

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re STRATA ENERGY SERVICES INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 15-_____
In re STRATA SERVICES INTERNATIONAL INC., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 15-_____ Recognition and Joint Administration Requests Pending

**DECLARATION OF DAVID W. MANN IN SUPPORT OF
VERIFIED PETITIONS FOR RECOGNITION UNDER CHAPTER
15 AND MOTION FOR ORDER GRANTING RELATED RELIEF**

David W. Mann, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a partner in Dentons Canada LLP's Workout and Insolvency Group, and work from its office in the City of Calgary in Alberta, Canada. I have been a practicing restructuring attorney for over 25 years, and have acted as counsel in a number of complex cross-border restructuring matters involving a Canadian insolvency proceeding and a parallel Chapter 15 proceeding in the US.

2. I am over the age of 18, a citizen of Canada, and, if called upon, could testify to all matters set forth in this declaration, except as otherwise provided herein. I hereby submit this declaration in support of the *Verified Petitions for Recognition of Canadian Proceeding Under Chapter 15 and Motion for Order Granting Related Relief*

(collectively, the “Verified Petition”).

3. Matters stated in this declaration that are based upon my personal knowledge are true and correct. Matters stated in this declaration that are not based upon my personal knowledge, but that are derived from business records, other documents and/or information are true to the best of my information and belief.

A. Overview of the BIA Receivership

4. Ken Pearl of The Fuller Landau Group Inc. (the “Receiver”) is an independent officer of the Court of Queen’s Bench of Alberta, Judicial Centre of Calgary (the “Canadian Court” or the “Court”) by virtue of an order of the Court appointing The Fuller Landau Group Inc. as Receiver over all of the undertaking, property, and assets of the Debtors in a proceeding (the “Canadian Proceeding”) under section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “BIA”) and acts on behalf of all creditors of the Debtors. The Receiver is charged with the duty to secure and monetize the Debtors’ assets to maximize realization for distribution to creditors entitled to same, which I understand is similar to the charge of a trustee under Chapter 7 of the Bankruptcy Code.

5. A BIA receivership is similar to a chapter 7 liquidation under the title 11 of the United States Code (the “Bankruptcy Code”). The goal of a BIA receivership is to maximize the value of Debtors’ assets and distribute the net proceeds of those assets to creditors holding valid claims in the order of priority prescribed by law.

6. Upon being appointed by the Court, the Receiver is a Court officer. A court-appointed receiver has those powers and obligations that are set out in the Court

order (commonly referred to the “receivership Order”) by which it is appointed.

7. On September 18, 2009, amendments to the BIA came into force in Canada, and are applicable to, *inter alia*, all persons or entities that have an interim receiver or receiver appointed in respect of all or substantially all of their property on or after September 18, 2009. I am aware that, prior to the 2009 BIA amendments, creditors argued that a receivership is not a “foreign proceeding,” arguing instead that it was an individual creditor’s remedy and, therefore, not a “collective judicial or administrative proceeding” as required by the Bankruptcy Code.

8. The 2009 amendments introduced the new role of national receiver to carry out the functions previously performed by receivers appointed under provincial legislation or under the more limited appointment of interim receiver under the BIA. Upon appointment by any provincial superior Court, a national receiver can act at once across the country without having to seek recognition in each province and territory.

9. Under the BIA, a receiver must discharge its duties and powers honestly and in good faith, and in a commercially reasonable manner. The aim of its role is to enhance and facilitate preservation and realization for the benefit of all stakeholders. A court-appointed receiver’s responsibility is not only to the applicant creditor; the receiver acts in a fiduciary capacity to all parties involved in the proceeding. *See, e.g., Ostrander v Niagara Helicopters Ltd., et al.* (1973), 1 OR (2d) 281 at 286; *Bank of Nova Scotia v Sullivan Investments Ltd.* (1982), 21 Sask R 14; *Royal Bank of Canada v Vista Homes Ltd.* (1984) BCLR 354.

