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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 15
OILSANDS QUEST INC.,	:	Case No. 12-10476 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
Oilsands Quest Sask Inc.,	:	Case No. 12-10477 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
Township Petroleum Corporation,	:	Case No. 12-10478 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
Stripper Energy Services Inc.,	:	Case No. 12-10479 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)

In re:	:	Chapter 15
1291329 Alberta Ltd.,	:	Case No. 12-10480 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
Oilsands Quest Technology Inc.,	:	Case No. 12-10481 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
1259882 Alberta Ltd.,	:	Case No. 12-10482 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)
In re:	:	Chapter 15
Western Petrochemicals Group	:	Case No. 12-10483 (MG)
Applicant in Foreign Proceeding.	:	(Joint Administration Requested)

MEMORANDUM OF LAW IN SUPPORT OF CHAPTER 15 PETITIONS
FOR RECOGNITION OF FOREIGN PROCEEDINGS AND RELATED RELIEF

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Ernst & Young Inc. is the court-appointed monitor (the "**Monitor**") and authorized foreign representative of Oilsands Quest Inc. ("**BQI**") and certain of its direct and indirect subsidiaries, Oilsands Quest Sask Inc. ("**Sask**"), Township Petroleum Corporation ("**Township**"), Stripper Energy Services Inc. ("**Stripper**"), 1291329 Alberta Ltd. ("**129**"), Oilsands Quest Technology Inc. ("**Tech**"), 1259882 Alberta Ltd. ("**125**"), and Western Petrochemicals Group ("**Western**," and collectively, the "**Oilsands Group**") in proceedings (the "**Canadian Proceedings**") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"), pending before the Court of Queen's Bench of Alberta (the "**Alberta Court**").

The Monitor has commenced these chapter 15 cases (the "**Chapter 15 Cases**") ancillary to the Canadian Proceedings by filing *Verified Petitions for Recognition of Foreign Proceedings and Related Relief* (collectively, the "**Chapter 15 Petitions**") with the accompanying documentation required pursuant to sections 1504 and 1515 of title 11 of the United States Code (as amended, the "**Bankruptcy Code**") seeking the entry of an order recognizing the Canadian Proceedings as "foreign main proceedings" under section 1517 of the Bankruptcy Code, (ii) giving full force in the United States to the Initial Order of the Alberta Court dated November 29, 2011 (the "**Initial Order**") and the order of the Alberta Court dated December 20, 2011 (the "**December 20 Order**"), including any extensions or amendments thereof authorized by the Alberta Court (collectively, the "**Alberta Orders**"), and (iii) staying certain proceedings against McDaniels & Associates Consulting Ltd., a former consultant to the Oilsands Group ("**McDaniels**").

The Monitor respectfully files this Memorandum of Law in support of the Chapter 15 Petitions.

PRELIMINARY STATEMENT

The Canadian Proceedings are intended to provide the Oilsands Group with the protection needed to reorganize its financial affairs and thereby maximize the recovery for all stakeholders, and these Chapter 15 Cases have been commenced for the purpose of obtaining the assistance of this Court to ensure the effective and economical administration of that process. Among other things, chapter 15 authorizes this Court to (i) recognize a foreign proceeding upon a foreign representative's proper commencement of a case under chapter 15 and (ii) grant assistance in the United States to such foreign representative with respect to the foreign proceeding, including by granting comity under section 1509 of the Bankruptcy Code, providing additional assistance under section 1507, and fashioning appropriate relief pursuant to section 1521.

The Chapter 15 Petitions satisfy all of the requirements set forth in section 1515 of the Bankruptcy Code. As CCAA proceedings before the Alberta Court involving companies that operate solely in Canada, the Canadian Proceedings are entitled to the recognition and relief provided by chapter 15. In addition, the enforcement of the Alberta Orders in the United States upon recognition is warranted under section 1509(b) of the Bankruptcy Code, and relief under sections 1507 and 1521 is necessary to stay litigation that would give rise to indemnification claims against the Oilsands Group. The Monitor is informed and believes that granting the relief sought herein will best assure the fair and efficient administration of the Canadian Proceedings in accordance with the principles underlying chapter 15 of the Bankruptcy Code. Moreover, such relief is consistent with the relief afforded by United States courts in other ancillary chapter 15 cases involving proceedings under the CCAA.

