

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____)	
IN RE:)	Chapter 15
)	
RAILPOWER HYBRID TECHNOLOGIES CORP.,))	Case No.
)	
Debtor.)	
_____)	
)	
RAILPOWER HYBRID TECHNOLOGIES CORP.,))	Document No. ____
)	
Movant,)	Hearing Date and Time:
)	
v.)	Response Deadline:
)	
NO RESPONDENTS.)	
_____)	

**MEMORANDUM OF LAW IN
SUPPORT OF CHAPTER 15 PETITION**

Ernst & Young Inc. (the “Monitor”) in its capacity as the foreign representative of Railpower Hybrid Technologies Corp. (the “Debtor”), by its undersigned United States counsel, respectfully submits this memorandum of law in support of the Debtor’s Chapter 15 Petition and that certain *Motion Pursuant to Chapter 15 Seeking Entry of an Order Recognizing Foreign Main Proceeding and Granting Additional Relief and Provisional Injunctive Relief* (the “Motion”).¹

FACTUAL BACKGROUND

Pursuant to the Initial CCAA Order entered by the Quebec Superior Court (Commercial Division) (District of Montreal) (the “Canadian Court”), the Monitor is charged with acting on the Debtor’s behalf in furtherance of its joint proceedings (the “Canadian Proceeding”) with

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Railpower Technologies Corp. under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), as commenced by the Debtor on February 5, 2009.

The Monitor, by its undersigned United States counsel, filed the Chapter 15 Petition and the Motion in order to commence cases ancillary to the Canadian Proceeding and seeking orders (1) recognizing the Canadian Proceeding as a "foreign main proceeding"; (2) granting additional relief upon such recognition; (3) granting certain provisional injunctive relief pending entry of the recognition order; and (4) granting a bridge order pending the hearing on such provisional injunctive relief.

The facts of the chapter 15 case are more fully set forth in the accompanying Motion and the supporting documents cited therein.

ARGUMENT

The purpose of the Canadian Proceeding is to propose, negotiate and administer a plan of arrangement under the CCAA, as well as to maximize the value to be distributed to all creditors of the Debtor under the auspices of the Canadian Court and with the aid of this Court. As proceedings under the CCAA in the Canadian Court, the Canadian Proceeding is entitled to the recognition and relief provided by chapter 15 of the Bankruptcy Code. Further, the Monitor is informed and believes that granting the additional relief sought herein will best assure an efficient and equitable resolution of the Debtor's liabilities and provide just treatment for all holders of claims against and interests in the Debtor and its property, protection of claim holders in the United States against prejudice, distribution of proceeds of the Debtor's property substantially in accordance with orders prescribed by the Bankruptcy Code, and economically and expeditiously administer the Debtor's affairs, consistent with the principles set forth in section 1507(b) of the Bankruptcy Code.

POINT I: THE COURT HAS JURISDICTION TO HEAR THE PETITION UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

The Canadian Proceeding is entitled to recognition as a foreign main proceeding under chapter 15 of the Bankruptcy Code because, among other things:

(A) the Canadian Proceeding is a foreign proceeding within the meaning of 11 U.S.C. § 101(23), and is a foreign main proceeding within the meaning of 11 U.S.C. § 1502(4);

(B) the Monitor is a foreign representative within the meaning of 11 U.S.C. § 101(24);

(C) the Chapter 15 Petition seeking recognition under chapter 15 of the Bankruptcy Code was filed in accordance with section 1504 of the Bankruptcy Code with respect to the Debtor; and

(D) the Chapter 15 Petition meets the requirements of 11 U.S.C. § 1515 with respect to the Debtor.

A. The Court has Jurisdiction to Recognize the Canadian Proceeding and Grant the Relief Requested

This Court has jurisdiction to hear and determine cases commenced under the Bankruptcy Code and all core proceedings arising thereunder pursuant to 28 U.S.C. §§ 157 and 1334. A case under chapter 15 is a “case” under the Bankruptcy Code. Recognition of foreign proceedings and other matters under chapter 15 of the Bankruptcy Code have expressly been designated as core proceedings pursuant to 28 U.S.C. § 157(b)(2)(P).

Venue is proper in this District. The Debtor has principal assets in the United States and, specifically, within the confines of this District. Rosenthal Statement at ¶ 4. Accordingly, venue is proper in this District pursuant to 28 U.S.C. § 1410(1). In addition, it is respectfully submitted

that venue in this District is also consistent with the interests of justice and the convenience of the parties, as provided by 28 U.S.C. § 1410(3).

