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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 15
Asbestos Corporation Limited,[1]	)	Case No. 25-_____( )
Debtor in a Foreign Proceeding.	)	

VERIFIED PETITION AND MOTION OF FOREIGN REPRESENTATIVE FOR (A) RECOGNITION OF THE CCAA PROCEEDING AS A FOREIGN MAIN PROCEEDING OR, IN THE ALTERNATIVE, AS A FOREIGN NONMAIN PROCEEDING, AND (B) CERTAIN RELATED RELIEF

[1] The Debtor in this chapter 15 case, along with its unique identifier, is Asbestos Corporation Limited (Canadian Federal Business Number: 104903273RC0001). The Debtor has a registered and business address in Canada of 840 Boul. Ouellet, Thetford Mines, QC G6G 7A5, Canada.

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Raymond Chabot Inc. ("**RCI**"), in its capacity as the duly appointed foreign representative (in such capacity, the "**Foreign Representative**" or **"Petitioner**") of the above-captioned debtor, Asbestos Corporation Limited (the "**Debtor**" or "**ACL**"), which is the subject of a proceeding initiated under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended (the "**CCAA**"), currently pending before the Superior Court of Québec (the "**CCAA Proceeding**," and such court, the "**Canadian Court**"), by and through its undersigned counsel, hereby submits this *Verified Petition and Motion of the Foreign Representative for (A) Recognition of the CCAA Proceeding as a Foreign Main Proceeding or, in the Alternative, as a Foreign Nonmain Proceeding, and (B) Certain Related Relief* in furtherance of the Chapter 15 Petition for Recognition of Foreign Proceeding (Official Form 401) (the "**Petition**") [ECF No. 1] filed concurrently herewith (together with the Petition, the "**Verified Petition**") pursuant to sections 105, 1515-1517 and 1519-1522 of title 11 of the United States Code (the "**Bankruptcy Code**"), for (i) entry of an order, substantially in the form attached hereto as Exhibit A (the "**Recognition Order**") after notice and a hearing (the "**Recognition Hearing**"), granting recognition of the CCAA Proceeding as a foreign main proceeding or, in the alternative, as a foreign nonmain proceeding and (ii) certain related relief.

In support of the Verified Petition, the Foreign Representative respectfully refers this Court to the *Declaration of Ayman Chaaban Pursuant to 28 U.S.C. § 1746* (the "**Chaaban Declaration**" or "**Chaaban Decl.**") [ECF No. 2] and the *Declaration of Alain V. Tardif as Canadian Counsel in Support of Chapter 15 Petition and First Day Pleadings* (the "**Tardif Declaration**" or "**Tardif Decl.**") [ECF No. 3] which are filed concurrently herewith and incorporated herein by reference. In further support hereof, the Foreign Representative respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Debtor is a Canadian company that owns asbestos mines in Québec, Canada. Although the Debtor stopped mining for asbestos in the 1980s, it has faced several thousands of lawsuits in the United States, brought by individuals claiming personal injury due to alleged exposure to asbestos produced by the Debtor. Over the years, the Debtor has defended and settled or otherwise resolved asbestos-related claims, with CLMI (defined below) reimbursing the Debtor for their share of defense costs and settlements pursuant to the ISA (defined below) and applicable insurance policies. Nonetheless, thousands of claims are still pending against the Debtor, and are increasing. The Debtor does not have sufficient liquidity to continue defending and reimbursing against such claims, and its insurance coverage is finite.

2. The strain on the Debtor's ability to manage its asbestos liabilities was significantly exacerbated in September 2023, when a state court in South Carolina imposed extraordinary sanctions on the Debtor. Despite the Debtor's having never operated in the United States and having no operating assets here, the South Carolina court appointed a receiver over the Debtor with respect to certain powers, rights and assets, specifically including the purported power and right to control the Debtor's defenses of asbestos litigation throughout the entire United States and administer the Debtor's insurance assets with respect to those suits. The appointment of the receiver, which the Debtor and CLMI have resisted in the U.S. courts, has led to additional costly disputes as to the validity of the receivership and the control of litigation against ACL. All the while, ACL continues to face new personal injury claims, as well as defaults, a $16.2 million default judgment and the risk of additional default judgments in ongoing litigation that threatens to deplete the insurance assets available to fairly compensate injured parties on their merits.

3. Recognizing the need for a global resolution of the Debtor's asbestos liabilities, the

Canadian Court issued orders on May 6, 2025 (the "**Canadian Orders**") appointing the Monitor and granting it broad authority over the Debtor. The Canadian Orders, among other things,

- appointed RCI as monitor within the CCAA Proceeding (in such capacity, the "**Monitor**");
- ordered that the Debtor possess and control its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, including all proceeds thereof, all bank accounts and all insurance assets, wherever they may be located, including in the United States, subject only to the Monitor's supervision pursuant to the authority granted to it by the Canadian Orders;
- authorized RCI to act as foreign representative in respect of the CCAA Proceeding, for the purposes of having such proceeding recognized in jurisdictions outside of Canada, including in an application to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the Bankruptcy Code;
- declared that the Debtor's "center of main interest" (COMI) is in Québec, Canada;
- provided for a stay of proceedings and efforts to exercise rights and remedies against the Debtor, as well as its Directors and Officers, from May 6, 2025 through and including May 16, 2025 (the "**Initial Stay Period**");
- extended the stay to non-debtors CLMI, their third-party claim administrator Resolute Management Inc. ("**Resolute**"), and General Dynamics Corporation ("**General Dynamics**") through the Initial Stay Period; and
- prohibited parties from discontinuing, failing to renew per the same terms and conditions, failing to honor, alter, interfere with, repudiate, terminate, or cease to perform any right in favor of or held by the Debtor.

4. On the date hereof (the "**Petition Date**"), the Foreign Representative commenced this case (the "**Chapter 15 Case**") by filing a petition for recognition of a foreign proceeding under chapter 15 of the Bankruptcy Code. The Foreign Representative hereby seeks recognition of the CCAA Proceeding as a foreign main proceeding or, in the alternative, as a foreign nonmain proceeding under section 1517 of the Bankruptcy Code.

JURISDICTION

5. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, sections 109 and 1501 of the Bankruptcy Code and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated as of January 31, 2012, Reference M-431, In re Standing Order of Reference Re: Title 11, 12 Misc. 00032 (S.D.N.Y. Feb. 2, 2012) (Preska, C.J.).

6. This Chapter 15 Case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the Verified Petition under section 1515 of the Bankruptcy Code. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code have been designated core matters under 28 U.S.C. § 157(b)(2)(P).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1410. As explained below, the Debtor has "property in the United States" sufficient to satisfy section 109(a) of the Bankruptcy Code.

8. The statutory predicates for the relief requested herein are sections 105, 362, 1519, and 1521 of the Bankruptcy Code.

BACKGROUND

A. The Debtor's business and operations

9. ACL is a Québec corporation and it has been located in the Province of Québec, Canada, for nearly a century. Chaaban Decl. ¶ 8. ACL's principal place of business is located in

the Province of Québec, Canada. *Id.* ACL was founded in 1925 and is incorporated under the laws of Canada. *Id.* ACL is regulated under the Canada Business Corporations Act and is a reporting issuer in the provinces of Québec, Alberta, British Columbia and Ontario, with Québec being ACL's principal jurisdiction. *Id.* ACL is a subsidiary of Mazarin Inc. ("**Mazarin**"), which holds a majority of ACL's shares. *Id.* Robert Tremblay and the Estate of Monette Serge are minority shareholders of ACL. *Id.*

10. ACL is a publicly listed entity trading in Canada on the Toronto Stock Exchange. *Id.* ¶ 9. In addition to its operations and debt, ACL raises its funds from share capital issuances in Canada and uses such capital raises to fund its activities. *Id.* ¶ 9.

