

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

In re:	§	
	§	Chapter 15
	§	
Q'MAX SOLUTIONS INC.,	§	
	§	Case No. 20-34791 (MI)
	§	
Debtor in a Foreign Proceeding.	§	
	§	

**RECEIVER'S EMERGENCY EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND RELIEF PURSUANT TO  
SECTIONS 105(A) AND 1519 OF THE BANKRUPTCY CODE**

**EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 2, 2020, AT 11:15 A.M. (CENTRAL TIME) IN COURTROOM 404, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**RELIEF IS REQUESTED NOT LATER THAN OCTOBER 2, 2020.**

**PLEASE NOTE THAT ON MARCH 24, 2020, THROUGH THE ENTRY OF GENERAL ORDER 2020-10, THE COURT INVOKED THE PROTOCOL FOR EMERGENCY PUBLIC HEALTH OR SAFETY CONDITIONS.**

**IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING.**

**AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT (832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGES. ONCE CONNECTED, YOU WILL BE ASKED TO ENTER THE CONFERENCE ROOM NUMBER. JUDGE ISGUR'S CONFERENCE ROOM NUMBER IS 954554.**

**YOU MAY VIEW VIDEO VIA GOTOMEETING. TO USE GOTOMEETING, THE COURT RECOMMENDS THAT YOU DOWNLOAD THE FREE GOTOMEETING APPLICATION. TO CONNECT, YOU SHOULD ENTER THE MEETING CODE "JUDGEISGUR" IN THE GOTOMEETING APP OR CLICK THE LINK ON JUDGE ISGUR'S HOME PAGE ON THE SOUTHERN DISTRICT OF TEXAS WEBSITE. ONCE CONNECTED, CLICK THE SETTINGS ICON ON THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.**

**HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF THE HEARING. TO MAKE YOUR ELECTRONIC APPEARANCE, GO TO THE SOUTHERN DISTRICT OF TEXAS WEBSITE AND SELECT "BANKRUPTCY COURT" FROM THE TOP MENU. SELECT "JUDGES' PROCEDURES & SCHEDULES," THEN "VIEW HOMEPAGE" FOR JUDGE ISGUR. UNDER "ELECTRONIC APPEARANCE" SELECT "CLICK HERE TO SUBMIT ELECTRONIC APPEARANCE." SELECT "Q'MAX SOLUTIONS INC.", COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.**

KPMG Inc. (“KPMG”), solely in its capacity as court appointed receiver and manager (“Receiver”) of Q’Max Solutions Inc. (“QSI” or the “Debtor”), and certain other related Canadian entities, pursuant to the *Consent Receivership Order* dated May 28, 2020 (the “Receivership Order”), entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2001-06722 (the “Canadian Court” and the “Canadian Proceeding”) pending under Canada’s Bankruptcy and Insolvency Act (“BIA”), and as authorized foreign representative of the above captioned Debtor, submits this *Receiver’s Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Application”), and respectfully states:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a) and (b) and sections 109 and 1501 of title 11 of the United States Code (the “Bankruptcy Code”). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P).

2. This chapter 15 proceeding has been properly commenced pursuant to section 1504 of the Bankruptcy Code by filing of a petition pursuant to section 1515 of the Bankruptcy Code.

3. Venue is proper pursuant to 28 U.S.C. § 1410(2).

4. This Court has constitutional authority to enter final orders with respect to the relief requested herein. The Receiver further confirms its consent to this Court’s entry of final orders or judgments on this Application if it is later determined that, in the absence of the consent of the parties, this Court does not have constitutional authority to enter final orders or judgments.

**II. SUPPORT FOR THIS APPLICATION**

5. Contemporaneously herewith, the Receiver has caused to be filed, among other items, the (a) *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code*

(the “Verified Petition”); (b) *Declaration of Receiver in Support of the Verified Petition and this Application* (the “Receiver Declaration”) (Exhibit R-1)<sup>1</sup>; (c) *Declaration of Foreign Counsel* (the “Osler Declaration”); and together with the Receiver Declaration, the “Supporting Declarations”) (Exhibit R-2); and (d) Receiver’s *Witness and Exhibit List in Support of First Day Motions* (the “Exhibits List”) and certain exhibits filed therewith pursuant to applicable local rules and emergency protocols. The Receiver further requests that the Court take judicial notice of its files in this case. *See State of Fla. Bd. of Trustees of Internal Imp. Trust Fund v. Charley Toppino & Sons, Inc.*, 514 F.2d 700, 704 (5th Cir. 1975) (finding that a court may take judicial notice of its own files and records); Fed. R. Evid. 201.