B. The Case is Properly a Case Under Chapter 15

Chapter 15 of the Bankruptcy Code applies where, as here, assistance is sought in the United States by a foreign representative in connection with a foreign proceeding. 11 U.S.C. § 1501(b)(1). The chapter 15 case has been commenced for the purpose of obtaining the assistance of this Court to ensure the effective and economical implementation and administration of a plan of arrangement under CCAA. Therefore, the case is precisely the type of case for which chapter 15 of the Bankruptcy Code applies.

C. The Case Concerns Foreign Proceeding

The Bankruptcy Code defines a foreign proceeding in relevant part as follows:

The term “foreign proceeding” means 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 proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purposes of restructuring or liquidation.

11 U.S.C. § 101(23).

As more fully described in the Chapter 15 Petition, the Motion and the Rosenthal Statement, the Canadian Proceeding and the potential plan of arrangement for the Debtor to be developed constitute a statutory means of comprehensively restructuring the Debtor’s liabilities under the supervision of the Canadian Court. As such, the Canadian Proceeding is a collective judicial proceeding in a foreign country under a law (the CCAA) relating to adjustment of debt in which the assets and affairs of the Debtor are subject to control or supervision by the Canadian Court for the purpose of restructuring such debts. Accordingly, the chapter 15 case concerns a foreign proceeding within the meaning of 11 U.S.C. § 101(23). Further, under former section

304 of the Bankruptcy Code, the statutory predecessor to chapter 15, Canadian proceedings, including insolvency proceedings, were regularly granted comity. See, *In re Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996) (“Courts in the United States uniformly grant comity to Canadian proceedings.”) see also, *Cornfeld v. Investors Overseas Svcs. Ltd.*, 471 F. Supp. 1255, 1260-62 (S.D.N.Y. 1979), *aff’d*, 614 F.2d 1286 (2d Cir. 1979); *Caddell v. Clairton Corp.*, 105 Bankr. 366, 366 (N.D. Tex. 1989).

D. The Case Was Commenced by a Foreign Representative

The chapter 15 case was commenced by the duly appointed and authorized “foreign representatives” of the Debtor and the Canadian Proceeding within the meaning of 11 U.S.C. § 101(24), which defines a “foreign representative” in pertinent part as a “person or body . . . authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.”

The Initial CCAA Order evidences that Ernst & Young Inc., the Monitor, was appointed and is duly authorized to act as foreign representative with respect to the Debtor in the Canadian Proceeding. Rosenthal Statement, ¶¶ 1 and 31. By virtue of its appointment under the Initial CCAA Order, the Monitor is also a “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code.

Further, under former section 304 of the Bankruptcy Code, monitors or trustees appointed under the CCAA by the Canadian Court in CCAA proceedings were considered “foreign representatives.” See *In re Air Canada*, Case No. 03-11971 (PCB) (Order dated September 28, 2004) (Bankr. S.D.N.Y.) (recognizing CCAA proceeding as a “foreign proceeding” an court-appointed monitor as “foreign representative” under Bankruptcy Code).

E. The Chapter 15 Case was Properly Commenced

The chapter 15 case was duly and properly commenced as required by 11 U.S.C. §§ 1504 and 1509 by the filing of the Chapter 15 Petition for recognition of foreign proceedings under 11 U.S.C. § 1515(a) accompanied by all documents and information required by 11 U.S.C. §§ 1515(b) and (c), including: (i) a certified copy of the Initial CCAA Order, and (ii) a statement identifying all foreign proceedings with respect to the Debtor that are known to the foreign representative. The Monitor is not aware of any other foreign proceedings pending with respect to the Debtor. Rosenthal Statement at ¶ 36. Having filed the above-referenced documents and because the Court is entitled under section 1516(b) of the Bankruptcy Code to presume the authenticity of the Initial CCAA Order, the requirements of section 1515 of the Bankruptcy Code have been met.

F. The Canadian Proceeding Should Be Recognized as a Foreign Main Proceeding

The Bankruptcy Code provides that a foreign proceeding for which chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its “center of its main interest.” 11 U.S.C. § 1517(b)(1).

The Bankruptcy Code further provides that, in the absence of evidence to the contrary, the debtor’s registered office is presumed to be the center of the debtor’s main interest. 11 U.S.C. § 1516(c). Such presumption “is included for speed and convenience of proof where there is no serious controversy.” *See*, H.R. REP. NO. 31, 109th Cong., 1st Sess 1516 (2005). This presumption “permits and encourages fast action in cases where speed may be essential, while leaving the debtor’s true ‘center’ open to dispute in cases where the facts are more doubtful.” *See*, Jay Lawrence Westbrook, *Locating the Eye of the Financial Storm*, 32 BROOK. J. INT’L L. 3, 15 (2007).

