

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

In re:)	Chapter 15
)	
)	
MOTORCYCLE TIRES & ACCESSORIES)	Case No. 19-12706 (KBO)
LLC, <i>et al.</i> , ¹)	Joint Administration Requested
)	
Debtors in a Foreign Proceeding)	
)	

**FOREIGN REPRESENTATIVE’S MOTION FOR PROVISIONAL AND FINAL RELIEF
IN RECOGNITION OF A FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS
105(a), 1507, 1517, 1519, 1520 AND 1521 OF THE BANKRUPTCY CODE**

KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and authorized foreign representative of Motorcycle Tires & Accessories LLC (“MTA”) and certain of its wholly-owned subsidiaries (collectively, the “Debtors”), in Canadian proceedings (the “Canadian Proceeding”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the District of Montreal (the “Canadian Court”) hereby moves (the “Motion”) this Court, pursuant to sections 105(a), 1507, 1517, 1519, 1520 and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) for: (i) entry of a provisional order (the “Provisional Relief Order”), attached hereto, on an interim basis, (a) enforcing the CCAA Order (as defined below) and (b) staying any collection activity by creditors against the Debtors’ assets in the United States; (ii) entry of a final order (the “Recognition Order”), attached hereto, after notice and a hearing, (a) granting recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code and (b) enforcing the CCAA Order on a permanent basis in the United States; and (iii) granting such

¹ The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

other and further relief as this Court deems just and proper. In support of this Motion, the Foreign Representative relies upon the *Declaration of Maxime Codère in Support of Foreign Representative's (I) Verified Petitions under Chapter 15, (II) Motion for Joint Administration, (III) Motion for Provisional and Final Relief in Recognition of a Foreign Main Proceeding, (IV) Motion to Establish Certain Notice Procedures in Connection with Filing of Verified Petitions under Chapter 15 and (V) Motion to Assume Agency Agreement* (the "Codère Declaration")² and the *Memorandum of Law in Support of Chapter 15 Petitions for Recognition of a Foreign Proceeding and Related Relief* (the "Memorandum of Law") filed contemporaneously herewith and incorporated herein by reference. In further support of the relief requested herein, 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.
2. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition (collectively, the "Petitions for Recognition") of the CCAA Proceeding pursuant to section 1515 of the Bankruptcy Code.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
4. Venue is proper in this Court and this District pursuant to 28 U.S.C. § 1410.
5. The statutory predicates for the relief requested herein are sections 105(a), 362, 1507, 1517, 1519, 1520 and 1521 of the Bankruptcy Code.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Codère Declaration.

BACKGROUND

6. On the date hereof (the “Petition Date”), the Foreign Representative filed with this Court verified voluntary petitions (collectively, the “Chapter 15 Petitions”) for each of the Debtors under chapter 15 of the Bankruptcy Code (the “Chapter 15 Cases”).

7. The Canadian Proceeding was commenced under the CCAA, pursuant to which the Canadian Court entered an order appointing KPMG as monitor and authorizing it to act as foreign representative of the Debtors on December 2, 2019 (as amended and restated on December 12, 2019, the “CCAA Order”).

8. Additional information about the Debtors’ business, the events leading up to the Petition Date, and the facts and circumstances surrounding the Debtors, the Canadian Proceeding and the Chapter 15 Cases can be found in the Codère Declaration.

RELIEF REQUESTED

9. By this Motion, pursuant to sections 105, 1507, 1517, 1519, 1520 and 1521 of the Bankruptcy Code, the Foreign Representative seeks: (i) entry of the Provisional Relief Order, attached hereto, on an interim basis, (a) enforcing the CCAA Order and (b) staying any and all collection activity or execution by creditors against the Debtors’ assets in the United States, including, but not limited to, continuing any action or commencing any additional action involving the Debtors or their assets or the proceeds thereof, enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets, commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or against any of their property and managing or exercising control over the Debtors’ assets; (ii) entry of the Recognition Order, attached hereto, after notice and a hearing, pursuant to sections 1517 and 1520 of the Bankruptcy Code,

(a) granting recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code and (b) enforcing the CCAA Order on a permanent basis in the United States; and (iii) granting such other and further relief as this Court deems just and proper.

