IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	
	§	**CASE NO. 15-50161**
GASFRAC ENERGY SERVICES, INC., *et al.*,[1]	§	**Jointly Administered**
	§	
	§	**Chapter 15**
Debtors in a foreign proceeding.	§	

MONITOR'S MOTION TO CLOSE CASE WITH FINAL REPORT PURSUANT TO FED. R. BANKR. P. 5009(C)

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

Now comes Ernst & Young, Inc., ("**EY**") as the court-appointed monitor,[2] authorized foreign representative[3] of the above-captioned Debtors and Residual Trustee[4] (the "**Monitor**") and files *Monitor's Motion To Close Case With Final Report Pursuant To Fed. R. Bankr. P. 5009(c)* ("**Motion and Final Report**"), and states:

[1] The Debtors are: GASFRAC Energy Services Inc., GASFRAC Services GP Inc., GASFRAC US Holdings Inc., GASFRAC ENERGY Services Limited Partnership, GASFRAC Inc., and GASFRAC Energy Services (US) Inc.
[2] On January 14, 2015 the Debtors instituted proceedings under the Companies' Creditors Arrangement Act ("**CCAA**") in the Matter of Gasfrac Energy Services Inc., et. al., in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary Court File No. 1501-00396 (the "**Canadian Proceedings**"). On January 15, 2015, the Canadian Court granted an Initial Order (the "**Initial Order**") for relief in the Canadian Proceedings, which appointed EY as the Monitor of the Canadian Proceedings under the Initial Order.
[3] On February 2, 2015, the Court entered "Order Granting Monitor's Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief" ("**Recognition Order**") recognizing the Canadian Proceedings as foreign main proceedings and recognizing the Monitor as a foreign representative pursuant to Section 1517 of the Bankruptcy Code and . 15-50161 Dkt. 46.
[4] EY was appointed Residual Trustee under a Plan of Compromise and Arrangement approved pursuant to a "Stay Extension and Sanction Order" signed by the Court of Queen's Bench of Alberta, Judicial Center of Calgary (Court File No. 1501-00396), and approved by this Court in "Order Granting Expedited Joint Motion Of The Monitor And The Debtors For Order Recognizing And Giving Full Force And Effect To The Sanction Order Of The Canadian Court" at 15-50161 Dkt. 140.

I.
INTRODUCTION

1. On January 14, 2015, the Debtors instituted proceedings under the Canadian Companies' Creditors Arrangement Act ("**CCAA**"), which is a proceeding similar to a US Chapter 11 case. EY was appointed Monitor by the Canadian Court. Upon being appointed as Monitor, EY, as foreign representative, filed the above Chapter 15 cases for the Debtors. This Court recognized the Monitor as a foreign representative under 11 U.S.C. § 101(24) and the Canadian proceedings as foreign main proceedings under 11 U.S.C. § 1517.

2. The assets of the Debtors have been sold and a Canadian Plan of Compromise and Arrangement ("**Plan**") was approved by the Canadian Court and this Court. Under the Plan, the Monitor was appointed Residual Trustee to wind up the affairs of the Debtors and to dissolve the US Companies. The Monitor has administered all of the assets of the Debtors and has dissolved the US Companies.

3. The Monitor submits that the purpose of its appearance in this Court has been completed and, therefore, files this final report and seeks closure the above-referenced, jointly administered chapter 15 bankruptcy cases.

4. Accordingly, the Monitor seeks an Order, effective December 31, 2016, approving this Motion and Final Report as a Final Report under Fed. R. Bankr. P. 5009(c) and closing this Chapter 15 case and discharging the Monitor from any further responsibilities.

II.
JURISDICTIONAL, CORE MATTERS, VENUE, AND STATUTORY PREDICATES

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

6. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105(a), 350 and 1517, and Fed. R. Bankr. P. 5009(c).