“This presumption is not a preferred alternative where there is a separation between a corporation’s jurisdiction of incorporation and its real seat.” *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 127, 127 (Bankr. S.D.N.Y. 2007). The Bankruptcy Code is silent with respect to the types of evidence required to rebut the presumption that the “center of mail interests” is the debtor’s place of registration or incorporation. In *Bear Stearns*, however, Judge Lifland has suggested that:

[v]arious factors could be relevant to such a determination, including: the location of the debtor’s headquarters; the location of those who actually manage the debtor (which conceivably could be the headquarters of a holding company); the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

Id. at 128 (citing *In re SphinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff’d*, 2007 WL 1965597 (S.D.N.Y. July 3, 2007)).

Chapter 15 also directs courts to obtain guidance from the application of similar statutes by foreign jurisdictions: “[i]n interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.” 11 U.S.C. § 1508; *In re SphinX, Ltd.*, 351 B.R. at 118. In the regulation adopting the European Union Convention on Insolvency Proceedings (the “EU Convention”), the “center of main interests” concept is elaborated upon as “the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.” Council Reg. (EC) No. 1346/2000, ¶ 13; *see also* Case 341/04, *Bondi v. Bank of America, N.A. (In re Eurofood IFSC Ltd.)*, 2006 E.C.R. 1-3813, p. 18-19, ¶32, 2006 WL 1142304 (E.C.J. May 2, 2006). This generally equates with the concept of a

“principal place of business” analysis under United States law. *See In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 633-34 (Bankr. E.D. Cal. 2006).

Under United States law, many bankruptcy courts look to the debtor’s “nerve center” – where such debtor performs its most important, influential and consequential business decision making functions – in determining where a debtor’s principal place of business or center of main interests is located. *See In re Peachtree Lane Associates, Ltd.*, 150 F.3d 788, 795 (7th Cir. 1998) (“We are in agreement with the Fifth Circuit that the ‘most important, consequential, or influential’ place where or a corporation or partnership does its business is likely to be the place where its management decisions are made. This focus on the location of an entity’s primary decision makers is particularly appropriate, we think, in a reorganization case like this one, as such proceedings generally will involve the financial management of the debtor, rather than day-to-day operations”) (internal citations omitted); *Standard Tank Cleaning Corp.*, 133 B.R. 562, 564 (Bankr. E.D.N.Y. 1991) (“Essential to this determination is the location at which the Debtor makes its major business decisions. The corporation’s principal place of business is the ‘place where general supervision is given’... Therefore, many courts have held that a corporate Debtor’s principal place of business may be where the Debtor makes its major business decisions, even if its assets are located elsewhere.”).

In its chapter 15 case, the Debtor’s “real seat” – its “center of main interests,” “nerve center,” and “principal place of business” – is at its corporate headquarters in Brossard, Quebec, Canada (the “Corporate Headquarters”), which is where all of the most important, consequential, and influential business and management decisions are made for the Debtor.

Specifically, the Corporate Headquarters is where:

- (a) the principal administrative functions and back-office operations of the Debtor are performed;

- (b) the accounts receivable for the Debtor are collected;
- (c) the accounts payable for the Debtor are processed and paid;
- (d) the centralized cash management system of the Railpower Entities is maintained;
- (e) the principal bank accounts for the Debtor are located, and where Railpower Canada advances, through a centralized cash management system, sum of money to the Debtor to fund its day-to-day operations;
- (f) the information technology of the Debtor is maintained;
- (g) most of the Debtor's officers are located and act on behalf of the Debtor, including the Debtor's Chief Executive Officer, Chief Restructuring Officer, Chief Financial Officer, General Counsel and various Vice Presidents;
- (h) the board of directors for the Debtor meet for their board meetings; and
- (i) the Debtor executed many, if not all, of its contracts and leases.

Accordingly, for the reasons above, the Canadian Proceeding is pending in the center of the Debtor's main interests and constitutes a "foreign main proceeding" as defined in 11 U.S.C. § 1502(4).

G. The Monitor is Entitled to an Order Granting Recognition

As evidenced above, the foreign proceeding for which recognition is sought is a "foreign main proceeding" within the meaning of 11 U.S.C. § 1502, the Monitor applying for recognition is a "foreign representative" within the meaning of 11 U.S.C. § 101(24), and the Chapter 15 Petition meets the requirements of 11 U.S.C. § 1515 with respect to the Debtor. Accordingly, the Court is required to enter an order recognizing the Canadian Proceeding (including its Initial CCAA Order). *See* 11 U.S.C. § 1517 (providing that after notice and a hearing, a court shall enter an order recognizing a foreign proceeding if the statutory requirements are satisfied).

