

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 20-_____
BOS SOLUTIONS LTD.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
	§	

In re:	§	
	§	Case No. 20-_____
BOS SOLUTIONS INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
	§	

In re:	§	
	§	Case No. 20-_____
BOS LEASECO LLC	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
	§	

In re:	§	
	§	Case No. 20-_____
BOS SOLUTIONS REAL ESTATE INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
	§	

In re:	§	
	§	Case No. 20-_____
BOS USHOLDCO INC.	§	
	§	Chapter 15
Debtor in a foreign proceeding.	§	
	§	Joint Administration Requested
	§	

**DECLARATION OF FOREIGN COUNSEL
UNDER PENALTY OF PERJURY**

1. I am a Partner in Blake, Cassels & Graydon, LLP (“Blakes”). My office is located at 855 2nd Street S.W., Suite 3500, Calgary, Alberta, T2P 4J8, Canada. I graduated with

a J.D. from the University of Western Ontario in 1998 and received my LL.M from Osgoode Hall Law School in 2007. I am a member of the Law Society of Alberta and the Law Society of Ontario and was admitted to the Alberta Bar in 2001 and the Ontario Bar in 2000. I have practiced at Blakes since 2007 and I am the head of the Restructuring & Insolvency group at the Blakes Calgary office. Prior to joining Blakes, I articulated and practiced at an international law firm in Toronto, Ontario, practiced at a boutique Calgary firm and was a legal and policy advisor to two consecutive Chairmen of the Canadian Senate Standing Committee on Banking, Trade and Commerce. My practice focuses primarily on insolvency and corporate restructuring proceedings. As part of my practice, I have been involved in numerous cross-border proceedings, including Chapter 15 proceedings, such as *In re Sanjel (USA) Inc.*, No. 16-50778 (Bankr. W.D. Tex.), *In re Argent Energy (Canada) Holdings, Inc.*, No. 16-20060 (Bankr. S.D. Tex.), and *In re Eagle Energy Inc.*, No. 19-33868 (Bankr. N.D. Tex.).

2. Blakes' client is Ernst & Young Inc. ("EY") solely in its capacity as court-appointed receiver (the "Receiver") of (1) BOS Solutions Ltd. ("BOS Ltd."), (2) BOS Solutions Inc. ("BOS Inc."), (3) BOS Leaseco LLC ("BOS Leaseco"), (4) BOS Solutions Real Estate Inc. ("BOS Real Estate"), and (5) BOS USHoldco Inc. ("BOS Holdco") (collectively, "BOS" or the "Debtors") pursuant to the Receivership Order dated May 4, 2020, entered by the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada, Court File No. 2001-05949 (the "Canadian Court" and the "Canadian Proceedings") under Canada's Bankruptcy and Insolvency Act.

3. Contemporaneously herewith, as foreign representative, the Receiver has caused to be filed Official Form 401 Chapter 15 petitions for each of the Debtors in the above referenced cases.

4. As foreign representative for the Debtors in these Chapter 15 cases, the Receiver seeks recognition of the Canadian Proceedings as the foreign main proceedings for the Debtors; alternatively, as foreign non-main proceedings.

5. On May 4, 2020, National Bank of Canada as the administrative agent (the “Agent”) on behalf of a group of corporate entities (collectively, the “Lenders”) filed an Application (Receivership Order) in the Canadian Proceedings seeking the appointment of EY as receiver under section 243 of the Bankruptcy and Insolvency Act, RSC 1985 c B-3 (the “BIA”) and section 13(2) of the Judicature Act, RSA 2000 c J-2. On May 4, 2020, the Canadian Court, Honorable Justice P. R. Jeffrey, entered the Receivership Order (the “Receivership Order”) pursuant to section 243(1) of the BIA and 13(2) of the Judicature Act.

6. The Bankruptcy and Insolvency Act (“BIA”) is one of two pieces of federal legislation in Canada applicable to bankruptcies and insolvencies.¹ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (Can.). The BIA governs both voluntary and involuntary bankruptcy liquidations and provides for debtor reorganizations.

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

¹ The second federal legislation in Canada concerning bankruptcies and insolvencies is the Companies’ Creditors Arrangement Act (“CCAA”), which affords financially troubled corporations the opportunity to restructure their financial affairs through a “Plan of Arrangement.” Companies’ Creditors Arrangement Act, RSC 1985 c C-36 (Can). The CCAA process is akin to chapter 11 of the Bankruptcy Code, affording companies an opportunity to restructure

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

8. A court-appointed receiver under the BIA is a “national” receiver, meaning that a receiver administers assets in each of Canada’s ten provinces and three territories, typically without further order of provincial courts. The BIA and its related legislation (the Companies’ Creditors Arrangement Act) are federal legislation. But provincial legislative jurisdiction governs property and civil rights, potentially affecting some insolvency-related matters, similar to the interplay between state and federal law in the United States. Nonetheless, the BIA provides a statutory framework for a court-appointed receiver to carry out its mandate on a national basis rather than relying on the various provincial statutes or courts for its authority.

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

10. I have been asked to opine on whether the Canadian Proceedings meet the definition of “foreign proceeding” under 11 U.S.C. § 101(23), which provides that a foreign proceeding is:

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

operations rather than liquidate. *See In re Fracmaster, Ltd.*, 237 B.R. 627, 629 n.3 (Bankr. E.D. Tex. 1999).

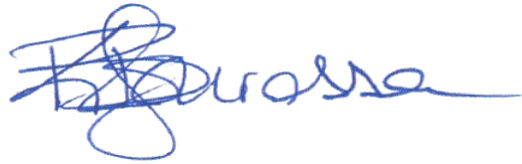
which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11. In my opinion, based on the above analysis, the Canadian Proceedings are foreign proceedings within the meaning of 11 U.S.C. § 101(23).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

[Remainder of this page intentionally left blank; signature page will follow]

Executed this 4th day of May, 2020.

A handwritten signature in blue ink, appearing to read "Bourassa", with a large, stylized initial "B" and a long horizontal stroke extending to the right.

By:

Kelly Bourassa, Canadian Counsel
for Receiver and Foreign Representative