10. Another component of the collective-proceeding analysis is whether and to

what extent creditors are given notice of the receivership proceeding and matters related thereto. Notice issues are addressed where appropriate throughout this declaration, however, it is clear that to the extent there could be a recovery to unsecured creditors, they would be provided notice to submit their claims for recovery from distributable assets. Also, absent extenuating circumstances, any creditor whose rights may be affected by action taken in a receivership proceeding is provided notice thereof and an opportunity to object thereto.

11. Recognizing that BIA receiverships are collective foreign proceedings, especially in light of the 2009 BIA amendments, Bankruptcy Courts in the US routinely recognize BIA receivership proceedings as “foreign proceedings” under chapter 15 of the Bankruptcy Code. *See, e.g., In re Calmena Energy Servs. Inc., et al.*, Case No. 15-30786 (KKB) (Bankr. S.D. Tex. Mar. 5, 2015); *In re ARXX Corp.*, Case No. 13-13313 (KJC) (Bankr. D. Del. Jan. 31, 2014); *In re Fletcher Leisure Grp. Ltd.*, Case No. 13-13420 (BRL) (Bankr. S.D.N.Y. Nov. 13, 2013), *In re Wellpoint Sys., Inc.*, et al., Case No. 11-10423 (MFW) (Bankr. D. Del. Feb. 25, 2011); *In re Salerno Plastic Film and Bags (USA) Inc.*, Case No. 10-14504 (REL) (Bankr. N.D.N.Y. Jan. 13, 2011); *In re EarthRenew IP Holdings LLC, et al.*, Case No. 10-13363 (CSS) (Bankr. D. Del. Nov. 10, 2010); *In re Innua Canada Ltd., et al.*, Case No. 09-16362 (DHS) (Bankr. D.N.J. Apr. 15, 2009); *In re CPI Plastics Grp. Ltd.*, Case No. 09-20175 (JES) (Bankr. E.D. Wis. Feb. 10, 2009); *In re Daymonex Ltd.*, Case No. 07-90171 (BHL) (S.D. Ind. Feb. 26, 2007); *see also In re Klyties’ Dev., Inc., et al.*, Case No. 07-22719 (MER) (Bankr. D. Co. Feb. 8, 2008) (recognizing Canadian securities receivership as a foreign main proceeding).

B. Commencing the BIA Receivership

12. A receivership under the BIA is commenced by application of a secured creditor of the debtor(s). The secured creditor must prove that a receivership is just or convenient. Subject to few exceptions, the secured creditor, if enforcing its security against all or substantially all of the debtors' inventory, accounts receivable, or other property used in connection with its business, is required to deliver to the Debtor a notice of intention to enforce its security at least 10 days prior to the application for appointment of a receiver.

13. Most provinces have a template form of receivership order, which has been designed and provided by a committee comprised of commercial justices of the superior court and senior members of the insolvency bar. I am a long-standing member of the Alberta template committee. For example, there is a template order that is commonly used in Alberta for receivership appointments, both under provincial legislation and the BIA. It is common practice for the applicant creditor to provide to the Court, along with its application materials, a blacklined form of order showing any proposed variations in the proposed receivership Order from the provincial template. This allows the Court to clearly see what, if any, non-standard relief is being sought at the initial application.

14. The Alberta template Order (applicable here), *inter alia*, contains provisions for a broad stay of proceedings immediately upon appointment, precluding actions against the Receiver, the Debtors, and as may affect the Debtors' property and business. The aim of the Court is to ensure the Court's officer has the ability to carry out its role efficiently and with minimal distraction. The stay is effective for so long as the

Receiver's appointment continues, or until lifted by further Court order. The Receiver is empowered to take possession and control of assets, manage the business, borrow monies in priority to existing creditors (if necessary), and market and sell the business and assets as the Receiver deems prudent and appropriate.

15. Following its appointment, within 10 days thereof, the Receiver is required to deliver notice of its appointment to the Debtors and to all known creditors of the Debtors. The Receiver must also prepare and provide to the Debtors, and to any creditor who requests the same, a notice containing a list of all creditors and their respective indebtedness, a list of assets and respective book values, and an outline of the Receiver's plan of action during the receivership, to the extent such a plan has been formulated. Creditors can request this notice at any time up to 6 months after the Receiver's discharge from its role.

