

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

In re:

HEMATITE HOLDINGS INC., *et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-12387 ( )

Joint Administrated Requested

**MOTION OF FOREIGN REPRESENTATIVE FOR ORDER (I) SCHEDULING HEARING  
ON VERIFIED PETITION UNDER CHAPTER 15 OF THE BANKRUPTCY CODE FOR  
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND FOR ADDITIONAL  
RELIEF AND ASSISTANCE UNDER 11 U.S.C. §§105(a), 1507, AND 1521 AND (II)  
SPECIFYING FORM AND MANNER OF SERVICE OF NOTICE OF HEARING**

Hematite Holdings Inc., in its capacity as the Canadian Court-appointed and authorized foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”) which are the subjects of a reorganization proceeding (the “CCAA Proceeding”) commenced before the Ontario Superior Court Of Justice (Commercial List) in Canada (the “Canadian Court”) under Canada’s *Companies’ Creditors Arrangement Act* (the “CCAA”), by and through its undersigned counsel, files this motion (the “Motion”), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Notice Order”), (i) approving the notice substantially in the form annexed to the Proposed Notice Order as **Exhibit 1** (the “Notice”) of the filing of the Petitions for Recognition (as defined herein) and providing notice of Foreign Representative’s intent to rely on foreign law; (ii) setting a hearing on the relief sought in the Verified Petition (the “Recognition Hearing”), and (iii) specifying the form

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<sup>1</sup> The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

and manner of service of the Notice in the above-captioned chapter 15 cases (the “Chapter 15 Cases”). In support of the Motion, the Foreign Representative respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

2. The Foreign Representative, in its capacity as authorized foreign representative, consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue is proper in this Court and this District pursuant to 28 U.S.C. § 1410.

4. The statutory predicates for the relief requested herein are sections 105, 1514, and 1515 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”). Relief is also warranted pursuant to Rules 1007, 1011, 2002 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **PROCEDURAL AND FACTUAL BACKGROUND**

5. On the date hereof (the “Petition Date”), each of the Debtors filed their respective Official Form 401 voluntary petitions for relief under chapter 15 of the Bankruptcy Code, a *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* (together, the “Petitions for Recognition”), the Nadeau Declaration (defined below) and the *Motion of Hematite Holdings Inc.*,

as Foreign Representative, For an Order Granting Certain Provisional Relief (the “Provisional Relief Motion,” together with the Petitions for Recognition and the Nadeau Declaration, the “Chapter 15 Pleadings”) pursuant to section 1515 of the Bankruptcy Code seeking, among other things, (i) entry of an Order recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code and (ii) relief under sections 1520 and 1521 of the Bankruptcy Code.

6. The detailed factual background relating to the Debtors and the commencement of the Petitions for Recognition is set forth in *Declaration of Jacques Nadeau in Support of the Debtors’ Chapter 15 Petitions and First Day Pleadings in Foreign Proceeding* (the “Nadeau Declaration”).

### **RELIEF REQUESTED**

7. By this Motion, the Foreign Representative requests entry of the Proposed Notice Order: (i) approving the Notice of the filing of the Petitions for Recognition and providing notice of the Foreign Representative’s intent to rely on foreign law; (ii) setting the Recognition Hearing, and (iii) specifying the form the manner of service of the Notice.

#### **A. Form and Manner of Notice**

8. Bankruptcy Rule 2002(q)(1) provides that:

The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days’ notice by mail of the hearing. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding and shall include the petition and any other document the court may require.

Fed. R. Bankr. P. 2002(q)(1).

9. Although Bankruptcy Rule 2002(q) provides that the parties identified therein must receive at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding, it fails to specify the form and manner in which such notice must be given. Therefore, pursuant to Bankruptcy Rules 2002(m) and 9007, this Court may specify such form and manner of notice.<sup>2</sup>