6. The Receiver also attaches a proposed form of order consistent with orders granted by the Court in similar proceeding authorizing certain Provisional Relief (as defined below) in support of the Receiver’s duties and powers pursuant to the Receivership Order (Exhibit R-6) and operative Canadian law.

### **III. REQUEST FOR EMERGENCY RELIEF**

7. Pursuant to Bankruptcy Rule 6003, within twenty-one (21) days immediately following the commencement of a case, the court is empowered to grant relief “to the extent that relief is necessary to avoid immediate and irreparable harm.” For this and the reasons stated herein, and in accordance with Local Rule 9013-1(i), the Receiver respectfully requests emergency consideration of this Application.

8. The Receiver seeks emergency provisional relief under Bankruptcy Code sections 1519 and 105(a), staying execution against the Debtors’ assets until and through the Court’s consideration of the Receiver’s *Verified Petition*. Prior to entry of a recognition order, the Debtor

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<sup>1</sup> Unless otherwise stated, all references to “Exhibit \_\_\_” shall mean those corresponding exhibits listed in and filed with the Exhibit List.

does not benefit from the protections of the Bankruptcy Code, including the automatic stay provisions. Accordingly, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtor's estate consistent with the Receivership Order. Without such emergency provisional relief, the Debtor will be exposed to the risks and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order and in contravention of the Receiver fulfilling its duties under applicable Canadian law, and thus threatens the Receiver's efforts to maximize value for the benefit of creditors.

#### **IV. BACKGROUND**

##### **A. OSI's Business and Corporate Structure**

9. QSI, the foreign debtor hereby seeking recognition under chapter 15, is a British Columbia corporation that is extra-provincially registered in Alberta, Canada. Prior to recent events, the Debtor, by and through the Q'Max Group (defined below), provided oilfield services focused on onshore and offshore drilling fluids, solids control, and waste management solutions in the upstream oil and gas drilling and producing industry. The Q'Max Group's customers include(d) national oil companies, major international energy companies and independent exploration and production companies in Canada, the United States, Mexico, Colombia, the Middle East and Africa.

10. The Debtor is 100% owned by Fluid Holding Corp. ("Fluid Holding"), which is also a British Columbia corporation that is extra-provincially registered in Alberta, Canada. The Debtor is the primary parent entity to the currently or formerly operating and non-operating regional companies in the Q'Max Group, holding direct or indirect ownership interests in the Q'Max Group of companies, owning intellectual property licensed by certain of the Q'Max Group entities, and entering into guarantees and other shared services agreements to the benefit of the

Q'Max Group. QSI's ownership interests in each of the entities in the Q'Max Group is set forth on the *Corporate Ownership Structure and Control Chart*. See Exhibit \_\_\_. The direct or indirect subsidiary entities relevant to this proceeding are as follows:

- With Fluid Holding and QSI, the "Canadian Debtors":
  - **Q'Max Canada Operations Inc.** ("QCO"), is a British Columbia corporation with a registered office in British Columbia and being extra-provincially registered in Alberta, Canada, conducting its business in Canada;
  - **1356760 Alberta Ltd.** ("135 Alberta") and **Q'Max Solutions Holdings Inc.** ("QSH") are Alberta, Canada corporations with registered offices in Calgary, Canada, conducting their business in Canada;
- The non-debtor "Global Operating Companies": **Central Procurement Inc.** ("CPI"); **Q'Max Mexico, S.A. de C.V.** ("Q'Max Mexico"); **Environmental Solutions for Petroleum Services – Free Zone – S.A.E.** ("Environmental Solutions"); **International Drilling Fluids & Engineering Services Co. (IDEC) Ltd.** ("IDEC"); **United QMax Drilling Fluids Company Co.** ("Kuwait JV"); and **QMax Arabian Oil & Gas Services Co.** ("Saudi JV"); and
- The "U.S. Debtors": **Q'Max America Inc.** ("QAI") and **Anchor Drilling USA, LLC** ("Anchor") are Delaware corporations conducting business in the United States, including Texas.<sup>2</sup>