11. ACL's board consists of 6 members, each of whom resides in Canada. *Id.* ¶ 10.

12. ACL's operational and critical strategic decisions are mainly made in Québec, by senior management of ACL, also located in Québec. *Id.* ¶ 11. ACL's books and records are located and maintained at ACL's headquarters in Québec. *Id.*

13. ACL currently has approximately 6 employees, all of whom are based in Canada. *Id.* ¶ 13.

14. ACL owns 8 mines, all of which are located in Québec. *Id.* ¶ 14. All of the real property ACL owns is located in Québec. *Id.*

15. For a period of close to sixty years, ACL operated open pit chrysotile mines for the purpose of asbestos mining in Québec. *Id.* ¶ 15. Although ACL stopped mining for asbestos in the 1980s, it continues to operate the mines for purposes of extracting minerals from serpentinite, the waste material remaining after mining. *Id.* ACL also continues to manage, restore, lease and redevelop its properties, including various warehouses and other buildings, all of which are in Québec, Canada. *Id.* ACL is also reportedly exploring the exploitation of new energy sources,

such as wind and solar power, and the potential for carbon dioxide capture and sequestration from the carbon dioxide emitted from its remaining mining operations. *Id.*

16. Aside from the operations described above, ACL's activities involve managing litigation it faces as a result of its historical asbestos mining operations. *Id.* ¶ 16. Thousands of personal injury lawsuits have been filed against ACL by people claiming bodily injury resulting from exposure to asbestos fiber or to asbestos-containing products allegedly connected to ACL. *Id.* ACL has also been named in a lawsuit asserting a $151 million indemnity claim that was filed by the Trustee of the bankruptcy trust of National Service Industries, Inc., a former participant in the asbestos market. *Id.* These product liability, personal injury and indemnity lawsuits pose a significant financial and operational burden to ACL. *Id.* As explained below, while ACL is party to insurance contracts that help defray the cost of liability and defense of these lawsuits, the fact that these claims are proceeding in a multitude of jurisdictions places an untenable strain and expense on the Debtor and its available insurance coverage. *Id.* Further, the non-recurring nature of some of its revenue creates additional risk and uncertainty with respect to ACL's liquidity. *Id.*

B. Assets, Liabilities and Capital Structure

17. ACL's limited employees, operating assets and operations are located in Québec, Canada. Chaaban Decl. ¶ 20.

18. ACL has one main secured creditor, its parent company, Mazarin, to which ACL owes approximately $26,729,000 in Canadian dollars, in respect of certain notes issued by ACL as reflected in the unaudited interim financial statements dated as of September 30, 2024. *Id.* ¶ 21. Like ACL, Mazarin is a publicly listed Canadian entity located in Canada and trades in Canada on the Toronto Stock Exchange. *Id.*

19. The notes held by Mazarin are secured by a mortgage on certain real property located in Canada (called an "immovable hypothec" under Québec law) up to the principal amount

of $70,000,000 in Canadian dollars. *Id.* ¶ 22.

20. ACL's unsecured debt consists of accounts payable and accrued liabilities with a total book value in Canadian dollars of approximately $2,381,000, of which approximately $1,849,000 consists of fees and compensation related to ongoing litigation, and $532,000 of trade payables and accrued expenses owed. *Id.* ¶ 23.

21. As of December 31, 2024, the Debtor's declared indebtedness for litigation-related liabilities had a total book value in Canadian dollars of approximately $29,413,000, consisting of approximately $3,284,000 in amounts currently owed due to the litigation in the U.S. and $26,129,000 of non-current liabilities. *Id.* ¶ 24.

22. ACL offers a defined benefit plan that guarantees the payment of post-retirement benefits to some of its employees and former employees. *Id.* ¶ 25. The defined benefit plan was closed to new members of December 2023. *Id.* ACL also offers life insurance to some of its former employees. *Id.*

C. Need for Organized Process for Resolving Asbestos Claims

23. Since ACL ceased its mining operations in the 1980s, it has faced several thousands of litigation claims related to exposure to asbestos. ACL continues to be a defendant in thousands of currently pending asbestos personal injury lawsuits. *Id.* ¶ 26. Those cases are pending in at least 14 states, including New York, California, Illinois, Louisiana, Washington, Indiana, Michigan, Minnesota, South Carolina, Connecticut and Delaware. *Id.* ¶.

24. Nearly thirty years ago, ACL, CLMI[2] and ACL's former indirect majority owner General Dynamics entered into an Interim Settlement Agreement regarding responsibility for managing the defense of asbestos-related bodily injury claims and lawsuits against ACL and payment of defense costs and settlements and judgments of those asbestos-related liabilities under the London Policies.[3] This protocol was embodied in a settlement agreement dated August 24, 1998 (the "**Interim Settlement Agreement**" or "**ISA**").[4] The ISA sets forth an arrangement among the parties thereto by which CLMI, under the London Policies in effect from 1976 to 1982, shall reimburse ACL for their shares of amounts paid by ACL for Defense Costs and Indemnity Payments attributable to Asbestos-Related Bodily Injury Claims (as such terms are defined in the ISA*).* Chaaban Decl. ¶ 27. The ISA also provided a mechanism for allocating defense costs and indemnity payments with respect to asbestos related bodily injury claims asserted against ACL. *Id.* ¶ 27. The effective term of the ISA has been extended on multiple occasions, with the most recent extension making it effective for an indefinite term.

25. Thousands of claims were settled using this protocol. Chaaban Decl. ¶ 28.

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[2] Certain Underwriters at Lloyd's, London, The Scottish Lion Insurance Company Limited, Tenecom Limited (as successor to Winterthur Swiss Insurance Company, formerly known as Accident & Casualty Insurance Company of Winterthur, Switzerland, and to Yasuda Fire and Marine Insurance Company (UK) Limited and now known as Tenecom Limited), The Ocean Marine Insurance Company Limited (as successor to liabilities of Commercial Union Assurance Company Limited, The Edinburgh Assurance Company, The Indemnity Marine Assurance Company Limited, The Northern Assurance Company Limited, The Road Transport & General Insurance Company Limited, United Scottish Insurance Company Limited, and The Victoria Insurance Company Limited), and NRG Victory Reinsurance Limited, as successor to liabilities of New London Reinsurance Company Limited, (collectively, "**CLMI**") and the Debtor (together with CLMI, the "**Applicants**"), initiated the CCAA Proceeding.

[3] From 1969 through 1982 General Dynamics held an indirect ownership interest in ACL. Chaaban Declaration ¶ 27 fn 7. During the period from July 1, 1969 through July 1, 1982 (the "**Policy Period**") certain general liability insurance policies were issued in favor of General Dynamics. *Id.* Among those were certain excess policies (the "**London Policies**") subscribed to severally (not jointly) by CLMI. *Id.* The London Policies, subject to their terms, conditions and limits of liability, provided defense cost and indemnification reimbursement coverage to General Dynamics and, commencing on April 1, 1973 of the Policy Period, to ACL. *Id.* The London Policies in effect during the period in which the bodily injury took place are triggered rather than the policies in effect on the date that a claim is asserted. *Id.* As ACL was an assured or alleged insured from April 1, 1973 through the end of the Policy Period of the London Policies, it remains an insured or alleged insured entity under the London Policies with respect to injuries allegedly occurring during the Policy Period even though it is no longer a subsidiary of General Dynamics.

[4] The ISA has a New York choice of law provision and a New York arbitration venue provision.

However, ACL's ability to resolve claims has been complicated by the recent appointment of a receiver over ACL by the Court of Common Pleas of Richland County (the "**South Carolina Court**").[5] *Id.* On September 8, 2023, the South Carolina Court entered an order (the "**Receivership Order**") appointing Mr. Peter D. Protopapas as receiver of ACL (the "**South Carolina Receiver**"), with broad powers, including the power to engage defense counsel for asbestos suits against ACL, assume exclusive control of asbestos lawsuits against ACL pending in the United States, and administer ACL's insurance assets with respect to these asbestos lawsuits.[6] *Id.* The South Carolina Court did so upon finding that ACL should be sanctioned for (a) asserting a personal jurisdiction defense in that litigation and (b) arguing that the Québec Business Concerns Records Act (the "**QBCRA**"), a "blocking statute" that prohibits Québec corporations from producing its documents outside of Québec in foreign proceedings, constrained ACL's ability to respond to discovery and deposition requests propounded in a single U.S. lawsuit (the "***Tibbs* Action**").