JURISDICTION AND VENUE

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. The recognition of foreign proceedings and other matters under chapter 15 of the Bankruptcy Code have been expressly designated as core proceedings pursuant to 28 U.S.C. § 157(b)(2)(P).

Because the Oilsands Group does not have assets or a place of business in the United States, and BQI is currently party to litigation in the United States District Court for the Southern District of New York, venue for the Chapter 15 Case of BQI is proper in this District under 28 U.S.C. § 1410(2). Establishing venue in this District for the other Chapter 15 Cases of the Oilsands Group generally is also consistent with the interests of justice and convenience of the parties, having regard to the relief sought by the Monitor, under 28 U.S.C. § 1410(3).

FACTUAL BACKGROUND

For a description of the Canadian Proceedings and the Oilsands Group's activities, business, corporate organization, capital structure, and circumstances leading to the filing of the Chapter 15 Cases, the Court is respectfully referred to the Chapter 15 Petitions, the *Affidavit of Garth Wong* in support of the application of BQI, Sask, Township, Stripper, 129, and Tech under the CCAA, sworn to and submitted to the Alberta Court on November 28, 2011 (the "**Wong Affidavit**"), the First Report of the Monitor dated December 15, 2011 (the "**1st Monitor's Report**"), and the Second Report of the Monitor dated January 5, 2012 (the "**2nd Monitors Report**"). These documents are annexed as Exhibits C, D, and E respectively to the declaration of Ken Coleman sworn to February 6, 2012 and filed contemporaneously herewith (the "**Coleman Declaration**").

Copies of the Initial and December 20 Orders are annexed as Exhibits A and B respectively to the Coleman Declaration.

ARGUMENT

I.

THE CANADIAN PROCEEDINGS ARE ENTITLED TO RECOGNITION AS FOREIGN MAIN PROCEEDINGS

Chapter 15 of the Bankruptcy Code applies where a foreign representative seeks the assistance of a United States bankruptcy court in connection with a foreign proceeding. *See* 11 U.S.C. § 1501(b)(l). The Canadian Proceedings are entitled to recognition as "foreign main proceedings" under chapter 15 of the Bankruptcy Code because, among other things:

(A) each of the Canadian Proceedings is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code and is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code because the Canadian Proceedings are pending in the location of the center of main interests of each member of the Oilsands Group;

(B) the Monitor is a "person" within the meaning of section 101(41) of the Bankruptcy Code and a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;

(D) the Chapter 15 Petitions were filed in accordance with sections 1504 and 1509 of the Bankruptcy Code; and

(E) the Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.

A. These Cases Concern "Foreign Proceedings"

The Canadian Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code. That section provides, in pertinent 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 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).

The Canadian Proceedings are insolvency proceedings brought under the CCAA, which provides a statutory means for applicants thereunder to reorganize their affairs subject to the supervision of a court. The Oilsands Group has applied for protection under the CCAA in order to restructure its operations and maximize stakeholder value under the supervision of the Alberta Court and, as such, the Canadian Proceedings fall squarely within the definition contained in section 101(23). Indeed, since the passage of chapter 15, Canadian proceedings under the CCAA have routinely been granted recognition by courts in the United States. *See*, *e.g.*, *In re Angiotech Pharmaceuticals, Inc., et al.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011);[1] *In re Metcalfe & Mansfield Alternative Investments, et al.*, No. 09-16709 (Bankr. S.D.N.Y. January 5, 2010); *In re Canwest Global Communications Corp., et al.*, No. 09-15994 (Bankr. S.D.N.Y. November 3, 2009); *In re SemCanada Crude Company*, et al., No. 09-12637 (Bankr. D. Del. Aug 27, 2009); *In re Quebecor World Inc.*, No. 08-13814 (Bankr. S.D.N.Y. July 1, 2009); *In re Biltrite Rubber (1984) Inc., et al.,* No. 09-31423 (Bankr. N.D.Ohio April 2, 2009); *In re Nortel Networks Corp.*, No. 09-10164 (Bankr. D. Del. Feb. 27. 2009); *In re*

[1] Copies of unpublished decisions and orders referred to herein are attached for the Court's convenience as Exhibit F to the Coleman Affidavit.