BASIS FOR RELIEF

10. The Foreign Representative filed the Chapter 15 Petitions in an effort to obtain recognition of the Canadian Proceeding as a “foreign main” proceeding under section 1517 of the Bankruptcy Code and to obtain certain relief related thereto from this Court in connection with the Chapter 15 Cases. However, until the Court grants such relief, the Debtors’ assets are vulnerable to collection and enforcement actions by creditors in the United States. Such actions threaten the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities,” including the Debtors, and the “protection and maximization of the value of the debtor’s assets” contemplated by sections 1501(a)(3) and (a)(4) of the Bankruptcy Code. The Foreign Representative’s ultimate goal is to ensure an orderly administration of the Debtors’ financial affairs under the aegis of the Canadian Proceeding, and with the aid of this Court through the Chapter 15 Cases. The Foreign Representative submits that entry of the Provisional Relief Order under section 1519 of the Bankruptcy Code is the most efficient and effective means of ensuring such a result.

11. Accordingly, the Foreign Representative respectfully requests the Court enter the Provisional Relief Order, granting provisional injunctive relief pursuant to section 1519 of the Bankruptcy Code, until such time as the Court has the opportunity to consider the Chapter 15 Petitions and entry of the Recognition Order.

A. Provisional Relief Is Authorized Under Section 1519(a) of the Bankruptcy Code

12. Section 1519(a) of the Bankruptcy Code provides:

From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including -

- (1) staying execution against the debtors assets;
- (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

11 U.S.C. § 1519(a).

13. Relief under section 1519 of the Bankruptcy Code is governed by the standards applicable to injunctions. *See* 11 U.S.C. § 1519(e). The standard for the grant of a preliminary injunction requires the court to balance the petitioner's likelihood of success against the relative prejudice that will inure to the parties. *See HRP Creative Servs. Co., LLC v. FPI-MB Entm't, LLC*, 616 F. Supp. 2d 481, 489 n.14 (D. Del. 2009) (noting that the test for a preliminary injunction involves a balancing of the interests among the parties that will result from preservation of the *status quo*). In determining whether injunctive relief is appropriate, courts must consider: (1) the likelihood of success on the merits; (2) the irreparable harm that will result if the injunction is denied; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether the public interest favors such relief. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citation omitted). The petitioner must establish that (i) irreparable harm will result absent an injunction, and (ii) a reasonable likelihood of success on the merits. *See Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000). The latter two factors should be taken into account where relevant. *See id.* ("If

relevant, the court should also examine the likelihood of irreparable harm to the nonmoving party and whether the injunction serves the public interest.”) (citation omitted); *In re Uniflex, Inc.*, 319 BR 101, 104 (Bankr. D. Del. 2005). “As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the [movant].” *AT&T Co. v. Winback and Conserve Program, Inc.*, 42 F. 3d 1421, 1427 n.8 (3d Cir. 1994). Under this standard, the Foreign Representative submits that it is entitled to provisional injunctive relief pursuant to section 1519 of the Bankruptcy Code and entry of the Provisional Relief Order.

B. The Foreign Representative Is Likely to Succeed On the Merits of Its Petition for Recognition

14. Chapter 15 of the Bankruptcy Code applies where assistance is sought in the United States by a foreign representative in connection with a foreign proceeding. *See* 11 U.S.C. § 1501(b)(1). Two of the objectives of chapter 15 are the “fair and efficient administration of cross-border insolvencies that protects the interest of all creditors, and other interested entities, including the debtor,” and the “protection and maximization of the value of the debtor’s assets.” *Id.* § 1501(a)(3), (a)(4). These Chapter 15 Cases have been commenced to obtain the assistance of this Court in the effective and economical administration of the Canadian Proceeding by, among other things, carrying out the terms of the CCAA Order.

15. Section 1517(a) of the Bankruptcy Code, which governs the Foreign Representative’s request for entry of the Recognition Order, provides:

Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

- (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.

Id. § 1517(a).

16. The Bankruptcy Code provides a clear and objective standard for determining the recognition of a foreign proceeding under section 1517 of the Bankruptcy Code. As reflected in the legislative history to Chapter 15:

The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceeding of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section [1517], which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition.