26. The existence of the receivership has resulted in several resource-intensive appeals and related disputes, including an appeal currently pending before the Supreme Court of South Carolina over whether Mr. Protopapas's appointment as receiver in the *Tibbs* Action was proper under South Carolina law.[7] *Id.* ¶ 29. But that appeal has not stayed the Receivership Order or

[5] In 2017, following her retirement as Chief Justice of the South Carolina Supreme Court, Justice Jean H. Toal was appointed to oversee all asbestos litigation in South Carolina state courts. In this Verified Petition, references to the South Carolina Court refer to Justice Toal's asbestos docket therein.

[6] The Receivership Order is not the first of its kind. The South Carolina Court has appointed Mr. Protopapas as receiver for other entities, including foreign debtors, at least twenty four times in the last five years. *See* Pet. for Writ of Prohibition 6, *Certain Underwriters at Lloyd's, London v. Hon. Jean H. Toal*, Case No. 2024-001959 (S.C. Nov. 18, 2024). On December 11, 2024, the High Court of Justice Business and Property Court of England and Wales (the "**UK Court**") rejected the South Carolina Court's claim of jurisdiction over a Cape Plc ("**Cape**"), whose corporate predecessor mined asbestos in South Africa and never did business in South Carolina, finding that the South Carolina Receiver had no authority to act on behalf of Cape. The UK Court then ordered the South Carolina Receiver pay a penalty of $1 million British pounds, equivalent to $1.3 million USD, and indicated that it would impose criminal sanctions on the Receiver if he continued to assert authority over Cape.

[7] *Tibbs v. 3M Co.*, Case No. 2023-001461 (S.C.).

ongoing and new asbestos litigation against ACL. *Id.*

27. Meanwhile, since his appointment, the South Carolina Receiver has taken steps that resulted in increased liability and damages for ACL, rather than protecting ACL's interests and those of its stakeholders. *Id.* ¶ 30. The South Carolina Receiver has refused to abide by the ISA, by settling claims for excessive amounts that ACL has not consented to.[8] The Receiver has, moreover, made damaging statements that are likely in direct contravention of the Receiver's duty to protect the Debtor's interests and pose additional risk to the Debtor, as parties may seek to use them as admissions against the Debtor's interests and, if deemed admissions of the Debtor, will jeopardize and potentially void the Debtor's coverage under the London Insurance Policies. *See* Chaaban Decl. ¶ 31.

28. At the same time, ACL continues to face litigation and exposure to the risk of default judgments without regard to the merits of the plaintiffs' claims—a risk that the receivership has only exacerbated. *Id.* ¶ 29. The South Carolina Receiver has accepted service of multiple new asbestos actions purporting to act on ACL's behalf, but ACL has declined to retain counsel in such cases, as it does not recognize the South Carolina Receiver as valid. *Id.* As a result of these gaps in legal representation, ACL has been exposed to the risk of default judgments, which in turn could deplete the finite insurance assets. *Id.* Even apart from disputes over the retention of counsel, the South Carolina Receiver's appointment has done nothing to stop the risk of sanctions or defaults resulting from ACL's reliance on the QBCRA to resist discovery. *Id.* Plaintiffs continue to file motions to compel and for sanctions against ACL even in the Receiver-defended cases in South

[8] The five South Carolina settlements recommended by the Receiver represent more than 5% of the total amount that CLMI have paid to ACL, over multiple decades, as reimbursement for CLMI's share of ACL's indemnity and defense costs. And the average of those five South Carolina settlements for ACL was 45 times higher than ACL's nationwide settlement average in 2023. *See* Pet. for Writ of Prohibition 43, *Certain Underwriters at Lloyd's, London v. Hon. Jean H. Toal*, Case No. 2024-001959 (S.C. Nov. 18, 2024).

Carolina.

29. Moreover, in *Kotzerke v. 3M Co.*,[9] a Washington state court struck ACL's responsive pleading and entered a default judgment against ACL as a discovery sanction, after ACL unsuccessfully invoked the QBCRA as limiting its ability to produce documents from Quebec or present a corporate deponent to testify about the Quebec documents. *Id.* ¶ 32. Absent a supersedeas bond, which ACL is not in a position to provide, that judgment in the amount of USD $16,219,398.25 is presently enforceable and unstayed. *Id.* This substantial monetary judgment is not directly related to the merits of the underlying claim,[10] but rather, is related to ACL's defenses being struck as purported punishment for ACL's lack of cooperation in discovery based on its adherence to the QBCRA in Québec. *Id.* Yet, the end result is that if CLMI pays this excessive judgment, it will deplete the finite resources available to current and future claimants. *Id.*

30. ACL is also now in jeopardy of having its defenses struck and being held in default in a California lawsuit, in which it has already been held in contempt and sanctioned for not producing documents and witnesses from Québec based on its adherence to the QBCRA.[11] As a result, ACL again is in jeopardy of being held in default and subject to an excessive judgment not based on the merits of the case, but rather on its respect of the QBCRA, the law of ACL's home jurisdiction that subjects ACL to potential civil and criminal penalties if violated. *Id.* ¶ 33.

D. The CCAA Proceeding

31. In response to these actions by the South Carolina Receiver, the Applicants initiated

[9] Case No. 23-2-05287-6 (Pierce County, Wa. Super. Ct.).

[10] On March 3, 2025, there was a hearing on damages, at which the ACL was precluded from disputing causation or plaintiff's alleged damages. Therefore, the results of the damages hearing were not based upon the merits, but to punish ACL for relying on the QBCRA.

[11] *Id.* ¶ 33; *see Smalley v. 3M Co.*, Case No. 23STCV17189 (Los Angeles County, Cal. Super. Ct.).

the CCAA Proceeding. *See* Chaaban Decl. ¶ 36. The Applicants intend the CCAA Proceeding to establish a single forum where all asbestos-related claims against ACL will be identified and diligently reviewed in a structured, efficient, and cost-effective manner under the supervision of the Canadian Court. *See* Tardif Decl. ¶ 26

32. In the CCAA Proceeding, the Applicants intend to seek an order approving a claims process, which will establish the procedures for determination and adjudication of claims against ACL (the "**Claims Process**"). *Id.* ¶ 12. As part of this Claims Process, the parties intend to establish a creditors' committee, consisting of ACL's insurers, that will assist the Debtor and the Monitor in the review and resolution of any claims submitted to the Claims Process, including the approval of any settlements in connection therewith. *Id.*

33. In their initial application for relief, the Applicants presented the Canadian Court with a detailed overview of the asbestos litigation that ACL faces in the United States, as well as the events following the South Carolina Receiver's appointment that have increased ACL's potential liability and damages. *See* Chaaban Decl., Ex. 1 (the "**Initial Application**").

34. Based on that showing, the Canadian Court granted substantial relief in its Canadian Orders. That relief includes a stay of all proceedings against the Debtor, CLMI, including its third-party claims administrator Resolute, and General Dynamics, as well as an order confirming that the Debtor has the sole power to administer and control its property, including its insurance assets, notwithstanding the South Carolina Receiver's purported claim to that power. *See* Tardif Decl. ¶ 7(f).

35. The Monitor seeks recognition of the Canadian Proceeding so that this Court may grant similar relief with respect to the Debtor's property in the United States. Recognition is not only compelled by the Bankruptcy Code, but in the best interest of all stakeholders. As ACL has

recognized, all creditors and parties in interest would be better served by a collective proceeding in ACL's home jurisdiction, where it has always conducted its business, where it can lawfully produce its business records to its Canadian court appointed Monitor in full compliance with Canadian law and where the South Carolina Receiver poses no obstacle to ACL's resuming an effective, efficient process, cost-effective and transparent process of resolving claims under court supervision.