MAAX Corporation, No. 08-11443 (Bankr. D. Del. Aug 5, 2008); *In re Destinator Technologies, Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008); *In re Muscletech Research and Development Inc. et al.,* Nos. 06 CIV 538 and 539 (S.D.N.Y. March 2, 2006). Accordingly, the Chapter 15 Cases concern "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.[2]

B. <u>These Cases were Commenced by a "Foreign Representative"</u>

These Chapter 15 Cases were commenced by the Monitor, the duly-authorized, court-appointed "foreign representative" of the Oilsands Group within the meaning of section 101(24) of the Bankruptcy Code. That section 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." 11 U.S.C. § 101(24). The Initial Order provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada." Initial Order ¶ 45. The Court is entitled to presume that the representative identified in the Initial Order is a "foreign representative" under section 1516(a) of the Bankruptcy Code. Accordingly, the Monitor is a proper "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code. In Paragraph 44 of the Initial Order, the Alberta Court specifically and respectfully requests that "all courts, tribunals, regulatory and administrative bodies are hereby

[2] 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*, *e.g.*, *Smith v. Dominion Bridge Corp.,* No. 96-7580, 1999 WL 111465, at *3 (E.D. Pa. March 2, 1999) ("As a sister common law jurisdiction, courts have consistently extended comity to Canadian Bankruptcy proceedings."); *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"); *Cornfeld v. Investors Overseas Servs. Ltd.,* 471 F. Supp. 1255, 1260-62 (S.D.N.Y. 1979), *aff'd,* 614 F.2d 1286 (2d Cir. 1979); *Caddel v. Clairton Corp*., 105 B.R. 366 (N.D. Tex. 1989).

respectfully requested . . . to grant representative status to the Monitor in any foreign proceeding." Initial Order ¶ 44.

C. These Cases were Properly Commenced under Chapter 15

The Monitor duly and properly commenced the Chapter 15 Cases, as required by sections 1504 and 1509 of the Bankruptcy Code, by filing the Chapter 15 Petitions for recognition of foreign proceedings under section 1515(a) accompanied by all documents and information required by section 1515(b) and (c). *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008) ("A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code."). Because the Monitor has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, it has properly commenced these Chapter 15 Cases.

D. The Canadian Proceedings Should be Recognized as Foreign Main Proceedings

The Canadian Proceedings should be recognized as "foreign main proceedings," as defined in section 1502(4) of the Bankruptcy Code. The Bankruptcy Code provides that a "foreign proceeding" that is the subject of a chapter 15 petition must be recognized as a "foreign main proceeding" if it is pending in the country where the debtor has its "center of . . . main interests." 11 U.S.C. § 1517(b)(1). While the Bankruptcy Code does not define this concept, courts equate a debtor's "center of main interests" with its principal place of business, examining factors such as the location of the debtor's headquarters, management, assets, and creditors, and the jurisdiction of controlling law. *See In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 70 (Bankr. S.D.N.Y. 2011) ("In determining the COMI of a foreign debtor, cases have examined a number of factors, 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.") (*quoting In re SPhinX*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007); *In re Bear Stearns*, 374 B.R. at 128 (same). Accordingly, though section 1516(c) of the Bankruptcy Code provides that in the absence of evidence to the contrary, the debtor's center of main interests is presumed to be located at its registered office, courts have frequently recognized foreign main proceedings for debtors incorporated in the United States. *See, e.g., In re Angiotech Pharmaceuticals, Inc., et al.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011) (recognizing CCAA proceeding as foreign main proceeding, including for members of corporate group incorporated in United States); *In re MAAX Corporation,* No. 08-11443 (Bankr. D. Del. Aug 5, 2008) (same); *In re Destinator Technologies, Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008) (same).