11. When operational, the Debtor maintained a Canadian headquarters at Suite 1700 – 407 2<sup>nd</sup> Street SW, Calgary, Alberta. Its business and registered offices were located in Canada. Prior to the terminations/resignations immediately preceding the U.S. Debtors' filing for chapter 7 bankruptcy relief, QSI's directors and officers resided in the United States and were, with one exception,<sup>3</sup> employed by QSI in those respective capacities. Since entry of the Receivership Order, the Receiver has exercised complete control of the Debtor. QSI does not presently employ any

<sup>2</sup> Collectively, the Canadian Debtors, the Global Operating Companies, and the U.S. Debtors are referred to herein as the "Q'Max Group."

<sup>3</sup> QSI's former Vice President of U.S. Operations was employed by Anchor.

officers, directors, or employees. All services required by QSI are provided by the Receiver or third parties employed by the Receiver.

12. In recent months, the business of the Q'Max Group was negatively impacted by depressed oil and natural gas pricing and a corresponding reduction in rig and drilling activity. Such negative impacts were exacerbated by public health restrictions in response to the COVID-19 pandemic. Demand for the Q'Max Group's products and services thus declined to the detriment of the Q'Max Group's earnings.

13. As of this filing, the Receiver has determined that QSI and the other Canadian Debtors will not be sold as going concern businesses. Accordingly, all of QSI's executives and other employees have been terminated. QSI's continued function, by and through the Receiver, is limited to liquidation of its interests in the Canadian Debtors, sale of the Global Operating Companies as going concern businesses, to the extent commercially feasible, and liquidation of any remaining QSI assets for the benefit of QSI's creditors pursuant to the Receivership Order and operative law.<sup>4</sup>

**B. The Q'Max Group Credit Agreement**

14. QSI, QCO, and QAI, as borrowers (the "Borrowers"); and HSBC Bank Canada, as administrative agent ("HSBC" or "Agent") for certain Lenders,<sup>5</sup> entered into a credit agreement in May 2014, which has been amended and restated and supplemented by various amending agreements (collectively, the "Credit Agreement"). Thereunder, the Agent alleges that, as of May 5, 2020, the total indebtedness of the Borrowers to the Lenders, inclusive of interest, was

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<sup>4</sup> The U.S. Debtors, as explained below, are chapter 7 debtors and thus undergoing a liquidation process separate from the Canadian Proceeding.

<sup>5</sup> The Agent acts on behalf of a syndicate of predominantly Canadian based lenders, currently comprised of HSBC, Bank of Montreal, Business Development Bank of Canada, Export Development Canada and HSBC Bank USA (collectively, and in such capacity, the "Lenders"). The Borrowers and Lenders are collectively referred to as the "Loan Parties".

approximately (a) USD \$145,381,623.21 plus CAD \$1,228,668.47; (b) outstanding letters of credit in the amounts of USD \$3,916,296.42 and CAD \$1,161,408.79; and (c) other outstanding credit card balances, plus accrued and accruing costs and disbursements, and interest continuing to accrue per diem (collectively, the “Indebtedness”).

15. Each of QSI, QSH, 135 Alberta, QCO, QAI, and Anchor have executed unlimited guarantees of the Indebtedness. Fluid Holding has granted a limited recourse guarantee in favor of the Agent. Further guarantees of the Indebtedness have been granted by other non-Canadian and non-U.S. members of the Q’Max Group.

16. Among other security and collateralization, general security agreements (the “GSAs”) were granted to secure amounts advanced under the Credit Agreement by QSI, QSH, 135 Alberta, QCO, QAI, and Anchor which grant first-priority security interests on all or substantially all of the grantors’ assets.