RELIEF REQUESTED

36. By this Verified Petition, the Foreign Representative seeks entry of an order granting ancillary relief by recognizing the CCAA Proceeding as a foreign proceeding and the Petitioner as the Foreign Representative of that proceeding. The primary purpose of the CCAA Proceeding is to establish a single forum in the Debtor's home jurisdiction in which it will be able to resolve its asbestos related tort liability in an efficient and equitable way. The Foreign Representative seeks to obtain certain immediate stays and protections for the Debtor and certain affiliates prior to the Recognition Hearing, through the *Motion for (i) Ex Parte Relief and (ii) Provisional Relief Pursuant to 11 U.S.C. §§ 1519, 362 and 105(a)* (the "**Motion for Provisional Relief**").

37. In this Verified Petition, the Foreign Representative seeks entry of the Recognition Order after notice and a hearing:[12]

> (A) granting recognition of the CCAA Proceeding as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code and granting related relief or, in the alternative, granting recognition of the CCAA Proceeding as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Bankruptcy Code and granting related relief;

[12] The Petitioner has requested a date and time for the Recognition Hearing to consider entry of the Recognition Order pursuant to the *Application by Foreign Representative for Order (I) Scheduling Hearing on Verified Petition of Asbestos Corporation Limited and Motion for Recognition and Related Relief and (II) Specifying Form and Manner of Service of Notice* (the "**Notice Motion**"), filed contemporaneously herewith.

(B) granting relief as of right upon recognition of the CCAA Proceeding as a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code if the CCAA Proceeding is recognized as a foreign main proceeding;

(C) whether the CCAA Proceeding is recognized as a foreign main proceeding or a foreign nonmain proceeding, granting additional relief under section 1521 of the Bankruptcy Code including:

(i) authorizing the Foreign Representative, on behalf of the Debtor, to possess and control, and be entrusted with the exclusive control and administration, of all of the Debtor's (i) property and the proceeds thereof, if any, located within the territorial jurisdiction of the United States, as further defined in 11 U.S.C. § 1502(8), including the London Policies (to the extent that the London Policies or the proceeds thereof are deemed to be property of the Debtor in the territorial jurisdiction of the United States); and (ii) rights, obligations and responsibilities in the United States (clauses (i) and (ii), collectively, "**U.S. Interests**");

(ii) applying section 362 of the Bankruptcy Code to stay and restrain all persons and entities, other than the Foreign Representative and its representatives and agents, from commencing or continuing any Stayed Actions (as defined in the Motion for Provisional Relief) with respect to the Debtor or its officers and directors and/or their U.S. Interests, and, in the case of CLMI, its third party claims administrator Resolute, General Dynamics and its current affiliates and subsidiaries that are insured under the London Policies (collectively with the Debtor, the "**Stay Parties**"), and/or their U.S. Interests, commencing or continuing any Stayed Actions related to the Debtor;

(D) granting related relief; and

(E) granting such further relief as the Court deems just and proper.

BASIS FOR RELIEF REQUESTED

I. THE REQUIREMENTS FOR RECOGNITION OF THE CCAA PROCEEDING AS A FOREIGN MAIN PROCEEDING UNDER CHAPTER 15 HAVE BEEN MET

38. The Foreign Representative meets the standards for obtaining the relief requested herein and otherwise satisfies the statutory requirements for recognition and related review under chapter 15 of the Bankruptcy Code.

39. As a threshold matter, the Second Circuit, has held that foreign Debtor seeking chapter 15 relief must satisfy the debtor eligibility requirements set forth in section 109(a) of the Bankruptcy Code. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247-51 (2d Cir. 2013). The Debtor satisfies the requirements of section 109(a) of the Bankruptcy Code.

40. The remaining requirements for recognition of a foreign proceeding under chapter 15 are set forth in section 1517(a) of the Bankruptcy Code. Subject to section 1506, a foreign proceeding must be recognized if the following requirements are met:

> (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain 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 In re Millard*, 501 B.R. 644, 651 (Bankr. S.D.N.Y. 2013) (section 1517 provides a "statutory mandate that recognition be granted upon compliance with the requirements of section 1517(a)(1), (2) and (3)") (citing *Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1021 (5th Cir. 2010)); *In re ABC Learning Centres Ltd.*, 728 F.3d 301, 306 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 1283 (2014) (recognition mandatory when an insolvency proceeding meets the section 1517 criteria).

41. As demonstrated below, the Debtor is eligible for chapter 15 relief because it has property located in the United States. Moreover, the Chapter 15 Petition and the CCAA Proceeding satisfy each of the foregoing requirements for recognition.

A. The Debtor Satisfies Section 109(a).

42. Pursuant to section 109(a) of the Bankruptcy Code, "only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a

debtor" under the Bankruptcy Code. 11 U.S.C. § 109(a). The question that most often arises in interpreting section 109(a) is what constitutes "property in the United States," particularly because section 109(a) does not address how much property must be present or when or how long property must have a situs in the United States.

43. Numerous courts have indicated that the "property" requirement is easily satisfied by a debtor having minimal property in the United States. *See In re U.S. Steel Canada Inc.*, 571 B.R. 600, 610 (Bankr. S.D.N.Y. 2017) (holding "an undrawn retainer in a United States bank account qualifies as property in satisfaction of section 109(a)"); *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *9 (Bankr. S.D.N.Y. July 2, 2021) (holding same); *In re Octaviar Admin. Pty. Ltd.*, 511 B.R. 361, 369-74 (Bankr. S.D.N.Y. 2014) (finding that foreign debtor satisfied section 109(a) based on claims the foreign debtor had under U.S. law against U.S. defendants and retainer that foreign representative deposited in client trust account to secure representation by U.S. law firm); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 412-13 (Bankr. S.D.N.Y. 2014) (holding establishment of a bank account in New York prior to commencement of the chapter 15 proceeding was sufficient to satisfy section 109(a)); *In re Paper I Partners, L.P.*, 283 B.R. 661, 674 (Bankr. S.D.N.Y. 2002) (finding that Debtor's maintenance of original business documents in the United States constituted "property in the United States" under section 109). Moreover, this Court has held that even New York choice of law and forum selection clauses in a debtor's indenture constitute sufficient property to satisfy section 109(a). *See In re Berau Capital Resources Pte Ltd.*, 540 B.R. 80, 84 (Bankr. S.D.N.Y. 2015) ("The Court concludes that the presence of the New York choice of law and forum selection clauses in the Berau indenture satisfies the section 109(a) 'property in the United States' eligibility requirement.").

44. This Court has previously found that actively taking steps to meet the property

requirement of section 109(a) is not improper conduct and does not constitute bad faith. In *Suntech*, the debtor had no property or business in the United States at the time its joint provisional liquidators agreed to file a chapter 15 case there. *Suntech Power Holdings*, 520 B.R. at 409. The joint provisional liquidators subsequently established a bank account in New York, transferred $500,000 into that account and filed the chapter 15 case the next day. This Court found that these actions were proper, stating: "Interpreting the Bankruptcy Code to prevent an ineligible foreign debtor from establishing eligibility to support needed chapter 15 relief [would] contravene the purposes of the statute to provide legal certainty, maximize value, protect creditors and other parties in interest and rescue financially troubled businesses." *Id.* at 413.

45. Here, that the Debtor lacks a United States domicile or place of business. However, the Debtor clearly meets the burden of proving that it has property in the United States and, more specifically, in New York. First, the Debtor has paid an attorney retainer fee of $300,000 to Orrick, Herrington & Sutcliffe, LLP, a New York law firm. The retainer fees are held in Orrick's client trust account at Citibank Private Bank in New York, where they shall remain pending the final billing in this proceeding. *See* Chaaban Decl. ¶ 17. Second, the ISA has a New York choice of law provision and a New York arbitration venue provision. *See* Chaaban Decl. ¶ 27 fn 8. Thus, the requirements of section 109 have been satisfied by two independent forms of property in the United States, and the Foreign Representative is eligible to commence and prosecute this Chapter 15 Case.