Headquarters and Management. Though BQI is incorporated in Colorado and was publically traded on the New York Stock Exchange, the Oilsands Group is a highly centralized business that is located and operated entirely in and around Alberta, Canada. Chapter 15 Petitions ¶ 7. The company has no place of business in the United States, maintaining nothing more than a registered agent in Colorado, and instead has its headquarters, executive offices, and principal street address at Suite 800, 1333 8th Street S.W., Calgary, Alberta, T2R 1M6, Canada. Chapter 15 Petitions ¶ 22. All of the strategic decisionmaking and corporate functions of the organization occur at this location- indeed, all three members of the Oilsands Group's current senior management team perform their duties in Alberta, and more generally, all nineteen employees or contractors of the Oilsands Group are employed in Canada. Chapter 15 Petitions ¶ 8. The Oilsands Group thus has no operational connection to the United States and is based entirely in Canada.

Property and Assets. The principal assets of the Oilsands Group are permits, licenses, and leases relating to natural resource properties in Alberta and Saskatchewan and granted by the Provinces of Alberta or Saskatchewan pursuant to applicable Canadian laws or regulations. As such, all substantive property of the Oilsands Group is located in Canada, and this remains true at the entity level; for instance, BQI's primary holdings are its 100% interests in its various subsidiaries, all of which are companies incorporated in Alberta. Township's main asset is a lease granted by the Province of Alberta. Likewise, Sask's primary assets, either directly or through Stripper, are oil sands exploration permits, licenses, and leases in Alberta and Saskatchewan. 129 owns assets related to camp facilities and equipment, while Tech was primarily incorporated to assess technologies related to bitumen and shale oil extraction. 125 and Western are largely inactive. By contrast, the Oilsands group has little to no property in any other jurisdiction, including the United States. *See* Chapter 15 Petitions ¶¶ 9, 23.

Creditors. With the exception of certain payables to regulators and consultants based in the United States, as well as the shareholder litigations in New York and Colorado, all liabilities of the Oilsands Group are to suppliers and creditors in Canada. As such, the parties that would be affected by the Canadian Proceedings are principally located in Canada. Chapter 15 Petitions ¶ 24.

Accordingly, the Canadian Proceedings are pending where each member of the Oilsands Group has its center of main interests and the proceedings constitute "foreign main proceedings" as defined in section 1502(4) of the Bankruptcy Code.

E. <u>The Monitor is Entitled to an Order Granting Recognition of the Canadian Proceedings as Foreign Main Proceedings</u>

As evidenced above, the Canadian Proceedings are "foreign main proceedings" within the meaning of section 1502(4) of the Bankruptcy Code, the Monitor applying for recognition is a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code, and the Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides, in pertinent part, that "[s]ubject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if - (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign non-main 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). *See also* H.R. Rep. 109-31(I), 109 Cong., Sess. 2005, *reprinted in* 2005 U.S.C.C.A.N. 88, 169 at 175 (noting, in enacting chapter 15, that the "decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition"). Accordingly, the Monitor respectfully submits that the Court should enter an Order recognizing the Canadian Proceedings as "foreign main proceedings" pursuant to section 1517 of the Bankruptcy Code.

II.

THE MONITOR IS ENTITLED TO AN ORDER <u>ENFORCING THE ALBERTA ORDERS</u>

In connection with the recognition of the Canadian Proceedings under chapter 15, the Monitor seeks enforcement in the United States of the Initial and December 20 Orders of the Alberta Court. The Initial Order provides the Oilsands Group with relief that is similar to and consistent with the relief that is available automatically under the Bankruptcy Code to chapter 11 debtors, such as, *inter alia*:

- stay relief to protect their business and property;
- the authority to remain in possession and control of their assets and operate their business;
- the authority to restructure their business by downsizing or shutting down any operations, selling any assets, terminating employees or repudiating leases, with the consequences thereof dealt with in a plan of arrangement or compromise or on further order of the Alberta Court; and
- the authority to file a plan of compromise or arrangement under the CCAA.