10. Consistent with the requirements of Bankruptcy Rule 2002(q)(1), the Foreign Representative proposes serving the Notice, Chapter 15 Pleadings and all filings in these Chapter 15 Cases by United States first-class mail and electronic mail (where available) on the following (collectively, the "Core Notice Parties"):<sup>3</sup> (i) counsel to the Interim DIP Lender; (ii) the Canadian Department of Justice; (iii) the United States Internal Revenue Service; (iv) counsel to the Debtors in the CCAA Proceeding; (v) the Monitor in the CCAA Proceeding; (vi) the Office of the United States Trustee for the District of Delaware; (vii) the Ministry of Finance for the Province of Ontario; (viii) the Office of the United States Attorney for the District of Delaware; (ix) the Delaware Secretary of State; (x) the United States Securities and Exchange Commission; (xi) the Delaware State Treasury; and (xii) any party that files a notice of appearance in these Chapter 15 Cases. The Foreign Representative proposes that such service upon the Core Notice Parties (the "Core Party Service") will be completed within three (3) business day of entry of the Proposed Notice Order.

11. Further, the Foreign Representative respectfully proposes serving the Notice via United States first-class mail and electronic mail (where available) on the following

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<sup>2</sup> Bankruptcy Rules 2002(m) and 9007 provide, among other things, that when notice is to be given under the Bankruptcy Rules, the court shall designate the form and manner in which such notice shall be given (provided the Bankruptcy Rules do not otherwise specify the appropriate form and manner of such notice). *See id.* 2002(m) and 9007.

<sup>3</sup> Capitalized parties included in the Core Notice Parties shall have the meanings ascribed to them in the Petitions for Recognition.

(collectively, the “Notice Parties”): (i) all persons or bodies authorized to administer the foreign proceeding of the Debtors; (ii) all entities against whom provisional relief is being sought under Bankruptcy Code section 1519; and (iii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date.

12. The Foreign Representative respectfully submits that service as set forth above, by United States mail, first-class postage pre-paid, upon the Core Notice Parties and the Notice Parties in accordance with Bankruptcy Rule 2002(k) and (q), constitutes adequate and sufficient notice of the Chapter 15 Cases, the relief sought in the Petitions for Recognition, the time fixed for filing objections to the relief sought in the Petitions for Recognition, and the time, date, and place of the Recognition Hearing.

**B. Scheduling Recognition Hearing**

13. Bankruptcy Code section 1517(c) provides that a petition for recognition shall be decided “at the earliest possible time.” 11 U.S.C. § 1517(c). Moreover, Bankruptcy Rule 1011(b) provides that a party objecting to a petition filed to commence an ancillary proceeding under Chapter 15 of the Bankruptcy Code has twenty-one (21) days from service to respond thereto. *See* Fed. R. Bankr. P. 1011(b). Similarly, Bankruptcy Rule 2002(q)(1) provides that parties are to be given twenty-one (21) days’ notice of a hearing on a chapter 15 petition. *See id.* 2002(q)(1).

14. In light of the foregoing requirements, the Foreign Representative respectfully requests that this Court: (i) schedule the Recognition Hearing Date approximately twenty-one (21) days after service of the Petitions for Recognition and Notice and (ii) set an appropriate objection deadline in connection therewith. The Foreign Representative further requests that this Court require that all objections or responses, if any, to the Petitions for Recognition must be made in writing (describing the basis for any objection) and pursuant to the

Bankruptcy Code, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and the Bankruptcy Rules, including, without limitation, Bankruptcy Rule 1011, which objection or response must be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon undersigned counsel to the Foreign Representative.

WHEREFORE, the Foreign Representative respectfully requests entry of an order in the form of the Proposed Notice Order attached hereto as **Exhibit A** (a) setting a hearing date for the Recognition Hearing and (b) approving the form of Notice and the manner of service of the Notice and the Petitions for Recognition.

Dated: September 22, 2020  
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Todd A. Atkinson

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*Counsel for Hematite Holdings Inc.,  
in its capacity as Foreign Representative*

**EXHIBIT A**

**Proposed Order**

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

In re:

HEMATITE HOLDINGS INC., *et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-12387 ( )

Joint Administrated Requested

Related Docket No. \_\_\_\_

**ORDER (I) SCHEDULING HEARING ON VERIFIED PETITION UNDER CHAPTER 15  
OF THE BANKRUPTCY CODE FOR RECOGNITION OF A FOREIGN MAIN  
PROCEEDING AND FOR ADDITIONAL RELIEF AND ASSISTANCE  
UNDER 11 U.S.C. §§105(a), 1507, AND 1521 AND (II) SPECIFYING  
FORM AND MANNER OF SERVICE OF NOTICE OF HEARING**