C. The Role, Rights, and Obligations of the BIA Receiver

16. In this case, the Alberta template receivership Order was used by the applicant creditor as the basis for the appointment of the Receiver in the Canadian Proceeding.¹ Standard provisions have been directed by the Canadian Court, including, *inter alia*, a ring-fence of protection for the Receiver, the Debtors and their assets from creditors, and power and authority to:

- take possession of and exercise control over the Debtors' assets, property

¹ The receivership Order entered is attached as Exhibit A to the *Declaration of Ken Pearl in Support of Verified Petitions for Recognition of Canadian Proceeding Under Chapter 15 and Motion for Order Granting Related Relief* filed contemporaneously herewith.

and undertakings;

- manage, operate and carry on the Debtors' business, including power to enter into agreements and incur obligations in the ordinary course of the Debtors' business;
- cease to perform contracts of the Debtors;
- engage agents and consultants as the Receiver deems necessary;
- initiate, prosecute, settle or extend claims by and for the Debtors;
- market any or all of the Debtors' property and business and complete sale transactions, out of ordinary course of business, without further Court approval for *de minimis* transactions for consideration up to \$100,000 (CDN) for any single transaction, and up to the aggregate consideration of \$500,000 (CDN) for all such transactions;
- apply for a vesting Order or Orders as may be necessary to convey the Debtors' property free and clear of all encumbrances;
- enforce access to property and co-operation of necessary persons (e.g. the Debtors and its directors and officers, employees, agents, shareholders, and others);
- have the benefit of a charge over all of the Debtors' property, ranking in priority to all secured, unsecured and other claims existing at the time of receivership, as security for the payment of the Receiver's fees and disbursements;
- borrow, up to an aggregate limit of \$1,000,000 (CDN) by revolving credit or otherwise as may be necessary to carry out the receivership, which borrowings will be secured by a priority charge on the property of the Debtors; and
- establish and maintain a website in respect of the receivership proceedings: <http://fullerllp.com/strata>, where any parties in interest can obtain the documents filed and orders entered in the receivership proceeding.

17. The most important effect of the Canadian Proceeding is that the Debtors lost the right to dispose of and control their assets. Instead, such disposition and control is vested in the Receiver, which I understand is akin to powers vested in a Chapter 7 trustee

for a company in liquidation under the Bankruptcy Code.

18. The Receiver's control is over the entire estate of the Debtors as of the date of the receivership order, which includes any and all of the Debtors' assets, including any assets located outside of Canada, as well as all assets acquired during the Canadian Proceeding. I understand this is similar to the powers of a trustee under Chapter 7 of the Bankruptcy Code.

19. In reflection of the foregoing, the Receiver is in the process of inspecting the Debtors' books and records, taking possession of the Debtors' property, identifying potential creditors in Canada and the US, notifying them where necessary or appropriate, and determining the complete body of claims against the Debtors' property and their priority.

20. The Receiver is also in the process of undertaking a marketing process in respect of certain of the Debtors' property with a view to identifying one or more suitable buyers and completing sale transactions in respect of the property (any such transaction, a "Sale"). On December 4, 2015, the Canadian Court granted an Order in the Canadian Proceedings approving the engagement by the Receiver of Raymond James & Associates, Inc. ("Raymond James") as investment banker and financial advisor to the Receiver to assist with a sale process and completing a Sale.

21. The Receiver will require approval of the Canadian Court for each significant Sale (in excess of the *de minimis* monetary limits outlined above) and will seek from the Canadian Court (at such time as it become necessary) a vesting order, delivering title to the assets free and clear of the claims of all creditors, after which the

Receiver will seek recognition of the vesting order in this Court to the extent it concerns US assets.

D. The BIA Receivership Claims Process

22. The Receiver has a duty to undertake a review of any and all secured claims, charges or liens in respect of all the Debtors' property. After the claims are reviewed—and on notice to the Debtors and other parties in interest—the Receiver will seek the Canadian Court's approval to distribute the proceeds of any Sale to creditors in accordance with the priority of all valid claims, including the claims of the Receiver (if any) in respect of its priority charges related to costs of administering the receivership. Thus, no funds or assets will be distributed to creditors without supervision and approval of the Canadian Court.