17. Furthermore, a separate credit agreement (the “U.S. Credit Agreement”) was entered between QAI, as holding company, and Anchor, as borrower; and Encina Business Credit, LLC (“Encina”), as administrative agent on behalf of certain lenders. Pursuant thereto, Encina asserted that the U.S. Debtors defaulted under the U.S. Credit Agreement and owed in excess of USD \$23,884,000. On September 6, 2019, the Agent and Encina, as ABL agent, entered into that certain *Intercreditor Agreement* (the “Intercreditor Agreement”), the purpose and effect of which was to subordinate a portion of the Agent’s security to security held by Encina in respect of funds owing under the U.S. Credit Agreement by the U.S. Debtors. Notably, there is no overlap between the lenders to the U.S. Credit Agreement and the Lenders to the Credit Agreement.

**C. The Canadian Receivership Proceeding**

18. On May 12, 2020, following approximately two years of extensive unsuccessful restructuring negotiations, the Agent, on behalf of the Lenders, issued to the Borrowers a demand

letter that included notices of intention to enforce security under section 244(1) of the BIA and to accelerate the Indebtedness under the Credit Agreement. On May 27, 2020, as expressly permitted by the GSAs, the Agent filed an *Application for Appointment of a Receiver*<sup>6</sup> seeking the appointment of KPMG as receiver under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c, B-3, section 13(2) of the Judicature Act, RSA 2000 c J-2 (the “Judicature Act”), and 65(7) of the Personal Property Security Act, R.S.A. 2000, c P-7.

19. On May 28, 2020, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243 of the BIA and section 13(2) of the Judicature Act.

20. The Receivership Order appointed the Receiver over the estates of the Canadian Debtors. The Receivership Order specifically authorizes the Receiver to act “as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.” (Receivership Order ¶ 31). It empowers and authorizes the Receiver to take numerous steps involving the property of the entities subject to the Canadian Proceeding. (Receivership Order ¶ 3). The Receivership Order grants the Receiver access to all of the Debtors’ books, records, contracts, securities, and information. (Receivership Order ¶¶ 4-6). Additionally, the Receivership Order imposes a stay of initiation or continuation of proceedings against the Receiver, the Debtor, and/or the other Canadian Debtors and their respective estates. (Receivership Order ¶¶ 7-11).

21. The Receivership Order also grants the Receiver a charge (the “Receiver’s Charge”) on all of the Canadian Debtors’ current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the “Property”) to secure payment of the reasonable fees and expenses of the

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<sup>6</sup> See R-4.



Receiver and its counsel, not to exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize). (Receivership Order ¶ 18). The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.

22. The Receivership Order further authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$8,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms authorized therein. (Receivership Order ¶ 21). The Canadian Court granted a charge (the "Receiver's Borrowings Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order.

23. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* . . . ." (the "Receiver's Protections"). (Receivership Order ¶ 14).<sup>7</sup>

24. The Receivership Order includes a request by the Canadian Court for "aid and recognition of any court . . . having jurisdiction in Canada or in any foreign jurisdiction . . . , to give effect to [the Receivership Order] and to assist the Receiver and its agents in carrying out the terms of [the Receivership Order]." (Receivership Order ¶ 30).

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<sup>7</sup> Section 14.06(1.2) of the BIA provides:

Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

- (a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and
- (b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

**D. U.S. Debtors' Chapter 7 Proceeding**

25. On May 24, 2020, the U.S. Debtors—QAI and Anchor—filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, jointly pending at Case No. 20-60030-CML (the “Chapter 7 Proceeding”).

26. On May 24, 2020, the United States Trustee appointed Christopher R. Murray, as the chapter 7 trustee (the “Trustee”). On June 3, 2020, the Trustee filed a motion to, inter alia, approve a stalking horse bidder sale agreement and bid procedures [Dkt. No. 74].

27. On July 1, 2020, the Court entered an order approving the sale of a portion of the U.S. Debtors’ assets, principally including operations in the Northeast United States, to Paragon Integrated Services Group LLC (“Paragon”) for the sum of USD \$7,200,000, plus assumption of the remaining Encina debt. As described in the July 23, 2020 *Trustee’s Status Report*, the Trustee anticipates that the remainder of the U.S. Debtors’ assets will be liquidated by December, 2020. *See* Case No. 20-60030, Dkt. No. 273.