III.
SUPPORT FOR THIS MOTION AND FINAL REPORT

7. The Monitor relies on the record in this case, including judicial notice of the filings in this case, any evidence provided at any hearing on this Motion and Final Report, and the following exhibits:

Ex	Description	Comment
A	Proposed Form of Order Granting Monitor's Motion To Close Case With Final Report Pursuant To Fed. R. Bankr. P. 5009(c)	
B	Tenth Report of the Monitor	

IV.
FINAL REPORT

A. Canadian Proceedings

8. On January 14, 2015 the Debtors instituted proceedings under the Companies' Creditors Arrangement Act ("**CCAA**") by filing applications for the commencement of reorganization proceedings pursuant to the CCAA, in the *Matter of Gasfrac Energy Services Inc., et. al.*, Court File No. 1501-00396 (the "**Canadian Proceedings**"). The Canadian Proceedings are heard in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary (the "**Canadian Court**").

9. On January 15, 2015, the Canadian Court granted an Initial Order (the "**Initial Order**") for relief in the Canadian Proceedings, a copy of which is attached as Exhibit GF-4 to the Monitor's *Notice Of Filing Of Documents In Support Of First Day Motions*. 15-50161 Dkt. 10.

10. Also, on January 15, 2015, the Canadian Court appointed EY as the Monitor of the Canadian Proceedings under the Initial Order. Initial Order ¶ 25. The Monitor's role in the

Canadian Proceedings is to supervise the property and business affairs, and the Debtors are obligated to cooperate with the Monitor in this respect. Id. ¶¶ 25-32.

B. Chapter 15 Cases

11. On January 15, 2015 ("**Petition Date**"), the Monitor filed Official Form No. 1 Chapter 15 petitions for each of the Debtors pursuant to 11 U.S.C. § 1504, 1509(a), and 1515(a), commencing these Chapter 15 cases. 15-50161 Dkt. 1.

12. On February 2, 2015, the Court entered "Order Granting Monitor's Expedited Petition For Recognition As Foreign Main Proceeding Pursuant To Sections 1515 And 1517 Of The United States Bankruptcy Code And Related Relief" ("**Recognition Order**") recognizing the Canadian Proceedings as foreign main proceedings pursuant to Section 1517 of the Bankruptcy Code. 15-50161 Dkt. 46.

C. Canadian Versus US Debtors

13. All six Debtors are debtors in both the Canadian Proceedings and in the Chapter 15 Cases.

14. The following Debtors are Canadian companies: GASFRAC Energy Services Inc. ("**GESI**"), GASFRAC Services GP Inc. ("**GSGP**"), GASFRAC Energy Services Limited Partnership ("**GES LP**") ["**Canadian Companies**"].

15. The following Debtors are United States companies: GASFRAC US Holdings Inc. ("**Holdings**"), GASFRAC Inc. ("**GI**"), and GASFRAC Energy Services (US) Inc. ("**GESI US**") ["**US Companies**"].

16. On January 23, 2015, the Debtors obtained approval of the Canadian Court to engage in an extensive sales and solicitation process ("**SISP**") to market the business and operations of the Debtors. This Court approved the SISP on February 2, 2015. 15-50161 Dkt. 43.

17. On March 16, 2015, the Debtors obtained approval of the Canadian Court with respect to an Asset Purchase Agreement ("**APA**") entered into by the Debtors with the successful bidder through the SISP providing for the purchase of most of the Debtors' assets (the "**Transaction**"). This Court approved the Transaction on March 18, 2015 in an "Order Authorizing Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances and Interests and Recognizing and Giving Full Force and Effect to Order of the Canadian Court Approving the Sale of Substantially All Assets." 15-60161 Dkt. 85.

18. The Transaction closed on April 2, 2015, resulting in full payment to the Debtors' first lien secured creditor, with proceeds remaining to be paid to the unsecured creditors of the Debtors, including, but not limited to, a dividend to holders of the unsecured subordinate debentures of GESI (the "**Subordinate Debentureholders**").

D. <u>US Companies Claims Procedure</u>

19. On March 11, 2015, the Movants filed a Monitor's And Debtors' Expedited Motion For Approval Of Claims Process For United States Creditors. 15-50161 Dkt. 76.

20. On March 18, 2015, the Court entered an Order Granting Monitor's And Debtors' Expedited Motion For Approval Of Claims Process For United States Creditors ("**Original Claims Procedure Order**"). 15-50161 Dkt. 84. The Original Claims Procedure Order established the applicability of certain provisions of the bankruptcy code to claims, established notice procedures, and set a bar date for the filing of claims for May 7, 2015.