B. The Verified Petition Meets the Requirements of Section 1515.

46. The Chapter 15 Case was duly and properly commenced in accordance with sections 1504, 1509 and 1515 of the Bankruptcy Code. The Foreign Representative filed the Chapter 15 Petition for recognition of foreign proceedings pursuant to section 1515(a), which was accompanied by all documents and information required by sections 1515(b) and (c) and the

relevant Bankruptcy Rules, including (a) a certified copy of the Canadian Orders with respect to the Debtor; (b) a statement identifying all foreign proceedings known to the Foreign Representative with respect to the Debtor; (c) a corporate ownership statement containing the information described in Bankruptcy Rule 1007(a)(4); and (d) a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtor.

47. Bankruptcy Rule 1007(a)(4)(B) requires that the petitioner file a list of, among other parties, all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code and a list of all parties to litigation in which the Debtor is a party as of the date of the filing of the petition, unless the court orders otherwise. In the Petition, the Foreign Representative filed a list of all known parties that have commenced asbestos-related personal injury litigation that is currently pending against ACL as of the Petition Date in the United States. As further explained in the Motion for Provisional Relief, the Foreign Representative submits that such list is sufficient under the circumstances of this case and requests that the Court waive any further requirement under Bankruptcy Rule 1007(a)(4)(B).

C. The Petitioner Qualifies as a "Foreign Representative."

48. A chapter 15 case is commenced by the filing of a petition for recognition (and related documents) by the "foreign representative." *See* 11 U.S.C. §§ 1504, 1509(a), 1515(a). A bankruptcy court may presume that the person petitioning for chapter 15 recognition is a foreign representative if the decision or certificate from the foreign court so indicates. 11 U.S.C. § 1516(a); *see also In re U.S. Steel Canada Inc.*, 571 B.R. 600, 612 (Bankr. S.D.N.Y. 2017) (holding that U.S Steel Canada Inc., a debtor, "is qualified to be the foreign representative"). The Bankruptcy Code defines "foreign representative" as "a person or body, including a person or body appointed on an interim basis, 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).

49. The Canadian Orders expressly appoint the Petitioner "to monitor the business and financial affairs of the Debtor as an officer of this Court" and authorizes the Petitioner "to apply for foreign recognition and approval of these proceedings in the United States pursuant to chapter 15 of title 11 of the United States Code." Chaaban Decl., Ex. 3, Initial Order, ¶ 62. The Canadian Orders further grant the Petitioner the power to "apply as [he] may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America, or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court, including, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code." *Id.* ¶ 72.

50. In light of the statutory presumption, the Bankruptcy Code's definition of "foreign representative" and the express provisions of the Canadian Orders, the Petitioner is a proper "foreign representative" of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

D. The CCAA Proceeding Is a "Foreign Proceeding."

51. The CCAA Proceeding is a "foreign proceeding" as required for recognition under section 1517(a) of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a)(1). Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as "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." Thus, to be a "foreign proceeding" a proceeding must:

a. exist;

b. be either judicial or administrative in character;

c. be collective in nature;

d. be taking place in a foreign country;

e. be authorized or conducted under a law related to insolvency or the adjustment of debt;

f. provide that the debtor's assets and affairs are subject to the control or supervision of the foreign judiciary; and

g. be for the purpose of reorganization or liquidation.

See In re ABC Learning Centres Ltd., 445 B.R. 318, 327 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3d Cir. 2013) (citation omitted); *In re Overnight & Control Comm'n of Avánzit, S.A.*, 385 B.R. 525, 533 (Bankr. S.D.N.Y. 2008). The CCAA Proceeding satisfies each of these distinct criteria as it:

a. is a proceeding that was recently commenced under the CCAA which has not been terminated. In *Flynn v. Wallace (In re Irish Bank Resolution Corp.)*, 538 B.R. 692, 697 (D. Del. 2015) (quoting *In re Betcorp Ltd.*, 400 B.R. 266 (Bankr. D. Nev 2009)), the court held that "the hallmark of a 'proceeding' is a statutory framework that contains a company's actions and that regulates the final distribution of a company's assets" and includes "acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice."). As the CCAA Proceeding is subject to the CCAA, a statutory framework that provides for a court-supervised reorganization procedure, it constitutes a "proceeding" within the meaning of 11 U.S.C. § 101(23);

b. is judicial in character. As set forth in *In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), a reorganization proceeding is judicial in character

whenever a "court exercises its supervisory powers." The Debtor's assets and affairs are subject to the supervision of the Canadian Court during the pendency of the CCAA Proceeding. Tardif Decl. ¶¶ 9, 24. The Canadian Court exercised its supervisory powers in entering an order to approve the appointment of the monitor, a licensed insolvency professional, that functions as an independent observer of the CCAA Proceeding under the CCAA, monitors the Debtor's ongoing operations, and reports to the Canadian Court on any major events affecting the Debtor. *See id.* ¶ 17;

c. is collective in nature. As the court held in *In re Poymanov*, 571 B.R. 24, 33 (Bankr. S.D.N.Y. 2017), a "proceeding is collective if it considers the rights and obligations of all of a debtor's creditors, rather than a single creditor." A proceeding commenced under the CCAA is collective in nature, as the CCAA provides that parties in interest may appear, be heard and weigh in on significant events in a CCAA proceeding. Tardif Decl. ¶ 23. Additionally, the Canadian Court's consideration of creditor rights is reflected in the fact that the Canadian Orders provide for a temporary stay of proceedings against the Debtor and its assets and, further, requires that the Debtor give its creditors notice of the CCAA Proceeding. *Id*. ¶ 23. Further, the CCAA is collective because it is designed to facilitate compromises and arrangements between companies and their creditors. Tardif Decl. *Id.* The Applicants commenced the CCAA Proceeding with the goal of maximizing value and providing a single forum for the efficient and equitable treatment of its creditors in a process in which affected creditors may participate. *See* Tardif Decl. ¶ 25;

d. is pending before the Superior Court of Québec, which is located in Canada, a foreign country;

e. is commenced under the CCAA, which is a Canadian statute that governs corporate insolvencies and provides for the reorganization of a company's financial obligations. *See* CCAA § 44(a–e); *Id*. ¶ 7;

f. provides that the Debtor's assets and affairs are subject to the supervision of the Canadian Court. *Id*. ¶¶ 9, 24. Upon entry of the Canadian Orders, the Debtor's assets became subject to the supervision of the Canadian Court and the monitor, an officer of the court that will monitor and report to the Canadian Court the Debtor's activities during the pendency of the CCAA Proceeding; and

g. is being pursued for the purpose of establishing a single forum to ensure the equitable treatment of all claims of equal stature and priority, and disincentivizing parties from racing to courthouses in a myriad of jurisdictions in order to obtain recoveries from a dwindling pool of assets. *Id*. ¶ 24;

52. Put simply, the CCAA Proceeding satisfies the requirements of section 101(23) as (a) the CCAA Proceeding is a collective judicial proceeding in which the assets and affairs of the Debtor are subject to the supervision of the Canadian Court and (b) the CCAA is designed to enable financially distressed companies to maximize company value by providing for a controlled reorganization or liquidation under the direct and indirect supervision of the Canadian Court. Since the CCAA Proceeding satisfies all the criteria required by section 101(23) of the Bankruptcy Code, it is a foreign proceeding entitled to recognition under chapter 15 of the Bankruptcy Code.

53. The conclusion that the CCAA Proceeding is a foreign proceeding within the meaning of section 101(23) is further supported by precedent. This Court and others have

consistently held that insolvency proceedings under the CCAA qualify as foreign proceedings under chapter 15 of the Bankruptcy Code.[13]

E. The CCAA Proceeding Is A "Foreign Main Proceeding"

54. The CCAA Proceeding is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code because the Debtor's center of main interests ("**COMI**") is Canada.