Recognizing the Canadian Proceeding would not be manifestly contrary to the public policy of the United States under 11 U.S.C. § 1506. Indeed, granting such recognition effectuates the U.S. public policy respecting foreign proceedings as articulated, among other ways, through the objectives set forth in 11 U.S.C. §§ 1501(a) and 1508. *See* 11 U.S.C. § 1501(a) (declaring that the purpose of chapter 15 is to further the objectives of (i) cooperation between the United States and foreign courts, (ii) creating greater legal certainty for trade and investment; (iii) providing fair and efficient administration of cross-border insolvency cases; (iv) protecting and maximizing the value of the debtor’s assets; and (v) facilitating the reorganization of financially troubled companies to protect investment and preserve employment); 11 U.S.C. § 1508 (directing that when interpreting Chapter 15, “the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions”).

Lastly, while chapter 15 greatly expands upon the procedures for recognizing foreign proceedings, the concept of recognition was well established under the Bankruptcy Code before the 2005 bankruptcy amendments. Under former section 304 of the Bankruptcy Code (superseded Chapter 15), United States bankruptcy courts regularly granted comity to Canadian proceedings. *See In re Davis*, 191 B.R. at 587; *Cornfeld*, 471 F. Supp. At 1259; *Caddel*, 105 B.R. at 366. Therefore, recognition of the Canadian Proceeding is also consistent with past practice.

POINT II: THE BRIDGE ORDER AND PROVISIONAL RELIEF REQUESTED BY THE MONITOR IS WITHIN THE SCOPE OF SECTION 1519

As set forth in the Motion, the Monitor is also requesting a bridge order and interim relief to preserve the Debtor’s assets in the United States for the benefit of all creditors.

A bridge order and interim relief is necessary because under chapter 15 of the Bankruptcy Code, the automatic stay does not commence upon filing. Rather, the stay only commences when the Court rules on a chapter 15 petition and enters an order granting recognition of a foreign main proceeding. *See* 11 U.S.C. § 1520(a)(1) (providing that the automatic stay under section 362 of the Bankruptcy Code applies when the Court recognized the foreign proceeding as a foreign main proceeding).

A. The Relief Requested is Authorized by Section 1519(a)

Where necessary to protect the debtor's assets or the creditors' interest while a petition for recognition is pending, a Court may grant, among other things, the following relief on a provisional basis:

- Staying execution against the debtor's assets;
- 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 assets that, by their nature or because of their circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- 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
- Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities.

11 U.S.C. § 1519(a) and 11 U.S.C. § 1521(3) and (4) (incorporated by 11 U.S.C. § 1519(a)(3)).

Therefore, this Court has jurisdiction under section 1519(1) of the Bankruptcy Court to order the foregoing relief in furtherance of the Canadian Proceeding.

Provisional injunctive relief is appropriate "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group." *See In re Banco*

Nacional de Obras v. Servicios Publico, S.N.C., B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (granting such an injunction). *See also In re Bird*, 222 B.R. 299, 233 (Bankr. S.D.N.Y. 1998) (finding that the purpose of filing under former section 304 was to prevent local creditors from dismembering assets located in the United States). Injunctive relief in the form of a stay also permits a debtor's affairs to be centralized in a single forum to maximize the creditors' recoveries. *See Bennett v. Manufacturers & Traders Trust Co.*, 2000 U.S. Dist. LEXIS 15316 N.D.N.Y. 2000) (citing *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 55 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093, *reh'g denied*, 430 U.S. 976 (1977)). In these cases, the bridge order and provisional injunctive relief that the Monitor requests is necessary to preserve the Debtor's estate and permit the reorganization of the Debtor's financial and business affairs under the auspices of applicable Canadian insolvency law for the benefit of all creditors and the Debtor's estate.

B. The Monitor Satisfies the Requirements of Section 1519(e) for Provisional Relief

A foreign representative must satisfy the general standards for injunctive relief to obtain the provisional relief afforded under section 1519 of the Bankruptcy Code. 11 U.S.C. § 1519(e) (providing that the "standards, procedures, and limitations applicable to an injunction shall apply to relief under this section"). That standard requires a showing of irreparable harm and either (i) probability of success on the merits, or (ii) the presence of sufficiently serious questions going to the merits and a balance of hardships tipping decidedly in favor of the party requesting the injunctive relief. *See In re Caldas*, 274 B.R. 583, 597-98 (Bankr. S.D.N.Y. 2002); *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988) (citing *In re Feit & Drexler, Inc.*, 760 F.2d 406, 415 (2d Cir. 1985)).