H.R. Rep 109-31, at 113 (2005), *reprinted in* 2005 U.S.C.C.A.N 88, 175. The Foreign Representative has satisfied the requirements of section 1517(a) of the Bankruptcy Code and is therefore “likely to succeed on the merits” of its request for entry of the Recognition Order.

(a) The Canadian Proceeding is a “foreign proceeding.”

17. Section 101(23) of the Bankruptcy Code defines the term “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.

11 U.S.C. § 101(23).

18. The Canadian Proceeding falls squarely within this definition of a “foreign proceeding” since it encompasses a comprehensive adjustment of the Debtors’ assets and liabilities subject to the control and supervision of the Canadian Court. Accordingly, the

Chapter 15 Cases involve a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code.

(b) The Chapter 15 Cases were commenced by a “foreign representative.”

19. Section 101(24) of the Bankruptcy Code defines a “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). Here, through the CCAA Order, the Foreign Representative has been authorized to act as a foreign representative for the Debtors in the Canadian Proceeding. *See* CCAA Order ¶¶ 28(k), 56 (specifically authorizing the Foreign Representative to act as foreign representative and to file these chapter 15 proceedings).

(c) The Chapter 15 Cases were properly commenced.

20. These Chapter 15 Cases were commenced as required by sections 1504 and 1509 of the Bankruptcy Code by the filing of the Chapter 15 Petitions under section 1515(a) of the Bankruptcy Code, accompanied by all documents and information required by sections 1515(b) and (c) of the Bankruptcy Code, including a certified copy of the CCAA Order, and a statement identifying all foreign proceedings with respect to the Debtors that are known to the Foreign Representative. In addition, the Foreign Representative included with the Chapter 15 Petitions a statement under Bankruptcy Rule 1007(a)(4) identifying all litigation known to be pending in the United States, and a list of all parties against whom provisional relief is sought (the Foreign Representative included a list of all known creditors of the Debtors).

(d) The Canadian Proceeding is a foreign main proceeding.

21. The Bankruptcy Code provides that a foreign proceeding for which chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the

country where the debtor has the “center of its main interests.” 11 U.S.C. § 1517(b)(1). Section 1516(c) of the Bankruptcy Code provides that, in the absence of evidence to the contrary, the debtor’s registered office is presumed to be the center of the debtor’s main interests. *Id.* § 1516(c). Motovan is incorporated under the Canada Business Corporations Act and has its head and registered offices in Quebec, Canada.³ Thus, the presumption provided by 1516 dictates that the Debtors’ “center of main interests” is Canada, such that the Canadian Proceeding qualifies as a “foreign main proceeding” under the Bankruptcy Code.

22. Although the Bankruptcy Code is silent as to the type of contrary evidence necessary to overcome the presumption provided by section 1516(c) of the Bankruptcy Code, courts have recognized that the following factors are relevant to the “center of main interest” analysis: (1) the location of the debtor’s headquarters; (2) the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); (3) the location of the debtor’s primary assets; (4) 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 (5) the jurisdiction whose law would apply to most disputes. *See In re ABC Learning Ctrs. Ltd.*, Case No. 10-11711, 2010 WL 5439809, at *11 (Bankr. D. Del. Dec. 16, 2010) (citing *In re Bear Stearns*, 389 B.R. 325, 336 (S.D.N.Y. 2008)). Applying those factors here does not overcome the presumption provided by section 1516(c) because: (1) the Debtors’ corporate headquarters are located in Montreal, Quebec, Canada; (2) the key management personnel of the Debtors are in Canada; and (3) a majority of the Debtors’ creditors, including all of its secured creditors, are located in Canada. Importantly, the Debtors’ principal corporate management and strategic functions are undertaken in Canada and the Debtors’ Canadian and United States operations are

³ Motovan is the ultimate parent company, which wholly owns the subsidiaries that are Debtors in these proceedings (collectively, the “U.S. Subsidiaries”).

integrated and function in a coordinated way such that the U.S. Subsidiaries would be unable to operate or function independently.