1. <u>The Debtor's COMI is Canada.</u>

55. The Bankruptcy Code defines a "foreign main proceeding" as "a foreign proceeding pending in the country where the debtor has the center of its main interests." *See* 11 U.S.C. § 1502(4). A foreign proceeding "shall be recognized" as a foreign main proceeding if it is pending where the debtor has its COMI. *See* 11 U.S.C. § 1517(b)(1). The Bankruptcy Code does not define "center of main interests," but, pursuant to section 1516(c) of the Bankruptcy Code, it is presumed that a debtor's COMI is the location of its registered office "absen[t] evidence to the contrary." *See* 11 U.S.C. § 1516(c).

56. Courts have generally equated the concept of COMI with a debtor's principal place of business (i.e., the place that is ascertainable by third parties as it is where the debtor conducts its regular business). *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 130 (2d Cir. 2013) ("[t]he relevant principle . . . is that the COMI lies where the debtor

[13] *See, e.g.*, *In re Ted Baker Canada Inc.*, Case No. 24-10699 [Dkt. No. 44] (Bankr. S.D.N.Y. May 9, 2024); *In re Imperial Tobacco Canada Ltd.*, Case No. 19-10771 [Dkt. No. 40] (Bankr. S.D.N.Y. Apr. 17, 2019); *In re Xebec Holding USA Inc.*, Case No. 22-10934 [Dkt. No. 36] (Bankr. D. Del. Oct. 27, 2022); *In re Spectra Premium Indus. Inc.*, Case No. 20-10611 [Dkt. No. 80] (Bankr. D. Del. May 29, 2020); *In re U.S. Steel Canada Inc.*, Case No. 17-11519 [Dkt. No. 12] (Bankr. S.D.N.Y. Jun. 29, 2017); *In re John Forsyth Shirt Co.*, Case No. 13-10526 [Dkt. No. 24] (Bankr. S.D.N.Y. Mar. 18, 2013); *In re Metcalfe & Mansfield Alternative Invs.*, Case No. 09-16709 [Dkt. No. 28] (Bankr. S.D.N.Y. Jan. 5, 2010); *In re Motorcycle Tires & Accessories LLC*, No. 19-12706 [Dkt. No. 38] (Bankr. D. Del. Jan. 22, 2020); *In re Kraus Carpet Inc.*, Case No. 18-12057 [Dkt. No. 46-1] (Bankr. D. Del. Oct. 1, 2018); *In re Artic Glacier Int'l Inc.*, Case No. 12-10605 [Dkt. No. 70] (Bankr. D. Del. Mar. 16, 2012); *In re Canwest Global Commc'ns Corp.*, Case No. 09-15994 [Dkt. No. 34] (Bankr. S.D.N.Y. Nov. 3, 2009).

conducts its regular business, so that the place is ascertainable by third parties"); *In re Basis Yield Alpha Fund (Master),* 381 B.R. 37, 48 (Bankr. S.D.N.Y. 2008); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008).

57. In the absence of evidence to the contrary, a debtor's registered office is presumed to be the debtor's COMI. *See* 11 U.S.C. § 1516(c); *see also In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 76 (Bankr. S.D.N.Y. 2011) *aff'd*, 474 B.R. 88 (S.D.N.Y. 2012) (finding in the context of section 1516 that "[t]he party seeking to rebut a statutory presumption must present enough evidence to withstand a motion for summary judgment"); *In re ABC Learning Centres Ltd.*, 445 B.R. 318, 333 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3d Cir. 2013) (holding that debtor's registered jurisdiction was its COMI where debtor established the section 1516 presumption and no objection was raised nor evidence was presented to rebut it). The legislative history indicates that this presumption was "designed to make recognition as simple and expedient as possible" in cases where COMI is not controversial. H. Rep. No. 109-31, Pt. 1, 109th Cong., 1st Sess. 112-13 (2005).

58. In undertaking a COMI analysis, courts may consider "any relevant activities, including liquidation activities and administrative functions . . . , the location of the debtor's headquarters, the location of those who actually manage the debtor . . . , 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." *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (citing *In re Fairfield Sentry Ltd.*, 714 F.3d at 137); *In re Ran*, 607 F.3d 1017, 1023 (5th Cir. 2010). Notably, the analysis of a foreign debtor's center of main interests is a flexible one, as "courts do

not apply any rigid formula or consistently find one factor dispositive." *In re Betcorp Ltd.*, 400 B.R. at 290; *see also In re Fairfield Sentry Ltd.*, 714 F.3d at 137-38 (explaining that "consideration of these specific factors is neither required nor dispositive" and warning against mechanical application).

59. The Debtor's "center of main interests" within the meaning of chapter 15 of the Bankruptcy Code is in Canada— and thus, the CCAA Proceeding is a foreign main proceeding— for the following reasons:

- ACL's current mining, real estate, and alternative energy development operations each take place exclusively in Canada. *See* Chaaban Decl., ¶ 12.
- The registered, head office and chief place of business of ACL and the headquarters office of ACL is in Québec, Canada. *See id.* ¶ 11.
- The books and records of ACL are maintained in Canada. *See id.*
- ACL's tangible assets and operations are located in Québec, Canada. *See id.*, ¶ 12. Canada is the location of ACL's primary assets, including its remaining mines, leases, and all of its equipment and other personal property.
- All of ACL's bank accounts are located in Canada. *See id.* ¶ 12.
- All of ACL's employees are based and work in Canada. *See id.* ¶ 13.
- The board of directors of ACL is comprised of 6 directors, each of whom have their primary residence in Canada. *See id.* ¶ 10. ACL's board meetings have been held exclusively in Canada for several years. See *id.*
- ACL's management team is located in Canada. ACL's operational and critical strategic decisions are mainly made in Québec, by senior management of ACL, also located in Québec. *See id.* ¶ 11 All directors or officers of ACL have places of

residence in Canada and work in Canada. *See id.*, ¶ 12.

For these reasons, the Foreign Representative submits that Canada is the Debtor's COMI.

F. In the Alternative, the CCAA Proceeding is a "Foreign Nonmain Proceeding" Because the Debtor Has an Establishment There.

60. As stated above, the CCAA Proceeding has met the requirements of a "foreign main proceeding" pursuant to section 1502 of the Bankruptcy Code in light of the Debtor's activities in Canada. Nevertheless, should the Court for some reason conclude that the CCAA Proceeding should not be recognized as a foreign main proceeding, the Foreign Representative submits that, in the alternative, the CCAA Proceeding should be recognized as a foreign nonmain proceeding under sections 1516(b)(2) and 1502(5) of the Bankruptcy Code.

61. A foreign nonmain proceeding is defined as a "foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment." 11 U.S.C. § 1502(5). An "establishment" is "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). The Bankruptcy Code does not define "nontransitory economic activity," but courts have interpreted the terms "operations" and "economic activity" as used in section 1502(2) to require a "showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just the maintenance of property." *In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016). Moreover, the "establishment" requirement may be satisfied by the local conduct of business. *See id.* ("'Establishment' has been described as a 'local place of business.'"); *In re Fairfield Sentry Ltd.*, No. 10 Civ. 7311, 2011 WL 4357421, at *10 n.8 (S.D.N.Y. Sept. 16, 2011) ("This Court agrees with the Bankruptcy Court that if main recognition were not granted, non-main recognition of Sentry's BVI Proceeding would be appropriate because Sentry has an establishment in the BVI for the conduct of nontransitory economic activity, *i.e.* a local place of business.").

62. At a minimum, the Debtor has an establishment in Canada. All of the Debtor's directors reside and Canada and conduct board meetings in Canada. *See* Chaaban Declaration ¶ 10, 12. All of the Debtor's employees, operating assets and operations are located in Québec, Canada. *See id.* ¶ 20.

