA (the “Defendant”), alleging general unsecured amounts owed by BUSA of approximately \$140,643.27 for oilfield services allegedly provided to BUSA on or about July, 2021 through October, 2021.

40. Subsequently filed in the Rossco Crane Action was the *Affidavit of Kevin Elliot in Support of Motion for Temporary Restraining Order and Temporary Injunction* (the “Affidavit”),

whereby Coach, Truck & Tractor, LLC (“CTT”) alleges several repairman liens against BUSA’s property in satisfaction of approximately \$70,000 worth of various oilfield services provided to BUSA. Moreover, CTT states that it has executed on those liens by towing two assets of the Debtors (one crane and one hauling truck) to an impound yard located at 4418 6th Ave. West, Williston, ND 58801 (the “Impounded Assets”).

(2) **Fluid Pro Civil Action**

41. On March 8, 2022, Fluid Pro Oilfield Services USA, Inc. (“Fluid Pro”) caused to be served its *Complaint and Jury Demand* District Court for the State of North Dakota, County of McKenzie against BUSA alleging general unsecured amounts owed by BUSA of approximately \$397,460.00 for allegedly providing high pressure fluid pumping services to BUSA on or about October 10, 2021 through December 17, 2021 (the “Fluid Pro Action”).

(3) **Panther Pumping Services Civil Action**

42. On March 16, 2022, Panther Pumping Services, LLC (“Panther”) caused to be served its *Complaint* District Court for the State of North Dakota, County of McKenzie against BUSA alleging general unsecured amounts owed by BUSA of approximately \$85,900.00 for allegedly providing pumping and other related oilfield services to BUSA on or about the summer and fall of 2021 (the “Panther Pumping Action”; and collectively with the Rossco Crane Action and the Fluid Pro Action, the “Collection Actions”).

F. Receivership Status, Sales Process, and Proposed Transaction

43. Since the Receiver’s appointment (and prior to the appointment in an advisory role), the Receiver has spent significant time analyzing the books and records of the Debtors to assess their assets and liabilities. In connection therewith, the Receiver and Lender, along with the former principals of the Borrowers, have engaged in meaningful and extensive discussion regarding sale

or restructure of the Balanced Energy enterprise.³ The former principals' new entity, XDI Energy Solutions ("XDI"), has since emerged as a stalking-horse bidder for the Debtors' assets. The Receiver understands that it is the intention of XDI, should it be the winning bidder under the stalking horse process, to continue the ongoing business of the Borrowers in Canada and to preserve the ongoing operations (including employee retention) in a new purchasing entity.

44. The Receiver shall continue to operate the Debtors' business, including collection of all outstanding receivables and preservation of estate assets, for the benefit of the creditors pending sale of the assets or some other disposition of the Canadian Proceeding.

VI. ARGUMENTS AND AUTHORITIES

A. Provisional Relief Authorized by Bankruptcy Code Section 1519

45. Contemporaneously herewith, the Receiver has filed its Verified Petition seeking recognition and a ruling that the Canadian Proceeding is a foreign main proceeding as defined in section 1502(4) of the Bankruptcy Code, or, in the alternative as a foreign nonmain proceeding as defined in section 1502(5) of the Bankruptcy Code. Although "[a] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time,"⁴ 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. Accordingly, the Receiver seeks emergency provisional relief under 11 U.S.C. § 1519 and 11 U.S.C. § 105(a).⁵

³ The Receiver has also engaged in a lending, collateral, and perfection/priority review, and the Receiver believes that the Debtors' assets located in the United States are subject to the Lender's first priority liens.

⁴ 11 U.S.C. § 1517(c).

⁵ 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."

46. Provisional relief is appropriately granted “where relief is urgently needed to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1519(a). Recognizing that a chapter 15 petition does not afford immediate relief ordinarily afforded to domestic debtors, section 1519 expressly permits the following provisional relief:

- (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). Section 1521(a)(3), (4), and (7) of the Bankruptcy Code permits the Court to provisionally grant 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; [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)(3), (4), and (7).

B. Provisional Relief Sought by the Receiver

47. Consistent with sections 1519 and 105(a) of the Bankruptcy Code, the Receivership Order, and principles of comity, the Receiver requests the following provisional relief pending a determination on the Receiver’s Verified Petition (collectively, the “Provisional Relief”):

- (a) The terms of the Receivership Order be given full force and effect in the United States. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (b) 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 any of the Debtors or FTI in its capacity as Receiver, be stayed. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7).