C. The Debtors will Suffer Irreparable Harm Absent the Provisional Relief Requested

23. The Foreign Representative believes that application of provisional relief pursuant to section 362 of the Bankruptcy Code in these cases is critical to the prevention of irreparable damage to the Debtors' reorganization proceeding in Canada. These cases were commenced for the purpose of obtaining the assistance of the Court in respect of the CCAA Proceeding and to give effect in the United States to the CCAA Order. Unless the Provisional Relief Order is entered, the Debtors face the real possibility of immediate and irreparable harm from (i) individual creditors' collection and enforcement actions, and (ii) the Debtors being unable to proceed with the orderly liquidation of their assets in the United States pending this Court's entry of the Recognition Order.

24. Entry of the Provisional Relief Order is necessary to protect the Debtors' assets and claims and to preserve the orderly administration of the Debtors' United States assets. If individual creditors are free to initiate piecemeal collection and enforcement actions, the Debtors' efforts to ensure such an orderly administration will be jeopardized. Absent this Court's entry of the Provisional Relief Order, the Debtors may be forced to expend their limited resources in defense of attachment and other similar collection actions by individual creditors, thereby exposing the Debtors (and their creditors) to irreparable harm. This type of decentralized administration of the Debtors' assets could be extremely prejudicial to the Debtors' reorganization process, and could serve to hinder the Canadian Proceeding.

25. With respect to the potential for collection activity on a piecemeal basis, a number of courts have recognized the need for provisional relief to prevent individual creditors

from taking extrajudicial advantage of the recognition process. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987) (harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary “to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group”); *In re Lines*, 81 B.R. at 270 (stating that “the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury”).

26. If all creditors are not enjoined, the assets of the Debtors located in the United States may be prematurely seized, or actions commenced, and the orderly determination of claims in the foreign proceeding will be rendered impossible. If creditors unilaterally pursue collection or enforcement efforts, or application of setoff, it could diminish the value of the Debtors’ assets and cause significant delay and disruption to the Debtors’ restructuring process. The purpose of chapter 15 is to prevent such harm. *See* 11 U.S.C. § 1501.

D. Provisional Relief Is Warranted Under the Balance of Hardships Test

27. In contrast to the hardships described above, preservation of the *status quo* through the provisional relief requested will not significantly prejudice creditors. Individual creditors’ rights to initiate piecemeal collection and enforcement actions should be afforded minimal weight in light of the Canadian Proceeding, the filing of the Chapter 15 Petitions, and the Foreign Representative’s request for entry of the Recognition Order. The hearing on the Recognition Order will be held in approximately 21 days, such that the relief requested in the Provisional Relief Order will only be in place for a limited time and will have a minimal impact on creditors as a whole if the Court were not to recognize the Canadian Proceeding.

28. Moreover, upon entry of the Recognition Order, section 1520 of the Bankruptcy Code automatically implements sections 362 (the automatic stay) and 363 (sale of estate property) of the Bankruptcy Code. Section 1521(a)(5) of the Bankruptcy Code authorizes the Court to “entrust the administration or realization” of the Debtors’ United States assets to the Foreign Representative, along with other relief. 11 U.S.C. § 1521(a)(5). Thus, in the event the Recognition Order is entered, the Foreign Representative will be entitled to much of the relief provided for by the Provisional Relief Order.

29. Finally, numerous bankruptcy courts in this District have granted relief similar to the relief requested in this Motion. *See, e.g., In re Earth Renew IP Holdings LLC*, Case No. 10-13363 (CSS) (Bankr. D. Del. October 22, 2010) [D.I. 21]; *In re Grant Forest Prods.*, Case No. 10-11132 (PJW) (Bankr. D. Del. April 19, 2010) [D.I. 47]; *In re Nortel Networks Corp.*, Case No. 0910164 (KG) (Bankr. D. Del. Jan. 14, 2009) [D.I. 29]; *In re MAAX Corp. et al.*, Case No. 08-11443 (CSS) (Bankr. D. Del. July 14, 2008) [D.I. 22].

E. The Provisional Relief Requested is Consistent with Public Policy

30. Granting the relief requested in the Provisional Relief Order will help advance the purpose of chapter 15 as set forth in section 1501 of the Bankruptcy Code.