UPON CONSIDERATION of the motion (the “Motion”)<sup>2</sup> of the Foreign Representative for the Debtors for entry of an order scheduling a hearing on the Foreign Representative’s verified petition for recognition of a foreign main proceeding and the relief requested therein and specifying the form and manner of service of notice of the hearing; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having

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<sup>1</sup> The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.



held a hearing to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The form of the Notice attached hereto as **Exhibit 1** is hereby APPROVED.
2. Copies of the Notice, the Chapter 15 Pleadings, including the Petitions for Recognition, related filings, and the documents filed in support thereof (collectively, the “Service Documents”) shall be served by United States mail, first-class postage pre-paid and electronic mail (where available) on or before the third business day after the entry of this order upon the Core Notice Parties and the Notice Parties, as set forth in the Motion, at their last known addresses.
3. If any party files a notice of appearance in this case, the Foreign Representative shall serve the Service Documents upon such party within five (5) business days of the filing of such notice of appearance if such documents have not already been served on such party (or its counsel).
4. Service of the Service Documents in accordance with this Order is hereby approved as adequate and sufficient notice and service of the Service Documents on all interested parties.
5. A hearing (the “Hearing”) on the relief sought in the Petitions for Recognition as well as responses or objections, if any, to the Service Documents shall be held on \_\_\_\_\_, 2020 at \_\_\_\_\_ : \_\_\_\_\_ .m. (**prevailing Eastern Time**), before the Honorable [\_\_\_\_\_], United States Bankruptcy Judge, at the United States

Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), 824 N. Market Street, [ ] Floor, Courtroom [ ], Wilmington, Delaware 19801, United States of America.

6. Responses or objections, if any, to the Petitions for Recognition or the Service Documents must be in writing describing the basis therefor and shall be (i) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, United States of America; and (ii) served upon Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, United States of America (Matthew P. Ward, Esq., [matthew.ward@wbd-us.com](mailto:matthew.ward@wbd-us.com); Morgan L. Patterson, Esq., [morgan.patterson@wbd-us.com](mailto:morgan.patterson@wbd-us.com); and Todd A. Atkinson, Esq., [todd.atkinson@wbd-us.com](mailto:todd.atkinson@wbd-us.com)), United States counsel to the Foreign Representative, on or before \_\_\_\_\_, **2020 at 4:00 p.m. (prevailing Eastern Time)**.

7. Replies in support of the relief sought in the Petitions for Recognition shall be filed with the Court on or before \_\_\_\_\_, **2020 at 4:00 p.m. (prevailing Eastern Time)**

8. The Hearing may be adjourned from time to time without notice other than an announcement in open court at the Hearing or the adjourned date of the hearing.

9. Notwithstanding section 1514(c) of the Bankruptcy Code, the Foreign Representative is not at this time setting a deadline for the filing of claims in these Chapter 15 cases but reserves the right to do so at a later date.

10. Service pursuant to this Order shall be good and sufficient service and adequate notice of the hearing to consider the Petitions for Recognition and the Foreign Representative's request for an order granting recognition of the foreign proceeding as a "foreign main proceeding" and for related relief.

**EXHIBIT 1**

**Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

HEMATITE HOLDINGS INC., *et al.*,<sup>1</sup>

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-12387 ( )

Joint Administrated Requested

Related Docket Nos.: \_\_\_\_

Objection Deadline: \_\_\_\_\_, 2020 at 4:00 p.m. (ET)

Hearing Date: \_\_\_\_\_, 2020 at \_\_\_\_\_m. (ET)