**E. Pending U.S. Civil Litigation**

**(1) Intellectual Property Dispute**

28. On April 6, 2018, M-I L.L.C. d/b/a M-I Swaco (“M-I”) filed in the United States District Court for the Southern District of Texas an action against QSI, QAI, and Sanjit Roy (“Roy”; and collectively with QSI and QAI, the “Defendants”) alleging copyright infringement, misappropriation of trade secrets, and conversion against all Defendants (and additional causes against former employee Roy) based on M-I’s assertion that the Defendants infringed on M-I’s intellectual property rights through QSI’s creation and ownership of a product named MAXSITE Hydraulics (“MAXSITE”). *See* Civ. A. No. 18-cv-01099 (S.D. Tex. 2018) (S. Lake) (the “MAXSITE Action”) (*see* Exhibit R-9). M-I argues that Roy, upon leaving his employ at M-

I, unlawfully maintained copies of the source code for Virtual Hydraulics and Presspro RT (the “M-I Software”), software that M-I developed for oil and gas drilling, and, upon joining QAI in April, 2015, used the M-I Software to design MAXSITE.

29. In relevant part, on November 18, 2019, the Defendants filed their motion for summary judgment, seeking summary relief with respect to M-I’s copyright infringement claim [Dkt No. 128] (“Defendants’ MSJ”).

30. On August 6, 2020, Judge Sim Lake entered his *Memorandum Opinion and Order* (the “MSJ Order”) (Exhibit R-8), which, among other things, granted the Defendants’ motion for summary judgment and dismissed with prejudice M-I’s copyright claim against QSI and QAI. The MSJ Order held that M-I failed to identify any protectable non-literal elements of its copyrighted work and failed to show evidence that protectable portions of the source code were important enough to M-I’s overall program to render MAXSITE substantially similar to them. *See* MSJ Order, Case No. 18-cv-01099, Dkt. No. 146.

31. The MSJ Order also dismissed without prejudice QAI as defendant on account of the Chapter 7 Proceeding and operation of the automatic stay. The MAXSITE Action continues based on the remaining counts against QSI and Roy.

32. The Receiver has approached M-I, by and through counsel, and M-I has been unwilling to recognize the stay set forth in the Receivership Order.

(2) **The Guarantor Action**

33. On September 17, 2020, plaintiff Atlas Energy Tower LLC (“Atlas”) filed its *Plaintiff’s Original Complaint* (Exhibit R-10) against defendant QSI in the District Court of Harris County, Texas, seeking an award of damages against QSI based on QSI’s alleged breach of a *Guaranty Agreement* executed by QSI relating to tenant QAI’s occupancy of Level 2 of the office building known as Energy Tower I (the “Guarantor Action”). *See* Cause No. 2020-57316 (127th

Dist. Ct., Harris County). Atlas seeks judgment in the amount of more than USD \$3 million, plus interest, attorney's fees and expenses.

**F. Receivership Pending Sales Processes**

34. As explained above, the Receiver was appointed approximately four (4) months prior to filing for chapter 15 relief. In that time, the Receiver has spent significant time analyzing the books and records of the Canadian Debtors, the Global Operating Companies, and many additional non-operating QSI subsidiary entities to assess the assets and liabilities of the Q'Max Group. In connection therewith, the Receiver has engaged in a comprehensive marketing and sale process in Canada and in the relevant regional markets in order to maximize value for the respective creditors and stakeholders.

35. To date, the Receiver has determined that it is not commercially feasible to sell QSI or the other Canadian Debtors as going-concern businesses. Accordingly, a liquidation process is underway.

36. Conversely, the Receiver believes that one or more of the Global Operating Companies should be sold as an operating business or businesses, and the Receiver continues to facilitate operations—by and through parent company QSI—and market the entities accordingly. Moreover, for various business reasons, the Receiver has determined that any sale of the Global Operating Companies must be conducted as a sale of the respective entities' equity interests, which are held in whole or in significant part by QSI. Therefore, any sale of QSI's equity interests in the Global Operating Companies, by operation of Canadian law, will be completed with full notice to QSI creditors and must be approved by the Canadian Court. It is contemplated that the MAXSITE intellectual property will be licensed as part of any going concern sale, to the extent allowed by the Canadian Court and operative law. The Receiver believes that the rights to MAXSITE are owned by, and only by, QSI, except as licensed to various affiliated and/or third parties.