Unique to the Bankruptcy Code, Chapter 15 contains a statement of purpose: “[t]he purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency,” with the express objectives of cooperation between United States courts, trustees, examiners, debtors and debtors in possession and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor's assets; and the facilitation of the rescue of financially troubled businesses. 11 U.S.C. § 1501(a)(1)-(5)

In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 BR 122, 126 (Bankr. S.D.N.Y. 2007) (internal citations omitted). Entry of the Provisional Relief Order will assist with the orderly administration of the Canadian Proceeding. Fostering cooperation among the Canadian insolvency proceedings and this Court is precisely the goal that chapter 15 is intended to promote. *See* 11 U.S.C. § 1501(a) (instructing that the purpose of chapter 15 is to promote cooperation among courts to ensure the “fair and efficient administration of cross-border insolvencies”). Finally, by the CCAA Order, the Canadian Court has requested the assistance of this Court to effectuate its orders in the United States. *See* CCAA Order ¶ 56. Providing the requested assistance would achieve the objectives underlying chapter 15. *See* 11 U.S.C. § 1525(a) (instructing that courts “shall cooperate to the maximum extent possible with a foreign court or a foreign representative” in accordance with section 1501).

NOTICE

31. The Foreign Representative has provided notice of this Motion to the following parties or their respective counsel: (a) the office of the U.S. Trustee for the District of Delaware; (b) counsel to BMO; and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Foreign Representative will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Foreign Representative submits that no other or further notice of this Motion is necessary or required.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests this Court (i) enter the

Provisional Relief Order, substantially in the form attached hereto, (ii) enter the Recognition Order, after notice and a hearing, substantially in the form attached hereto, and (iii) grant such other and further relief as this Court deems just and proper.

Dated: December 19, 2019
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

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

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MOTORCYCLE TIRES & ACCESSORIES LLC, <i>et al.</i> , ¹)	Case No. 19-12706 (KBO)
)	Joint Administration Requested
Debtors in a Foreign Proceeding)	
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**ORDER GRANTING PROVISIONAL RELIEF PURSUANT
TO SECTIONS 105(a), 1507, 1517, 1519, 1520 AND 1521 OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “Motion”)² of KPMG, Inc., (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and duly authorized foreign representative for the above-captioned debtors (collectively, the “Debtors”) in the Canadian proceedings (the “Canadian Proceeding”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the District of Montreal (the “Canadian Court”) seeking (i) entry of this provisional order (this “Provisional Relief Order”), on an interim basis, (a) enforcing the CCAA Order and (b) staying any collection activity by creditors against the Debtors’ assets in the United States; (ii) entry of a final order (the “Recognition Order”), after notice and a hearing, (a) granting recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code and (b) enforcing the CCAA Order on a permanent basis in the United States; and (iii) such other and further relief as this Court deems just and proper; and upon the Codère Declaration and the Memorandum of Law; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157

¹ The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

and 1334; and it appearing that venue of the Chapter 15 Cases and the Motion in this District is proper pursuant to 28 U.S.C. § 1410; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given under the circumstances; and upon the record of the hearing on the Motion; and the Court having found and determined that the relief sought in the Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code 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, the Court finds and concludes as follows:

- (i) There is a substantial likelihood that the Foreign Representative will be able to demonstrate that the Debtors are subject to a foreign main proceeding;
- (ii) The commencement or continuation of any action or proceeding in the United States against the Debtors or any of the Debtors' assets or proceeds thereof should be enjoined pursuant to sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the Debtors' estates in the Canadian Proceeding, and the relief requested either will not cause an undue hardship or any hardship to parties-in-interest is outweighed by the benefits of the relief requested in the Motion;
- (iii) Unless a preliminary injunction is issued in these Chapter 15 Cases, there is a material risk that the Debtors' assets could be subject to efforts by creditors or other parties-in-interest in the United States to control or possess such assets. Such acts could: (a) interfere with and cause harm to the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code; (b) interfere with and cause harm to the Debtors' efforts to administer the Debtors' estates in the Canadian Proceeding; and (c) undermine the Debtors' efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury and therefore it is necessary that the Court enter this Provisional Relief Order; and;
- (iv) The interest of the public will be served by this Court's entry of this Provisional Relief Order.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is Granted.
2. The CCAA Order is hereby given full force and effect in the United States.
3. Beginning on the date of this Provisional Relief Order and continuing until the date of the entry of an order of recognition of the Canadian Proceeding as a foreign main proceeding (the "Recognition Date"), all persons and entities are:

- (a) enjoined from commencing or continuing any legal proceeding against the Debtors or against their United States assets, including, but not limited to, (i) continuing any action or commencing any additional action involving the Debtors or their assets or the proceeds thereof, (ii) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Debtors or their assets, (iii) commencing or continuing any action to create, perfect or enforce any lien, setoff or other claim against the Debtors or against any of their property, and (iv) managing or exercising control over the Debtors' assets; and
- (b) required, if such persons or entities are a plaintiff in an action in which the Debtors are or were named as a party, or as a result of which liability against the Debtors may be established, to place counsel for the Foreign Representative, as identified in the Motion and in this Provisional Relief Order, on the master service list of any such action or proceeding and take such other and further steps as may be necessary to ensure that such counsel receives, at the physical address set forth in the Motion and in this Provisional Relief Order, copies of (i) any and all documents served by the parties to such action or proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or proceeding, and (ii) any and all correspondence or other documents circulated to parties listed on the master service list.

4. No person or entity shall discontinue, fail to honor, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favor of or held by the Debtors, except with the written consent of the Foreign Representative or leave of the Canadian Court.

5. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

6. The Foreign Representative, in connection with its appointment as the foreign representative, is entitled to the full protections and rights available pursuant to section 1519(a)(1)–(3) of the Bankruptcy Code, including, without limitation:

- (a) The right and power to administer and/or realize all or part of the Debtors’ assets located in the United States in order to protect and preserve the value of such assets;
- (b) The right and power to transfer, encumber or otherwise dispose of any assets of the Debtors are prohibited, except by the Foreign Representative and the Debtors, as provided in this Provisional Relief Order; and
- (c) The right and power to examine witnesses, take evidence or deliver information concerning the Debtors’ assets, affairs, rights, obligations or liabilities.

7. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), no notice to any person is required prior to entry and issuance of this Provisional Relief Order. The security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7065, are waived.

8. Notice of (i) the filing of (a) the Chapter 15 Petitions and (b) the Motion, (ii) this Court’s entry of this Provisional Relief Order, (iii) the deadline to object to this Court’s entry of the Recognition Order and (iv) the hearing for this Court to consider the Chapter 15 Petitions and entry of the Recognition Order shall be served in accordance with the order (the “Notice Order”) of this Court approving the *Foreign Representative’s Motion for Entry of an Order Specifying Form and Manner of Service of Notice of (I) Filing of (A) Petitions Pursuant to Chapter 15 of the Bankruptcy Code, and (B) Foreign Representative’s Motion for Provisional and Final Relief In Recognition of a Foreign Main Proceeding Pursuant to Sections 105(a), 1519, 1520 and 1521*

of the Bankruptcy Code, (II) Entry of Provisional Relief Order, (III) Deadline to Object to Entry of Recognition Order, (IV) Hearing for Court to Consider Chapter 15 Petitions and Entry of Recognition Order; (V) Approving the Manner of Service on the Master Service List of Any Pleadings that the Foreign Representative Files in the Chapter 15 Cases; and (VI) Granting Certain Related Relief. Service of the Chapter 15 Petitions, the Motion and this Provisional Relief Order (collectively, the “Petition Documents”) in accordance with the Notice Order shall constitute due and sufficient notice of the Petition Documents and any relief of this Court associated therewith.

9. The Petition Documents shall also be made available by the Foreign Representative upon request to its counsel, Potter, Anderson & Corroon, LLP, R. Stephen McNeill, at (302) 984-6000 or rmcneill@potteranderson.com.

10. Any responses or objections to the Chapter 15 Petitions or the entry of the Recognition Order shall (i) be made in writing, describe the basis therefore, and indicate the nature and extent of the respondent’s interests in the Debtors’ cases and (ii) be filed with the Office of the Clerk of the Court, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon counsel for the Foreign Representative, Potter Anderson & Corroon LLP, Hercules Plaza, Sixth Floor, 1313 North Market Street, P.O. Box 951, Wilmington, Delaware 19899-0951 (Attn: R. Stephen McNeill), and counsel to BMO, Chapman and Cutler LLP, 111 West Monroe Street Chicago, IL 60603-4080, (Attn: Stephen R. Tetro II), and Womble, Bond & Dickinson LLP, 1313 N. Market St., Suite 1200 Wilmington, DE 19801, (Attn: Matthew P. Ward), on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2020.