**NOTICE OF FILING AND HEARING ON VERIFIED PETITION  
OF FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

**PLEASE TAKE NOTICE** that on September 22, 2020, Hematite Holdings Inc., in its capacity as the Canadian Court-appointed and authorized foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”) in a reorganization proceeding (the “CCAA Proceeding”) commenced under Canada’s Companies’ Creditors Arrangement Act (the “CCAA”) pending before the Ontario Superior Court of Justice (Commercial List) (Court File No. CV-20-00647824-00CL) in Ontario, Canada, by the Foreign Representative’s undersigned United States counsel, filed an *Official Form Petition* for each of the Debtors, the *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Initial Order and Amended Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code, and the Motion of Hematite Holdings Inc., as Foreign Representative, For an Order Granting Certain Provisional Relief* (together with all exhibits, declarations and other documents appended thereto or filed in connection therewith, the “Petitions for Recognition”) commencing chapter 15 cases ancillary to the CCAA Proceeding and seeking (i) recognition of such foreign proceeding as “foreign main proceeding” and (ii) relief in aid of the CCAA Proceeding in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) with respect to the Debtors, including certain additional relief pursuant to sections 105, 362, 363, 365, 1507, and 1521 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the *Order Scheduling Hearing on Verified Chapter 15 Petition and Specifying Form and Manner of Notice of Hearing* [Docket No. \_\_\_\_] (the “Scheduling Order”), the Bankruptcy Court has scheduled a hearing on \_\_\_\_\_, **2020 at \_\_\_\_\_ : \_\_\_\_\_ .m. (prevailing Eastern Time)** (the “Hearing”) before the Honorable [\_\_\_\_], United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, [\_\_\_\_] Floor, Courtroom [\_\_\_\_], Wilmington, Delaware 19801, United States of America.

<sup>1</sup> The U.S. Debtors in these chapter 15 cases and the last four digits of their U.S. Federal Employer Identification Numbers are as follows: Pavaco Holdings U.S. Inc. (5569); Hematite, Inc. (3799); and Hematite Automotive Products Inc. (5382). The Canadian Debtors in these chapter 15 cases and the last four digits of their unique identifier are as follows: Hematite Holdings Inc. (8581); Hematite Manufacturing Inc. (4900); Hematite Industrial Products Inc. (7706); and Canadian Pavaco Inc. (5315). The U.S. Debtors and the Canadian Debtors are referred to herein, collectively, as the “Debtors.” The Debtors’ principal offices are located at 659 Speedvale Avenue West, Guelph, Ontario, N1K 1E6, Canada.

**PLEASE TAKE FURTHER NOTICE** that any response or objection to the relief requested in the Petitions for Recognition must be (i) in writing describing the basis therefor; (ii) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, United States of America, **on or before \_\_\_\_\_, 2020 at \_\_\_\_\_ .m. (prevailing Eastern Time)** (the “**Objection Deadline**”); and (iii) served upon Womble Bond Dickinson (US) LLP, 1313 N. Market Street, Suite 1200, Wilmington, Delaware 19801, United States of America (Attention: Matthew P. Ward, Esq., [matthew.ward@wbd-us.com](mailto:matthew.ward@wbd-us.com); Morgan L. Patterson, Esq., [morgan.patterson@wbd-us.com](mailto:morgan.patterson@wbd-us.com); and Todd A. Atkinson, Esq., [todd.atkinson@wbd-us.com](mailto:todd.atkinson@wbd-us.com)), United States counsel to the Foreign Representative, on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the Petitions for Recognition or the Foreign Representative’s request for relief must appear at the Hearing at the time and place set forth above. Further, the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing of the adjourned date or dates or any further adjourned hearing.

**PLEASE TAKE FURTHER NOTICE** that the Foreign Representative intends to raise issues pertaining to foreign law, specifically Canadian insolvency law including the CCAA, in connection with the Petitions for Recognition: (i) recognizing the CCAA Proceeding as a foreign main proceeding pursuant to chapter 15 of the Bankruptcy Code and the Foreign Representative as the Debtors’ foreign representative under Bankruptcy Code sections 1509 and 1517; (ii) granting automatic relief pursuant to Bankruptcy Code section 1520; and (iii) granting other and additional relief pursuant to Bankruptcy Code sections 1507 and 1521(a) and (b).

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the recognition and relief requested by the Foreign Representative without further notice. Copies of the Petitions for Recognition and the Scheduling Order may be obtained for a fee by visiting the Bankruptcy Court’s website at <https://www.deb.uscourts.gov/>, or free of charge by contacting the undersigned United States counsel to the Foreign Representative.

Dated: September \_\_\_\_, 2020  
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

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