E. <u>The Plan</u>

21. On March 26, 2015, the Debtors obtained approval of the Canadian Court with respect to a transaction with Calfrac Well Services Ltd. (the "**Calfrac Transaction**"). The Calfrac Transaction was conditioned upon creditor approval of the Plan of Compromise and

Arrangement ("**Plan**")[5] with respect to its remaining creditors (the "**Affected Creditors**"), the sanction[6] of the Plan by the Canadian Court pursuant to a "sanction" order, and required the Debtors to implement the Plan.

22. On May 13, 2015, the Canadian Court entered the Extension of Stay & Creditors' Meeting Order ("**Creditors' Meeting Order**") establishing a protocol and process for the convening and conduct of a meeting of the Affected Creditors to vote on the Plan. On the same day, this Court entered an order recognizing and giving full force and effect to the Creditors' Meeting Order. 15-50161 Dkt. 114.

23. Pursuant to the Creditors' Meeting Order, the Creditors' Meeting was held on June 22, 2015. The voting Affected Creditors voted overwhelmingly in favor of the Plan.

24. On June 22, 2015, the Debtors' filed an Application for Stay Extension and Sanction Order with the Canadian Court, seeking sanction of the Plan, which is expected to be heard on June 24, 2015. 15-50161 Dkt. 133-3; 133-4.

25. On June 24, 2015, the Stay Extension and Sanction Order was signed by the Court of Queen's Bench of Alberta, Judicial Center of Calgary (Court File No. 1501-00396) ("**Sanction Order**").

26. On June 25, 2015, this Court entered an "Order Granting Expedited Joint Motion Of The Monitor And The Debtors For Order Recognizing And Giving Full Force And Effect To The Sanction Order Of The Canadian Court" ("**Sanction Recognition Order**"). 15-50161 Dkt. 140.

[5] A copy of the Plan is at 15-50161 Dkt. 127-2.
[6] A Canadian plan sanction order is akin to a plan confirmation order under the United States Bankruptcy Code.

F. Subsequent Claims Procedure for Post-Petition Creditors

27. On June 25, 2015, this Court entered an "Order Granting Monitor's And Debtors' Expedited Motion For Approval Of Subsequent Claims Procedure For United States Creditors." ("**Subsequent Claims Order**") 15-50161 Dkt. 139. The Subsequent Claims Order set a July 30, 2015 bar date for the filing of claims arising post-petition.

G. Omnibus Claims Objection

28. On March 8, 2017, the Monitor filed "Monitor's First Omnibus Objection To Claims Pursuant To Fed. R. Bankr. P. 3007(D) Based On (1) Claims That Were Not Timely Filed; Or (2) Claims That Have Been Satisfied Or Released During The Case." 15-50161 Dkt. 165. That omnibus claims objection was granted by an April 6, 2017 "Order Granting Monitor's First Omnibus Objection To Claims Pursuant To Fed. R. Bankr. P. 3007(D) Based On (1) Claims That Were Not Timely Filed; Or (2) Claims That Have Been Satisfied Or Released During The Case." 15-50161 Dkt. 166.

H. Payment of Claims

29. Pursuant to the Tenth Report of the Monitor, all valid and proven claims against the US entities have been paid in full. All remaining claims were resolved through the Omnibus Claims Objection.

I. Litigation

30. There have been no adversary proceedings filed by or against the Debtors or the Monitor since the Petition Date. On October 27, 2016, the lawsuit styled *Tanya L. Miracle v. Matthew Scott Wade and Gasfrac Energy Services, Inc.* was filed in the Court of Common Pleas, Summit County, Ohio, in Case No. CV-2016-10-4578 ("**Miracle v. Wade**"). The Monitor discovered the *Miracle v. Wade* lawsuit fortuitously through Wade's litigation counsel, but the Monitor was never served with process in *Miracle v. Wade*. In *Miracle v. Wade*, the plaintiff

Miracle alleged personal injury damages caused by a post-petition accident with a motor vehicle allegedly owned by GASFRAC Energy Services, Inc. and operated by the co-defendant, Wade. The *Miracle v Wade* matter has settled using insurance proceeds.

V.
ARGUMENT AND AUTHORITIES

A. Closing of a Chapter 15 Case

31. A case under Chapter 15 may be closed in the manner prescribed under 11 U.S.C. § 350. 11 U.S.C. § 1517(d). After an estate is fully administered and the court has discharged the trustee, the court shall close the case. 11 U.S.C. § 350(a).