23. The Receiver currently understands that the only secured claimants in respect of the Debtors, apart from creditors with specific claims against specific pieces of the Debtors' equipment, are PNC Bank Canada Branch , BDC Capital Inc. and/or Wells Fargo Bank, N.A. The Receiver continues to review the Debtors' books and records and other relevant sources, such as the relevant personal property security registries in the US and Canada, to ensure this is accurate and that all secured creditors are identified.

24. Currently, I am advised by the Receiver that it is uncertain whether there will be any funds remaining for distribution to unsecured creditors. If sufficient sale proceeds remain for distribution after payments are made to all identified secured creditors, the Receiver would conduct an unsecured claims process for the purpose of identifying and quantifying all unsecured claims and distributing proceeds to unsecured

creditors of each Debtor. Such a claims process would be structured in a Court Order (a “Claims Process Order”). A Claims Process Order must be approved by the Canadian Court before a claims process can be implemented and will normally provide for a notice period to all creditors and a method by which they can prove their claim(s) to the Receiver. In the event a creditor wishes to object to the Receiver’s adjudication of his or her claim, such creditor would have a right to be heard in the Canadian Court.² Alternatively, the Debtors may be placed into bankruptcy where a licensed trustee in bankruptcy would perform a similar process.

25. Distributions to unsecured creditors in connection with this process would be *pro rata* and completed through a process approved by the Canadian Court. I am informed that such ratable distribution is similar to what would occur under the Bankruptcy Code.

26. If such a claims process is not undertaken, unsecured creditors would be forced to pursue individual—rather than collective—remedies at their own risk and expense and likely, to the detriment of the creditor body, generally.

27. In my view, the claims process outlined above, as overseen by the Canadian Court, would provide due notice, be efficient in terms of the costs to the Debtors and diminution of funds available to creditors, fair to all creditors of the Debtors, whether Canadian or American, and appropriate under the circumstances. For this reason, I support the Receiver’s request that this Court permit all claims to be administered under

² In the event a US claims process is required, the Petitioner will apply for an order establishing such process at a later date.

Canadian law and to be overseen by the Canadian Court in respect of secured and unsecured claims against all the Debtors, without the requirement of an additional claims process to be run through these chapter 15 cases (unless facts later determined require it).

E. The Canadian Court's Role in the BIA Receivership

28. The Canadian Proceeding is a Court-supervised process wherein the Receiver is obligated under the BIA to provide interim reports to the Court and the Superintendent of Bankruptcy, the federal regulator in Canada, on the progress of, and major events that occur during, the Canadian Proceeding. These reports must be filed at least every 6 months, are publically available and can be obtained and reviewed by all creditors. All reports and materials filed with the Court in the Canadian Proceedings are not only available at the courthouse in Calgary, being the locality of the Debtors, but also on the Receiver's website which is frequently updated.

29. In reality, the Receiver files reports with the Court more often than every 6 months, as the Receiver is subject to the Court's supervision throughout its mandate. The Receiver will file a report in connection with any application it makes. As noted above, the Receiver is subject to monetary limits on its borrowings and the value of consideration of sale transactions. Moreover, the Receiver requires Court approval of any significant sale process that may be implemented, claims process that may be required, and sale of assets where vesting of clear title is necessary.

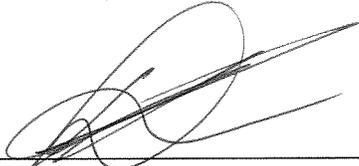
30. The Receiver has already made its first report to the Court in connection with its application for the approval of the Raymond James engagement and the implementation of its proposed sale process. The Receiver will report to the Court as

frequently as is needed to properly carry out the receivership.

31. Upon its discharge, the Receiver is required to file a final report including a final statement of receipts and disbursements and details of distributions and dispositions of proceeds and property as have occurred. The Receiver cannot be discharged from its role without doing so, as well as obtaining an Order of the Canadian Court.

[signature on following page]

Executed this 14 day of December, 2015 in Calgary, Alberta, Canada.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David W. Mann

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