- (c) Staying execution against the Debtors' assets. 11 U.S.C. § 1519(a)(1).
- (d) 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).
- (e) 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).
- (f) As provisional relief in aid of the Receivership Order, the Receiver's Charge and the Receiver's Borrowing Charge and priorities as set forth in the Receivership Order, including paragraphs 18 and 21 of the Receivership Order, be enforced against the Property (as defined in the Receivership Order) in accordance with the terms of the Receivership Order. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (g) Subject to the terms and conditions of the Receivership Order, the Receiver be authorized to execute all necessary documentation related to the Receiver's Borrowing Charge and to pay and perform all indebtedness, interest, fees, liabilities, and obligations when the same become due and are to be performed. The Receiver, in its discretion, may (but is not required to in order for the Receiver's Borrowing Charge and priorities to be enforceable) file a photocopy of this Order and/or the Receivership Order as a financing statement, notice of lien, or similar document with any recording officer designated to file financing statements, notices of lien or similar documents in any U.S. jurisdiction, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Order and/or the Receivership Order. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (h) If any of the provisions of the Order granting this Application related to the Receiver's Borrowing Charge shall subsequently be stayed, modified, amended, reversed or vacated in whole or in part (collectively, a "Modification"), whether by subsequent order of this Court or on appeal from the Order, such Modification shall not impair, limit or diminish the Receiver's Borrowing Charge, whether under the Order granting this Application (as entered prior to the Modification), under the Receivership Order, or under any of the documentation delivered pursuant thereto or hereto, including with respect to any advances made prior to entry of the Modification. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (i) As provisional relief in aid of the Receivership Order, the Receiver's Protections be given full force and effect in the United States. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).

- (j) 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).
- (k) Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of the Order granting the Application be immediately effective and enforceable upon its entry and, upon its entry, become final and appealable. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (l) The Receiver be 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, to the extent applicable (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. 11 U.S.C. §§ 1519(a)(3); 1521(a)(5), (7).
- (m) The Receiver be 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. 11 U.S.C. §§ 1519(a)(3); 1521(a)(5), (7).
- (n) This Court 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 this chapter 15 proceeding, 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.
- (o) 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 and waived.

C. Standard Applicable to Provisional Relief

48. Pursuant to section 1519(e) of the Bankruptcy Code, the standard for issuance of provisional relief requires the same satisfaction as that which is required for injunctive relief. 11

U.S.C. § 1519(e).⁶ The factors for injunctive relief as stated in *Minnesota Bearing Co. v. White Motor Corp.*, 470 F.2d 1323 (8th Cir. 1973),⁷ are discussed below.

(1) **Substantial likelihood of success on the merits**

49. There exists no credible challenge to recognition of the Canadian Proceeding, specifically in light of the Receivership Order entry, as a foreign main or, alternatively, nonmain proceeding. Courts, including within this Circuit, have consistently recognized Canadian insolvency proceedings, including receiverships under the BIA, under 11 U.S.C. § 1515(b). See *In re Big Sky Farms, Inc.*, No. 12-01711 (Bankr. N.D. Iowa September 12, 2012) (recognizing Canadian receivership appointed under the BIA); *In re Eagle Energy Inc.*, No. 19-33868-15, ECF No. 35, ¶ J (Bankr. N.D. Tex. Dec. 5, 2019) (same). See also *In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020); *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).

50. The Canadian Proceeding has been pending since March 7, 2022,⁸ with notice to all relevant parties consistent with applicable Canadian law, and the Receiver is not aware of any formal or informal objection to the authority of the Canadian Court or the force of its order within Canada.

⁶ 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).

⁷ This statement of the standard, in particular the requirements of “substantial probability” and “irreparable injury,” has become known as the “traditional test.” See, e. g., *Young v. Harris*, 599 F.2d 870, 875-76 (8th Cir.), cert. denied sub nom. *Young v. Landrieau*, 444 U.S. 993, 100 S. Ct. 526, 62 L. Ed. 2d 423 (1979); *Fennell v. Butler*, 570 F.2d 263, 264 (8th Cir.), cert. denied, 437 U.S. 906, 98 S. Ct. 3093, 57 L. Ed. 2d 1136 (1978); *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 112 (8th Cir. 1981).

⁸ Notably, the Receiver attempted to avoid the costs associated with seeking chapter 15 relief, but files at this time (and requests emergency provisional relief) based on various recent circumstances, including but not limited to the Collection Actions.