In addition, the Initial Order also provides stay relief to protect both the Monitor and former, current, and future directors and officers of the Oilsands Group. See Initial Order ¶¶ 13-15, 19. The December 20 Order, among other things, extends the stay of proceedings contained in the Initial Order to February 27, 2012 and adds 125 and Western as applicants in the Canadian Proceedings. December Order ¶ 2, 6. An application for a further stay extension is currently scheduled to be heard before the Alberta Court on February 16, 2012.

A. Upon Recognition, Courts in the United States Must Extend Comity to a Foreign Representative's Request Unless Contrary to Public Policy

Upon recognition of the Canadian Proceedings as "foreign main proceedings," the Alberta Orders should be given full force and effect in the United States on the basis of comity. Section 1509 of the Bankruptcy Code provides that "if the court grants recognition under section 1517, 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). This provision has been interpreted to provide that "[o]nce a foreign proceeding has been recognized by a U.S. bankruptcy court, it is mandatory that U.S. courts extend comity to a foreign representative's request for a grant of comity unless granting such request would contravene U.S. public policy." *CT Inv. Mgmt. Co., LLC v. Carbonell & Grupo Costamex*, 2012 U.S. Dist. LEXIS 3356, at *12 (S.D.N.Y. Jan. 6, 2012). *See also In re Condor Ins. Ltd.*, 601 F.3d 319, 324 (5th Cir. 2010) (noting that "U.S. courts must grant comity and cooperation to the foreign representative" after recognition); *In re Qimonda AG Bankruptcy Lit.*, 433 B.R. 547, 565 (E.D. Va. 2010) ("Put another way, §§ 1509 (b) (3) and 1506, read *in pari materia*, provide that comity shall be granted following the U.S. recognition of a foreign proceeding under Chapter 15, subject to the caveat that comity shall not be granted when doing so would contravene fundamental U.S. public policy."). Accordingly, once recognition has been granted to a foreign proceeding, section 1509(b) of the Bankruptcy Code generally entitles a foreign representative to comity and cooperation in aid of the administration of the foreign proceeding.

The primary limitation on this principle is section 1506 of the Bankruptcy Code, which provides that a court may refuse to take an action governed by chapter 15 if such "action would be manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. However, the legislative history of section 1506 makes clear that the public policy exception should be "narrowly interpreted" and is restricted to "the most fundamental policies of the United States." *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (citing H.R. REP. NO. 109-31(I), at 109, *as reprinted in* 2005 U.S.C.C.A.N. 88, 172). *See also In re Gold & Honey, Ltd.*, 410 B.R. 357 (Bankr. E.D.N.Y. 2009). *Cf. Hilton v. Guyot*, 159 U.S. 113 (1895) (holding that a foreign judgment should generally be accorded comity if "its proceedings are according to the course of a civilized jurisprudence"). Accordingly, courts have held that the public policy exception "should be interpreted restrictively" and that "a foreign judgment should generally be accorded comity if its proceedings are . . . fair and impartial." *In re Ephedra Prods. Liab. Litig.*, 349 B.R. at 90-91 (internal citations omitted) (affirming foreign judgment issued in the absence of a jury trial). *See also In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010) (noting that "this public policy exception is narrowly construed" and enforcing broad third-party releases in Canadian order); *Iida v. Kitahara (In re Iida)*, 377 B.R. 243 (B.A.P. 9th Cir. 2007) ("This public policy exception is narrow and, by virtue of the qualifier 'manifestly,' is limited only to the most fundamental policies of the United States."). Courts engaging in this analysis examine (i) whether the foreign proceeding was procedurally unfair and (ii) whether the application of foreign law would "'severely impinge the value and import' of a U.S. statutory or constitutional right, such that granting comity would 'severely hinder United States bankruptcy courts' abilities to carry out . . . the most fundamental policies and purposes' of these rights." *In re Qimonda AG*, 433 B.R. at 569-9 (citing *Gold & Honey, Ltd.*, 410 B.R. at 372).