11. A hearing to consider entry of the Recognition Order shall be held on _____, 2020 at ___ __.m. (prevailing Eastern Time).

12. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Provisional Relief Order shall be effective immediately and enforceable upon its entry; the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Provisional Relief Order; and the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Provisional Relief Order.

13. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Provisional Relief Order.

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

In re:)	Chapter 15
)	
MOTORCYCLE TIRES & ACCESSORIES)	Case No. 19-12706 (KBO)
LLC, <i>et al.</i> , ¹)	Joint Administration Requested
)	
Debtors in a Foreign Proceeding)	
)	

**ORDER GRANTING FINAL RELIEF IN RECOGNITION OF
A FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS
105(a), 1519, 1520 AND 1521 OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “Motion”)² of KPMG, Inc. (“KPMG” or the “Foreign Representative”), in its capacity as the court-appointed monitor and duly authorized foreign representative for the above-captioned debtors (collectively, the “Debtors”) in the Canadian proceedings (the “Canadian Proceeding”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Superior Court in Commercial Division in the District of Montreal (the “Canadian Court”) seeking (i) entry of a provisional order on an interim basis, (a) enforcing the CCAA Order and (b) staying any collection activity by creditors against the Debtors’ assets in the United States; (ii) entry of this final order (the “Recognition Order”), after notice and a hearing, (a) granting recognition of the Canadian Proceeding as a foreign main proceeding under section 1517 of the Bankruptcy Code and (b) enforcing the CCAA Order on a permanent basis in the United States; and (iii) such other and further relief as this Court deems just and proper; and upon the Codère

¹ The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Motorcycle Tires & Accessories LLC (8629); Moncy Holding Company, Inc. (6755); Moncy Financial Services Company, Inc. (7515); Moncy LLC (3654); and Nichols Motorcycle Supply, Inc. (4371). The Debtors’ mailing address is 1550 Melissa Court, Corona, CA 92879.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Declaration and the Memorandum of Law; and upon the Order Granting Provisional Relief Pursuant to Sections 105(a), 1519, 1520 and 1521 of the Bankruptcy Code [D.I. ___] (the “Provisional Relief Order”) previously entered by this Court; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Chapter 15 Cases and the Motion in this District is proper pursuant to 28 U.S.C. § 1410; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given under the circumstances; and upon the record of the hearing on the Motion; and the Court having found and determined that the relief sought in the Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code 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, the Court finds and concludes as follows:

- (i) The Foreign Representative is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of each of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.
- (ii) The Chapter 15 Cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.
- (iii) The Chapter 15 Petitions meet the requirements of section 1515 of the Bankruptcy Code.
- (iv) The Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.
- (v) The Canadian Proceeding pending in the Canadian Court in Quebec, Canada, which is the location of the Debtors’ center of main interest, constitutes 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.
- (vi) The Foreign Representative as a foreign representative is entitled, without limitation, to all of the relief provided pursuant to section 1520 of the Bankruptcy Code.

- (vii) The relief granted herein is necessary and appropriate, in the interest of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 1521 of the Bankruptcy Code, and will not cause any hardship to any parties-in-interest that is not outweighed by the benefits of the relief granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is Granted.
2. The Canadian Proceeding is hereby recognized as a “foreign main proceeding” pursuant to section 1517 of the Bankruptcy Code.
3. All provisions of section 1520 of the Bankruptcy Code apply in these Chapter 15 Cases, including, without limitation, sections 361, 362 and 363 of the Bankruptcy Code, with respect to the Debtors and the Debtors’ assets within the United States.
4. The CCAA Order is hereby given full force and effect in the United States.
5. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all other prior relief granted pursuant to the Provisional Relief Order pursuant to section 1519(a) of the Bankruptcy Code is hereby extended on a final basis.
6. The Chapter 15 Petitions, the Motion, the Provisional Relief Order and this Recognition Order shall be made available by the Foreign Representative upon request to its counsel, Potter, Anderson & Corroon, LLP, R. Stephen McNeill, at (302) 984-6000 or rmcneill@potteranderson.com.
7. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Recognition Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Recognition Order; and (iii) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any

act necessary to implement and effectuate the terms of this Recognition Order.

8. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Recognition Order.