51. Further, the Receiver is a proper “foreign representative” because it is a “person or body,” as defined under section 101(41) of the Bankruptcy Code, that has also been authorized in the Canadian Proceeding to act as the Debtors’ foreign representative. *See* Receivership Order, ¶ 31 (“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. . . .”). The Court is thus entitled to presume that the Receiver is a proper “foreign representative.” *See* 11 U.S.C. § 1516(b).⁹

52. The Receiver also contends that the center of main interest for the Debtors is in Canada. As set forth more fully in the Verified Petition, which is incorporated herein, the Debtors “nerve center” is in Canada because the Debtors are either organized under Canadian Law, conduct their business in Canada, or were owned by a Canadian parent company. Moreover, each of the Debtors is controlled by the Receiver (located in Canada). Further, the Debtors’ headquarters is best described as of this filing as the office of the Receiver in Canada. The majority of the Debtors’ assets and liabilities are located in Canada, including BEH’s (a) ownership interest in the equity of the Debtors; (b) contractual rights, most of which were executed in Canada and are subject to Canadian law; and (c) the Debtors’ obligations to repay the Indebtedness. With respect to the last point, amounts owed under the Finance Agreement represent the vast majority of the Debtors’ outstanding obligations. The Finance Agreement is governed by the laws of the Province of Alberta and the federal Laws of Canada; Lender is a Canadian financial institution with offices in Alberta.

⁹ 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 BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Eagle Energy Inc.*, No. 19-33868-15, (Bankr. N.D. Tex. Dec. 5, 2019), ECF No. 35 (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).

53. 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).

54. Even if the Court were to determine that the Canadian Proceeding was a foreign nonmain proceeding, the Court could still order protective relief to the Receiver during the pendency of the chapter 15 proceeding. 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).

55. 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.

56. Comity is a central tenet of chapter 15. *See In re Nat’l Warranty Ins. Risk Retention Group*, 300 B.R. 719, 722 (Bankr. Neb. 2003); *Aviva Sports, Inc. v. Fingerhut Direct Mktg.*, 2021 U.S. Dist. LEXIS 219032, at *24 (8th Cir. 2021); *Hoffman v. Bullmore (In re Nat’l Warranty Ins. Risk Retention Group)*, 306 B.R. 614, 622 (B.A.P. 8th Cir. 2004). The U.S. Supreme Court defines 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).

57. Exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a sister common law jurisdiction with procedures akin to those in the United States. *See In re Nat’l Warranty Ins. Risk Retention Group*, 300 B.R. 719, 722 (Bankr. Neb. 2003); *see, e.g., In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010); *In re Singer*, 205 B.R. 355, 357 (Bankr. S.D.N.Y. 1997).

58. The extension of comity to orders issued in Canadian insolvency proceedings is routine. *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 Petition of Ernst & Young, Inc.*, 383 B.R. 773, 777 (Bankr. D. Colo. 2008). 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 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.”).

59. Courts within the Eighth Circuit have granted provisional and final relief substantially similar to the Provisional Relief sought by this Application. *See In re Nat’l Warranty Ins. Risk Retention Group*, 300 B.R. 719, 722 (Bankr. Neb. 2003); *In re Big Sky Farms, Inc.*, No. 12-01711 (Bankr. N.D. Iowa September 12, 2012).

60. For these reasons, the Receiver is likely to succeed in its request for recognition of the Canadian Proceeding and, to the extent necessary, in its request for section 1521 relief.

(2) Substantial threat of irreparable injury if the injunction is not issued

61. To the extent necessary to effectuate and complete its duties set forth in the Receivership Order, the Receiver continues to operate BCAN and/or oversee the affairs of the Debtors. Without injunctive relief recognizing the Receiver’s authority in the United States per the Receivership Order, including the staying of the Collection Actions, the Receiver will be frustrated from performing its duties, and the value of the Debtors’ assets could be jeopardized. *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.”).

62. As set forth above, the Receivership Order provides for substantially similar powers and protections pursuant to Canadian law as those afforded to a chapter 7 trustee under the Bankruptcy Code. Among others, the Receiver’s Charge, the Receiver’s Borrowing Charge, the Receiver’s Protections, the stay of all collection activities akin to 11 U.S.C. § 362, and the grant of specific authority for the Receiver to seek international recognition of the Receivership Order provides the Receiver with vital powers to maximize value for all rightful creditors.