32. Bankruptcy Code § 105(a) empowers courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of chapter 15 is to promote cooperation between courts of the United States and courts of foreign countries involved in cross-border insolvency cases. 11 U.S.C. § 1501(a)(1). Consistent with Bankruptcy Code § 1501, Bankruptcy Code § 1525(a) requires that courts "cooperate to the maximum extent possible with a foreign court or a foreign representative." 11 U.S.C. § 1525(a).

33. With respect to a case under chapter 15 of the Bankruptcy Code, upon recognition of a foreign proceeding, courts "may provide additional assistance to a foreign representative under this title" considering "whether such additional assistance, consistent with the principles of comity, will reasonably assure . . . the just treatment of all holders of claims against or interests in the debtor's property [and] the protection of claim holders in the United States against prejudice and inconvenience." 11 U.S.C. § 1507.

34. Moreover, upon recognition of a foreign proceeding, "any appropriate relief" may be granted "where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1521(a).

35. Fed. R. Bankr. P. 5009(c) concerns the requirements for closing a Chapter 15 case. It provides:

> (c) Cases under chapter 15. A foreign representative in a proceeding recognized under § 1517 of the Code [11 USCS § 1517] shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.
>
> Fed. R. Bankr. P. 5009(c).

36. The purpose of the Monitor's appearance as foreign representative of the Debtors is completed. This Motion shall serve as a Final Report describing the nature and results of the Monitor's activities in this Court. As shown above, on January 14, 2015, the Debtors instituted proceedings under the Canadian CCAA, a process similar to a US Chapter 11 case. On January 15, 2015, the Canadian Court granted an Initial Order (the "**Initial Order**") for relief in the Canadian Proceedings, which appointed EY as Monitor. This Court, among other things, recognized the Canadian Proceedings as foreign main proceedings and gave full force and effect to the Initial Order. The Canadian Court and this Court approved a claims process for pre-petition claims and also a claims process for post-petition claims. The Canadian Court and this Court approved a sales process for the sale of assets. Pursuant to the sales process, the assets of

the Debtors were sold, in transactions approved by the Canadian Court and this Court. The Debtors proposed its Plan under the CCAA. The creditors voted in favor of the Plan. The Canadian Court approved of the Plan in a Sanction Order, and this Court entered the Sanction Recognition Order giving effect to the Sanction Order in the United States.

37. Under Section 5.2(f) of the Plan, the Monitor as Residual Trustee on behalf of the US Companies has a duty to dissolve and wind up the US Companies. 15-50161 Dkt. 127-2. The Monitor has caused the dissolution of the US Companies.

38. Since the entry of the Sanction Order and the Sanction Recognition Order, the Monitor has administered the remaining assets of the Debtors and paid claims pursuant to the Plan. This Motion and Final Report requests an Order approving of the final distributions by the Monitor of the assets of the Debtors and constituting a bar of any party in interest asserting claims against the Debtors' assets or the Monitor.

B. <u>Service of this Motion and Final Report</u>

39. Pursuant to Fed. R. Bankr. P. 5009(c), the Monitor is transmitting this Motion and Final Report to the United States Trustee, and giving notice of its filing to the Debtors, all persons or bodies authorized to administer foreign proceedings of the Debtors, all parties to litigation pending in the United States in which the Debtors were a party at the time of the filing of the petition, and such other entities as the Court may direct. The Monitor will file a certificate with this Court that such notice has been given.

VI.
PRAYER

WHEREFORE, the Monitor respectfully requests that the Court enter the Proposed Form of Order Granting Monitor's Motion To Close Case With Final Report Pursuant To Fed. R.

Bankr. P. 5009(c) attached as **Exhibit A** to the Motion, granting the relief requested herein; and for all other relief, at law or in equity, to which the Monitor is justly entitled.

Dated: May 31, 2019

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

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COUNSEL FOR CANADIAN MONITOR

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served upon the persons entitled to notice by either U.S. first class mail, postage prepaid or by electronic notification on parties in interest were directed to be served with the foregoing Motion through the offices of the Monitor's noticing agent. The Monitor will supplement this certificate of service with a copy of such service list.

/s/Steve A. Peirce