In the instant matter, the Monitor requests the enforcement of the Alberta Orders in connection with the recognition of the Canadian Proceedings. Moreover, paragraph 44 of the Initial Order provides that:

> [The Alberta Court] hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this

> Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

Initial Order ¶ 44. The Alberta Court has thus requested the assistance and cooperation of courts in the United States in giving effect to the Initial Order. In the absence of any public policy concerns, such request should be granted on the basis of comity and section 1509 of the Bankruptcy Code. The same principles support the enforcement of the December 20 Order, which, among other things, extends the Initial Order.

The enforcement of the Alberta Orders, including the stay of proceedings contained therein, cannot be said to offend a fundamental public policy of the United States. Bankruptcy Courts presiding over plenary cases have extended the automatic stay to include directors and officers and other non-debtor parties in various circumstances where there is sufficient identity of interests between the non-debtors and the debtors or where stay protection is essential to the debtor's reorganization efforts. *See, e.g.*, *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 443 B.R. 295, 316-17 (Bankr. S.D.N.Y. 2011) (extending stay to third-party actions against non-debtor entities); *In re Calpine Corp.*, 365 B.R. 401, 409 n.20 (S.D.N.Y. 2007) (same); *In re United Health Care Org.*, 210 B.R. 228, 232-35 (S.D.N.Y. 1997) (same). Further, the court in *CT Inv. Mgmt. Co.* granted comity to a stay order issued in a foreign proceeding and expressly noted that, even though the facts arguably would not have warranted the extension of a stay to a non-debtor in a plenary case, "the laws of [the foreign jurisdiction] and the United States need not be identical for extension of comity to be appropriate." *CT Inv. Mgmt. Co.*, 2012 U.S. Dist. LEXIS 3356 at *14.

Moreover, the Initial Order and the stay of proceedings therein is a standard feature of proceedings under the CCAA and has routinely been enforced in full in the

United States upon recognition of a foreign proceeding under Chapter 15. *See*, *e.g.*, *In re Angiotech Pharmaceuticals, Inc., et al.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011) (enforcing Initial Order in full in the United States); *In re Nortel Networks Corp.*, No. 09-10164 (Bankr. D. Del. Feb. 27. 2009) (same); *In re MAAX Corporation,* No. 08-11443 (Bankr. D. Del. Aug 5, 2008) (same); *In re Destinator Technologies, Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008) (same); *In re Muscletech Research and Development Inc. et al.,* Nos. 06 CIV 538 and 539 (S.D.N.Y. March 2, 2006) (same). *Cf. In re Canwest Global Communications Corp., et al.*, No. 09-15994 (Bankr. S.D.N.Y. November 3, 2009) (refusing to enforce stay provisions of the Initial Order due to absence of pending litigation in the United States).

Accordingly, the Monitor respectfully submits that, under section 1509(b) of the Bankruptcy Code, this Court should give full force and effect to the Alberta Orders in the United States upon recognition of the Canadian Proceedings. Such relief would not be manifestly contrary to the public policy of the United States, as prohibited in section 1506. Indeed, granting such recognition furthers the United States public policy respecting foreign proceedings as articulated, among other ways, through the objectives set forth in sections 1501(a) and 1508 of the Bankruptcy Code.

III.

THE COURT SHOULD STAY PROCEEDINGS PURSUANT TO SECTIONS 1507, 1521(A) AND 105(A) OF THE BANKRUPTCY CODE

The enforcement of the Alberta Orders and the stay embodied therein is warranted, as discussed above, on the basis of comity and section 1509. Such enforcement would effectively stay proceedings in the United States against former, current, and future directors or officers of the Oilsands Group. However, the Monitor respectfully requests that this

Court also stay certain proceedings against McDaniels & Associates Consulting Ltd. pursuant to sections 1507, 1521(a), and 105(a) of the Bankruptcy Code.