63. Without recognition and enforcement of the Receivership Order to the fullest extent permitted by chapter 15, the Receiver will be unable to fully discharge its duties to all creditors, specifically including direct negative impact to the Receiver’s ability to maximize value for the estate and cause the Receiver to expend finite resources to defend actions that are intended to be stayed by the Receivership Order and by operation of Canadian law.

(3) **The threatened injury to the movant outweighs any damage the injunction might cause to the opponent**

64. Any threatened injury to the Debtors outweighs any damage the injunction might cause to opponents. The requested Provisional Relief, if granted, would benefit the Debtors’ creditors, as a whole, by ensuring an orderly distribution of assets by and through the Canadian Proceeding, including the forthcoming Investment Solicitation Process. *See, e.g., In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y. 2007), Dkt. 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 Debtors’ creditors.”). Moreover, the Debtors creditors and interested parties will receive proper notice and

have the ability to participate in the Canadian Proceeding—or, as applicable, this proceeding—to protect any rights they may have with respect to the Debtors.

(4) **The injunction will not disserve the public interest**

65. Finally, the requested relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it sets to facilitate a cross-border process that will provide a benefit to all rightful creditors of the Debtors. *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.”).

66. For the above stated reasons, the Provisional Relief sought is necessary and appropriate, in the interest of the public and international comity, consistent with 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.

67. Accordingly, to the extent necessary, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtors’ Canadian estates consistent with the Receivership Order. Without such relief, the Debtors will be exposed to the risk and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order, prejudicial to the Receiver fulfilling its duties under applicable Canadian law, and thus threatens the Receiver’s efforts to maximize value for the benefit of creditors.

D. No Bond

68. 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 its duties under the BIA, the Judicature Act, and the Receivership Order, is akin to a trustee, and any bond would necessarily come from the Debtors' assets.

VII. CONCLUSION

69. For the reasons stated herein and in the evidence supporting the Application, the Receiver respectfully requests entry of an order granting the Provisional Relief, and all such other and further relief to which the Receiver is justly entitled.

Dated: April 14, 2022.

Respectfully submitted,

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Counsel for FTI Consulting Canada Inc., solely in its capacity as court-appointed receiver and manager of the Debtors.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on April 14, 2022. A separate notice of service will be filed in accordance with applicable Bankruptcy and Local Rules describing specific physical and electronic mailing service.

/s/ Ryan G. Quarne
Ryan G. Quarne

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NORTH DAKOTA**

In re:	§	
	§	Chapter 15
	§	
BALANCED ENERGY OILFIELD SERVICES INC., <i>et al.</i> ¹	§	
	§	Case No. 22-30100
	§	
Debtors in a Foreign Proceeding.	§	(Joint Administration Pending)
	§	

**ORDER GRANTING RECEIVER’S REQUEST FOR
PROVISIONAL RELIEF PURSUANT TO 11 U.S.C. § 1519**
[Relates Dkt. No. ____]

FTI Consulting Canada Inc. (“FTI”), solely in its capacity as court-appointed receiver and manager (“Receiver” or “Foreign Representative”) of Balanced Energy Oilfield Services Inc. (“BCAN”), Balanced Energy Holdings Inc. (“BEH”), and Balanced Energy Oilfield Services (USA) Inc. (“BUSA”) (collectively, “Balanced Energy” or the “Debtors”) pursuant to the *Receivership Order* dated March 7, 2022 (the “Receivership Order”), entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2201-02699 (the “Canadian Court” and the “Canadian Proceeding”) pending under Canada’s *Bankruptcy and Insolvency Act* (“BIA”), and as authorized foreign representative of the Debtors, filed its *Receiver’s Emergency Application for Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Provisional Relief Application”),² in this chapter 15 proceeding.

For the reasons stated on the record, the Court finds that the relief requested in the Provisional Relief Application should be GRANTED; and the Court therefor **FINDS AND CONCLUDES** as follows:

¹ Simultaneous chapter 15 petitions are being filed for affiliated debtors Balanced Energy Oilfield Services Inc., Balanced Energy Holdings Inc., and Balanced Energy Oilfield Services (USA) Inc. which are accompanied by identical Verified Petitions (as defined herein); the Receiver will also seek joint administration of these proceedings.

² Capitalized terms not defined herein shall have the meaning ascribed in the Provisional Relief Application.