1. Irreparable harm

Courts have consistently held that “the premature piecing out of the property involved in a foreign liquidation proceeding constitutes irreparable injury.” *See Lines*, 81 B.R. at 270, 274 (granting preliminary injunction). Public policy favors the equitable and orderly distribution of assets that belong to foreign debtors but are located in the United States. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.*, 825 F.2d 709, 714 (2d Cir. 1987). *See also In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (finding that the guiding principle of bankruptcy is the equality of distribution and that “irreparable harm exists whenever local creditors of the foreign debtor seek to collect on their claims or obtain preferred positions to the detriment of other creditors”). The successful administration of the Debtor’s case requires that the claims of all creditors, wherever situated, be resolved in the Canadian Proceeding. If particular creditors are allowed to collect from or seize the Debtor’s assets, the Debtor’s estate may be prematurely pieced out, irreparably harming the Debtor’s reorganization efforts, and the orderly determination of claims and the fair distribution of assets in the Canadian Proceeding will be severely disrupted.

2. Success on the merits and balancing of hardships

Although the Monitor only need demonstrate either a probability of success on the merits or a balance of hardships favoring injunctive relief, the Monitor satisfies both alternatives with respect to the Debtor.

i. Probability of success on the merits

As previously mentioned, the Canadian Proceeding is a foreign proceeding and the Monitor is a foreign representative. Because the Monitor filed all of the proper supporting documentation contemporaneously with the Chapter 15 Petition, and the Debtor does not oppose

the Chapter 15 Petition, there is a high likelihood that the recognition of the Chapter 15 Petition will be granted.

ii. Balancing of hardships favors the Monitor

The issuance of an *ex parte* provisional injunction is appropriate when the applicant is in need of immediate relief. An applicant for such relief must show that “immediate and irreparable injury, a loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition.” *See, e.g., TKR Cable v. Cable Co. City Corp.*, 267 F.3d 196, 208 n.4 (3d Cir. 2001) (affirming *ex parte* temporary restraining order against defendants to enjoin further sales of cable television descramblers).

Preservation of the *status quo* while the Monitor seeks a determination as to the course of the foreign proceedings will not prejudice creditors. Indeed, the Debtor’s creditors will benefit from the Debtor’s and Monitor’s efforts to preserve, maximize the value of and reorganize the Debtor’s estate to achieve a truly global, equitable resolution of all claims against such estates.

Unless the requested bridge order and provisional relief is granted in this case, there is an imminent risk that assets of the Debtor’s estate will be dissipated, derailing the Debtor’s reorganization efforts and certainly disrupting and equitable distribution for the benefit of all of its creditors. As a result, the Debtor and its creditors will suffer immediate and irreparable injury for which they will have no adequate remedy at law. Therefore, the Monitor respectfully submits that it is necessary for this Court to grant the relief requested without prior notice to those in possession of the assets of the Debtor or its counsel.

The Monitor has narrowly tailored its request for a bridge order and provisional injunctive relief by requesting that such relief last only through a determination in respect of the

Chapter 15 Petition. Additionally, the requested relief is limited to the statutory relief provided for in section 1519 of the Bankruptcy Code.

Recognizing the Canadian Proceeding (including the Initial CCAA Order) and granting the requested bridge order and provisional injunctive relief will not contravene the public policy of the United States. *See, e.g., In re Bd. of Directors of Hopewell Int'l Ins. Ltd.*, 238 B.R. 25, 66 (Bankr. S.D.N.Y. 1999) (concluding that “when the foreign proceeding is in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings”) (internal quotation marks and citation omitted). Furthermore, “the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction.” *Cornfeld*, 471 F. Supp. at 1259 (concluding that recognition of a Canadian liquidation proceeding “would not violate the laws or public policy of New York of the United States”).

CONCLUSION

The Canadian Proceeding qualifies for recognition as a foreign main proceeding. Additionally, the Monitor and the Canadian Proceeding qualify for the accompanying statutory relief. The Monitor is the appropriate foreign representative and has satisfied the requirements for the additional interim injunctive relief requested. Without recognition and the requested bridge order and provisional relief, it will be extremely difficult for the Monitor to propose, let alone ensure the effective and economical implementation and administration of a plan of arrangement under the CCAA for the benefit of the Debtor's estate. For the foregoing reasons, the Monitor respectfully requests that this Court grant the relief requested.

Dated: Pittsburgh, Pennsylvania
February 5, 2009

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