63. Given the considerable business activities conducted by the Debtor in Canada, the Foreign Representative submits that the CCAA Proceeding is pending where the Debtor has an "establishment," and, therefore, that the CCAA Proceeding constitutes a "foreign nonmain proceeding" within the meaning of section 1502 of the Bankruptcy Code.

G. Recognition of the CCAA Proceeding Would Not Be Manifestly Contrary to United States Policy.

64. Recognition of a foreign proceeding is "subject to section 1506," which provides that a bankruptcy court may decline to grant relief requested if the action would be "manifestly contrary to the public policy of the United States." 11 U.S.C. §§ 1506, 1517(a). This Court has construed the public policy exception narrowly. *See In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 94-95 (Bankr. S.D.N.Y. 2012) (citing *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006)) (noting that the public policy exception is "to be invoked only under 'exceptional circumstances concerning matters of fundamental importance'"); *see also Armada (Singapore) Pte Ltd. v. Shah (In re Ashapura Minechem Ltd.)*, 480 B.R. 129, 139 n.60 (S.D.N.Y. 2012) (stating that courts have "uniformly" read the public policy exception "narrowly and applied it sparingly").

65. Granting recognition of the CCAA Proceeding would advance the public policy objectives of sections 1501(a) and 1508 of the Bankruptcy Code, among others, thereby making the public policy exception under section 1506 wholly inapplicable. Specifically, granting recognition of the CCAA Proceeding would promote the fair and efficient administration of cross-border insolvency proceedings designed to protect the interests of all creditors and other interested

parties, while at the same time preventing dissident creditors and other parties hostile to the Debtor's restructuring from commencing or continuing litigation in the United States that could potentially thwart the Debtor's restructuring plans and disadvantage the overwhelming majority of creditors. Granting recognition to the CCAA Proceeding as a foreign proceeding is critical to furthering the objectives of chapter 15, promoting greater cooperation between the United States and Canadian Courts, and accomplishing the Debtor's restructuring through the CCAA Proceeding. Moreover, recognition of the CCAA Proceeding as a foreign proceeding under chapter 15 would further protect the interests of creditors in the CCAA Proceeding because, absent recognition, the uniform and orderly administration of the Debtor's assets would be continue to be jeopardized.

II. THE DEBTOR'S PROPERTY SHOULD BE ENTRUSTED TO THE MONITOR.

66. In order to protect the Debtor's assets for efficient distribution to creditors in the CCAA Proceeding, the Foreign Representative requests that the Court recognize and give full force and effect in the United States to the orders of the Canadian Court, in the CCAA Proceeding, including by granting the Debtor (subject only to the powers of the Monitor pursuant to the Canadian Orders) exclusive control and powers to administer all of its property, including the Debtor's U.S. Interests.

67. As more fully detailed in the Motion for Provisional Relief, the Foreign Representative requested this relief on a provisional basis pursuant to section 1519(a)(2) of the Bankruptcy Code, in order to preserve the Debtor's ability to equitably distribute assets to creditors. This relief should be extended upon recognition in order to grant comity to the Canadian Orders and to ensure that the Debtor's property remains available for distribution in any claims process established through the CCAA Proceeding.

III. THE SECTION 362 AUTOMATIC STAY SHOULD BE EXTENDED TO CLMI, THEIR CLAIM ADMINISTRATOR AND GENERAL DYNAMICS.

68. Upon recognition, pursuant to Section 1521(a)(7), the Court may grant any relief under chapter 15 that would be available to a trustee, subject to certain limitations not relevant here. The relief available to a trustee includes that under section 105(a), which allows, "[t]he court [to] issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a). Thus, the Court may look to section 105(a) as a separate basis for fashioning relief as is necessary to protect a chapter 15 debtor and its creditors. Under such authority, the Court has discretion to apply the automatic stay to non-debtors where necessary to protect the Debtor's estate. *See Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir. 2003) ("The automatic stay can apply to non-debtors . . . when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate."); *see also In re Hal Luftig Co.*, 667 B.R. 638, 658 (Bankr. S.D.N.Y. 2025) ("[N]on-consensual third party stay extensions survived the Supreme Court's ruling [in *Purdue Pharma*]."") (citing *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024)). In fact, many bankruptcy courts have extended and applied the automatic stay to non-debtor entities in chapter 15 cases. *See, e.g.*, *In re Boart Longyear Ltd.*, No. 17-11156 (MEW), ECF No. 26 (Bankr. S.D.N.Y. May 8, 2017) (extending stay to third-party actions against non-debtor entities); *Corporación Durango, S.A.B. de C.V. v. Law Debenture Tr. Co. of New York*, Adv. No. 08-01608 (RDD), ECF No. 17 (Bankr. S.D.N.Y. Oct. 10, 2008) (same); *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 443 B.R. 295, 316-17 (Bankr. S.D.N.Y. 2011) (same); *RSM Richter, Inc. v. Aguilar*, Adv. No. 06-1147 (JMP), ECF No. 6 (Bankr. S.D.N.Y. Jan. 18, 2006) (same); *Vitro, S.A.B. v. ACP Master, Ltd.*, Adv. No. 12-03027, ECF No. 84 (Bankr. N.D. Tex. Mar. 12, 2012) (same); *In re W.C. Wood Corp., Ltd.*, No. 09-11893, ECF No. 16 (Bankr. D. Del. June 1, 2009) (extending stay protection to officers and directors); *In re*

Fraser Papers Inc., No. 09-12123, ECF No. 18 (Bankr. D. Del. June 19, 2009) (same); *see also CT Inv. Mgmt. Co. v. Carbonell*, No. 10-Civ. 6872, 2012 WL 92359 (S.D.N.Y. Jan. 11, 2012) (extending bankruptcy stay to non-debtor guarantor).

69. As more fully explained in the Motion for Provisional Relief, the Foreign Representative requested this relief on a provisional basis because it is critical that the stay be extended to cover CLMI, including their third-party claims administrator Resolute, and General Dynamics, in addition to the Debtor, to preserve the value of the Debtor's estate. Commencement of the CCAA Proceeding and this Chapter 15 Case have made it more likely that the South Carolina Receiver and other parties will seek to pursue direct actions against CLMI, Resolute, and/or General Dynamics to collect on their claims under the London Policies if they are not protected. Indeed, prior to the commencement of the CCAA Proceeding, the South Carolina Receiver had already sued CLMI and Resolute in South Carolina to force them to pay the South Carolina Receiver's costs, and other creditors had already taken action against certain of the Debtor's insurers to enforce judgments against ACL. *See* Chaaban Decl. ¶ 34; s*ee, e.g.*, *Morvant v. Maryland Cas. Insur. Co.*, No. 14-00226 (E.D. La. 2014) (action against certain insurers to enforce $6.4 million judgment obtained against ACL). The London Policies are the Debtor's primary asset, and the equitable resolution of creditors' claims depends on the Monitor's ability to preserve the proceeds of those insurance policies for equitable distribution through the CCAA Proceeding. *See* Tardif Decl. ¶ 26; *In re Johns-Manville Corp.*, 40 B.R. 219, 229 (S.D.N.Y. 1984) (staying direct actions against the debtor's insurer because the insurance policies and their proceeds constituted "substantial property of the . . . estate" which would be diminished by third party direct actions against insurance carriers). Accordingly, extension of the stay to the Stay Parties is appropriate and necessary to the success of the CCAA Proceeding.

NOTICE

No trustee, examiner or statutory committee has been appointed in this Chapter 15 Case. The Debtor shall provide a copy of the Verified Petition to the Notice Parties (as defined in the Notice Motion) in accordance with the terms set forth by the Court in the proposed order attached to the Notice Motion as Exhibit A.

In light of the nature of the relief requested herein, the Foreign Representative submits that no other or further notice is necessary.

[*remainder of page intentionally left blank*]

WHEREFORE, the Foreign Representative respectfully requests that this Court enter an order substantially in the form attached hereto as Exhibit A, granting the relief requested therein and such other and further relief as may be just and proper.