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- B. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
- C. Venue is proper pursuant to 28 U.S.C. § 1410(1) and (2).
- D. The Receiver is entitled to the provisional relief afforded under 11 U.S.C. § 1519.
- E. For the reasons stated in the Provisional Relief Application, the relief requested by the Receiver pursuant to 11 U.S.C. § 1519 is appropriate and necessary.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. All relief granted herein is on a provisional basis, with all relief granted being effective immediately upon entry of this Order and continuing until the conclusion of the recognition hearing to be held by this Court (unless otherwise extended pursuant to section 1519(b) of the Bankruptcy Code).

2. A hearing to consider preliminary and permanent relief as requested by the Verified Petition is set for _____, at _____ .m. (Central time), at Quentin N. Burdick United States Courthouse, 655 1st Avenue North Fargo, ND, 58102 (the “Recognition Hearing”). Counsel for the Receiver shall serve this Order on parties in interest in this chapter 15 proceeding and provide notice of the hearing.

3. The Receiver is recognized as, and shall be the representative of, the Debtors with full authority to administer the Debtors’ assets and affairs in the United States and may exercise the rights and powers of a trustee consistent with, and unless otherwise specified in, the Receivership Order.

4. Section 362 of the Bankruptcy Code shall apply with respect to the Debtors and the Debtors’ property that is within the territorial jurisdiction of the United States. For the sake of clarity, 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 FTI in

its capacity as Receiver, is hereby stayed. Execution against the assets of the Debtors, any act to collect, assess, or recover a claim against the Debtors that arose before the commencement of these chapter 15 cases, and the setoff of any debt owing to the Debtors that arose before the commencement of these chapter 15 cases against any claim of the Debtors, is hereby stayed.

5. 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, their creditors, the Receiver, and any other parties-in-interest.

6. 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.

7. As provisional relief in aid of the Receivership Order, the Receiver's Charge and the Receiver's Borrowing Charge and priorities as set forth in the Receivership Order are hereby enforced against all of the Debtors' current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof, in accordance with the terms of the Receivership Order.

8. Subject to the terms and conditions of the Receivership Order, the Receiver is authorized to execute all necessary documentation related to Receiver's Borrowings Charge and to pay and perform all indebtedness, interest, fees, liabilities, and obligations when the same become due and are to be performed. The Receiver, in its discretion, may (but is not required to in order for the Receiver's Borrowings Charge and priorities to be enforceable) file a photocopy of this Order and/or the Receivership Order as a financing statement, notice of lien, or similar document with any recording officer designated to file financing statements, notices of lien or

similar documents in any U.S. jurisdiction, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Order and/or the Receivership Order.

9. The Receiver is authorized and empowered, but not obligated to (a) maintain and continue to use, with the same account numbers, all of the Debtors' existing bank accounts (the "Bank Accounts") at depository institutions in the United States (the "Banks"), if any; (b) treat the Bank Accounts for all purposes as debtor-in-possession accounts; (c) maintain and continue to use the Debtors' existing business forms, stationery and checks, all without the appellation "debtor-in- possession"; and (d) preserve the reporting and accounting mechanisms used by the Debtors in respect of the Bank Accounts.

10. Those certain existing deposit agreements between the Debtors and the Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. The Receiver and the Banks may, without further Order of this Court, agree to and implement changes to the cash management systems and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts.

11. Each of the Debtors' and/or Receiver's Banks is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court. Any of the Debtors' Banks may rely on the representations of the Receiver with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Commencement Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Receiver as provided for herein.

12. 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 shall be paid except as authorized hereby.

13. If any of the provisions of this Order related to the Receiver's Borrowings Charge shall subsequently be stayed, modified, amended, reversed or vacated in whole or in part (collectively, a "Modification") whether by subsequent order of this Court or on appeal from this Order, such Modification shall not impair, limit or diminish the Receiver's Borrowings Charge, whether under this Order (as entered prior to the Modification), under the Receivership Order, or under any of the documentation delivered pursuant thereto or hereto, including with respect to any advances made prior to entry of the Modification.

14. As provisional relief in aid of the Receivership Order, the Receiver's Protections are given full force and effect in the United States.

15. 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.

16. 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.

17. This Court shall retain exclusive 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.

18. 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.

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

20. 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.

SIGNED: _____

THE HONORABLE JUDGE SHON HASTINGS
CHIEF UNITED STATES BANKRUPTCY JUDGE