Section 1507 of the Bankruptcy Code provides that, "if recognition is granted," a court "may provide additional assistance to a foreign representative under this title or under other laws of the United States." 11 U.S.C. § 1507. Section 1521(a) provides that, upon recognition of a foreign proceeding, and "where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of any creditors, the court may grant any appropriate relief . . . ." 11 U.S.C. § 1521. Such relief includes, among other things, "granting any additional relief that may be available to a trustee," with certain exceptions that are not relevant here. *Id*. Finally, section 105(a) of the Bankruptcy Code allows the Court to "issue any order… necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a).

Courts in plenary bankruptcy cases will exercise their broad powers under section 105(a) to stay actions against non-debtor third parties in "unusual circumstances" where "a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate," such as where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant." *QUEENIE, LTD. v. NYGARD INT'L*, 321 F.3d 282, 287 (2d Cir. 2003). The paradigm example of such circumstances "would be a suit against a third party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case." *In re Lomas Financial Corp.*, 117 B.R. 64, 66 (S.D.N.Y. 1990) (staying action against a "non-debtor third party" on the basis that debtor was obliged to indemnify its officers for all legal claims arising out of acts performed in their capacity as . . . officers"). *See als*o *See McHale v. Alvarez (In re*

1031 Tax Group, LLC), 397 B.R. 670 (Bankr. S.D.N.Y. 2008) (in extending the stay to third parties, "a court should consider, among other relevant factors, whether the suits would . . . increase the debtor's indemnification liability . . . ."); *Calpine Corp. v. Nev. Power Co. (In re Calpine Corp.)*, 354 B.R. 45 (Bankr. S.D.N.Y. 2006)*, aff'd*, 365 B.R. 401, 410 (S.D.N.Y. 2007) (noting that if judgment were entered against third party, debtors "must indemnify it thereby having an adverse impact upon property of the Debtors' estates"); *In re United Health Care Org.*, 210 B.R. 228, 232 (S.D.N.Y. 1997) ("One example of a situation where such an injunction would be permitted would be a suit against a third party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against it in the case."); *In re Bidermann Indus. U.S.A.*, 200 B.R. 779, 784 (Bankr. S.D.N.Y. 1996) ("The case law indicates that "unusual circumstances" exist where the claim clearly arises out of the defendant's actions in his capacity as the debtor's officer, and he is undisputedly entitled to indemnity."); *Eastern Air Lines v. Rolleston*, 111 B.R. 423, 435 (Bankr. S.D.N.Y. 1990) ("this Court finds that the indemnification rights of Mr. Lorenzo make their interests 'so intimately intertwined with those of the debtor that the latter may be said to be the real party in interest,' thereby justifying an extension of the automatic stay under § 105 of the Code").

McDaniels and certain former and current directors and officers of the Oilsands Group are currently named defendants in a securities class action in the United States District Court for the Southern District of New York (the "**SDNY Action**"). Chapter 15 Petitions ¶ 12. Though all of these parties are entitled to claim indemnification from BQI for acts taken in connection with their employment by the company, and thus proceedings against them relating to such acts are in effect actions against the Oilsands Group, actions against the director and officer defendants will be stayed through the enforcement of the Alberta Orders. However, by their terms, the Alberta Orders do not purport to stay proceedings against McDaniel. The commencement or continuation of proceedings against McDaniels thus poses real and legitimate risks to the estate, and the Monitor respectfully requests that the Court stay any actions against the McDaniels relating to its employment by the Oilsands Group.

CONCLUSION

WHEREFORE, the Monitor respectfully requests that this Court grant the relief requested in the Chapter 15 Petitions, and such other and further relief as may be just and proper.

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