Dated: New York, New York
May 6, 2025

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */s/ Evan C. Hollander*
Evan C. Hollander

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Counsel for the Petitioner
Raymond Chabot, Inc. in its capacity as
Proposed Foreign Representative

VERIFICATION OF PETITION

Ayman Chaaban, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the laws of the United States of America as follows:

I am a partner at Raymond Chabot Inc., which is the duly appointed proposed foreign representative of the Debtor. As such, I have full authority to verify the foregoing Verified Petition on behalf of the Debtor.

I have read the foregoing Verified Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

Dated: May 6, 2025
Montréal, Québec

By: */s/ Ayman Chaaban*

By: Ayman Chaaban

Title: Partner

Raymond Chabot Inc., Authorized Foreign Representative of the Debtor

EXHIBIT A

Proposed Recognition Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 15
Asbestos Corporation Limited,[1]	)	Case No. 25-_____( )
Debtor in a Foreign Proceeding.	)	

ORDER (I) RECOGNIZING THE CCAA PROCEEDING OF ASBESTOS CORPORATION LIMITED AS A FOREIGN MAIN PROCEEDING AND (II) GRANTING RELATED RELIEF

Upon the Verified Petition[2] of Raymond Chabot Inc. in its capacity as the monitor (the "**Monitor**") of Asbestos Corporation Limited ("**ACL**" or the "**Debtor**") for entry of an order (the "**Order**"), after notice and a hearing, granting recognition of the CCAA Proceeding as a foreign main proceeding or, in the alternative, as a foreign nonmain proceeding; and upon consideration of the Verified Petition and all pleadings related thereto, including the Chaaban Declaration; and the Court finding that: (a) the Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (d) notice of the Verified Petition was due and proper under the circumstances and no further or other notice need be given; and a hearing having been held to consider the relief requested in the Verified Petition on _____ __, 2025 and upon the record of the hearings and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Verified Petition is consistent

[1] The Debtor in this chapter 15 case, along with its unique identifier, is Asbestos Corporation Limited (Canadian Federal Business Number: 104903273RC0001). The Debtor has a registered and business address in Canada of 840 Boul. Ouellet, Thetford Mines, QC G6G 7A5, Canada.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Verified Petition.

with the purpose of chapter 15 of the Bankruptcy Code and that the legal and factual bases set forth in the Verified Petition establish just cause for the relief granted herein; and it appearing that the relief requested in the Verified Petition is in the best interest of the Debtor, its estate, its creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, the Court additionally finds and concludes that:

A. The Debtor has "property" in the United States and is therefore eligible for chapter 15 relief under section 109(a) of the Bankruptcy Code.

B. The Debtor's Chapter 15 Case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

C. The Verified Petition filed by the Debtor on the Petition Date meets each of the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4) (subject to certain relief requested in the concurrently filed Motion for Provisional Relief).

D. The Monitor is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.

E. The CCAA Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

F. The CCAA Proceeding is entitled to recognition by this Court pursuant to section 1517(a) of the Bankruptcy Code.

G. The CCAA Proceeding is pending in Canada, which is the location of the Debtor's center of main interests, and, as such, is a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

H. The Monitor and the Debtor are entitled to all the relief provided pursuant to section 1520 of the Bankruptcy Code.

I. The Monitor is entitled to the relief expressly set forth in 11 U.S.C. §§ 1521(a) and (b) that is granted hereby.

J. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, warranted pursuant to sections 105(a), 1507(a), 1509(b)(2)-(3), 1520, 1521 and 1525 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of granting relief.

K. Absent the relief granted hereby, the Debtor may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings against the Debtor or the Debtor's property, thereby interfering with and causing harm to, the Debtor, its creditors, and other parties in interest in the CCAA Proceeding and, as a result, the Debtor, its creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

L. Absent the requested relief, the efforts of the Debtor, the Canadian Court and the Monitor in conducting the CCAA Proceeding and effecting the proposed restructuring of the Debtor may be thwarted by the actions of certain creditors, a result that is antithetical to the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

M. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) confers material benefits on, and is in the best interests of, the Debtor and its creditors, including without limitation the creditors in the CCAA Proceeding, and (iii) is important to the overall objectives of the CCAA Proceeding.

N. The interest of the public will be served by this Court's granting of the relief requested by the Monitor.

NOW, THEREFORE, IT IS HEREBY:

ORDERED, that the Verified Petition is GRANTED; and it is further

ORDERED, that the CCAA Proceeding is hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code; and it is further

ORDERED, that all provisions of section 1520 of the Bankruptcy Code apply in this Chapter 15 Case, including, without limitation, the stay under section 362 of the Bankruptcy Code throughout the duration of this Chapter 15 Case or until otherwise ordered by this Court; and it is further

ORDERED, that the Foreign Representative, on behalf of the Debtor, is authorized to possess and control, and be entrusted with the exclusive control and administration, of all of the Debtor's (i) property and the proceeds thereof, if any, located within the territorial jurisdiction of the United States, as further defined in 11 U.S.C. § 1502(8), including the London Policies (to the extent that the London Policies or the proceeds thereof are deemed to be property of the Debtor in the territorial jurisdiction of the United States); and (ii) rights, obligations and responsibilities in the United States (clauses (i) and (ii), collectively, the "**U.S. Interests**");

ORDERED, that Section 362 of the Bankruptcy Code applies with respect to the Stay Parties (defined below) and their U.S. Interests; for the avoidance of doubt, the stay will operate to stay and restrain all persons and entities, other than the Foreign Representative and its agents, from:

a) commencing or continuing any Stayed Actions (as defined in the Motion for Provisional Relief) with respect to the Debtor or its officers and directors and/or

their U.S. Interests, and, in the case of CLMI, its third party claims administrator Resolute, General Dynamics Corporation and its current affiliates and subsidiaries that are insured under the London Policies (collectively with the Debtor, the "**Stay Parties**"), and/or their U.S. Interests, commencing or continuing any Stayed Actions related to the Debtor;

b) seizing, attaching, enforcing, or executing any judicial, quasi-judicial, administrative or monetary judgment, assessment or order or arbitration award, to the extent related to the Debtor, against the Monitor (in its capacity as the Monitor or foreign representative of the Debtor), the Stay Parties, their U.S. Interests or the proceeds thereof;

c) commencing or continuing any action or proceeding in the United States to create, perfect or enforce any lien, setoff or other claim, to the extent related to the Debtor, against the Monitor (in its capacity as the Monitor or foreign representative of the Debtor), the Stay Parties, their U.S. Interests or the proceeds thereof unless otherwise expressly permitted by the Canadian Orders (as defined in the Motion for Provisional Relief);

d) seeking the issuance of or issuing any restraining notice or other process of encumbrance, to the extent related to the Debtor, with respect to the Monitor (in its capacity as the Monitor or foreign representative of the Debtor), the Stay Parties or their U.S. Interests thereof unless otherwise expressly permitted by the Canadian Orders; and

e) transferring, encumbering, relinquishing or otherwise disposing of or interfering with any of the Stay Parties or their U.S. Interests or agreements in

the United States (if any), to the extent related to the Debtor, without the express consent of the Monitor or as permitted by the Canadian Order;

and it is further

ORDERED, that notice of entry of this Order, shall be served in accordance with this Court's *Order (I) Scheduling Hearing on Verified Petition of Asbestos Corporation Limited (II) Specifying Deadline for Filing Objections and (III) Specifying Form and Manner of Service of Notice*, dated _____ __, 2025 (the "**Notice Order**"), on or before _____ __, 2025. Service in accordance with the Notice Order constitutes adequate and sufficient service and notice; and it is further

ORDERED, that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED, that the Monitor and the Debtor are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order;

ORDERED, that the Monitor and the Debtor are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED, that the Monitor, Debtor and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York

_____, 2025

_____

UNITED STATES BANKRUPTCY JUDGE