37. Although the Receiver has and will continue to take steps to maximize value to the fullest extent possible in connection with fulfilling its fiduciary obligations under the Receivership Order and Canadian law, it does not project under the current and foreseeable market conditions that the Q'Max Group will return amounts sufficient to make a distribution to unsecured creditors.

## V. ARGUMENTS AND AUTHORITIES

### A. Provisional Relief Authorized by Bankruptcy Code Section 1519

38. Contemporaneously herewith, the Receiver has filed its Verified Petition seeking recognition and a ruling that the Canadian Proceeding is a foreign main proceeding as defined in section 1502(4) of the Bankruptcy Code, or, in the alternative as a foreign nonmain proceeding as defined in section 1502(5) of the Bankruptcy Code. Although “[a] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time,”<sup>8</sup> there is necessarily a gap between the time the petition for recognition is filed and the time the Court makes a decision on whether a proceeding should be recognized, and if so, whether such proceeding is a foreign main proceeding or a foreign nonmain proceeding. Accordingly, the Receiver seeks emergency provisional relief under 11 U.S.C. § 1519 and 11 U.S.C. § 105(a).<sup>9</sup>

39. Provisional relief is appropriately granted “where relief is urgently needed to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1519(a). Recognizing that a chapter 15 petition does not afford immediate relief ordinary afforded to domestic debtors, section 1519 expressly permits the following provisional relief:

- (1) staying execution against the debtor’s 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

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<sup>8</sup> 11 U.S.C. § 1517(c).

<sup>9</sup> Section 105(a) provides: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

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). Section 1521(a)(3), (4), and (7) of the Bankruptcy Code permits the Court to provisionally grant relief—

- (3) suspending the right to transfer, encumber, or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities; [and]
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a)(3), (4), and (7).

**B. Provisional Relief Sought by the Receiver**

40. Consistent with section 1519 of the Bankruptcy Code, the Receivership Order, and principles of comity, the Receiver requests the following provisional relief pending a determination on the Receiver's Verified Petition for Recognition (collectively, the "Provisional Relief"):

- (a) The terms of the Receivership Order be given full force and effect in the United States. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (b) The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtor, including any action or proceeding against KPMG in its capacity as Receiver of the Debtor, be stayed. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7).
- (c) Staying execution against the Debtor's assets. 11 U.S.C. § 1519(a)(1).
- (d) The administration or realization of all or part of the assets of the Debtor within the territorial jurisdiction of the United States be entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtor, its creditors, the Receiver, and any other parties-in-interest. 11 U.S.C. § 1519(a)(2).

- (e) The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtor be suspended unless authorized in writing by the Receiver or by Order of this Court. 11 U.S.C. §§ 1519(a)(3); 1521(a)(3).
- (f) As provisional relief in aid of the Receivership Order, the Receiver's Charge and the Receiver's Borrowing Charge and priorities as set forth in the Receivership Order, including paragraphs 18 and 21 of the Receivership Order, be enforced against the Property (as defined in the Receivership Order) in accordance with the terms of the Receivership Order. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (g) Subject to the terms and conditions of the Receivership Order, the Receiver be authorized to execute all necessary documentation related to the Receiver's Borrowings Charge and to pay and perform all indebtedness, interest, fees, liabilities, and obligations when the same become due and are to be performed. The Receiver, in its discretion, may (but is not required to in order for the Receiver's Borrowings Charge and priorities to be enforceable) file a photocopy of this Order and/or the Receivership Order as a financing statement, notice of lien, or similar document with any recording officer designated to file financing statements, notices of lien or similar documents in any U.S. jurisdiction, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Order and/or the Receivership Order. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (h) If any of the provisions of the Order granting this Application related to the Receiver's Borrowings Charge shall subsequently be stayed, modified, amended, reversed or vacated in whole or in part (collectively, a "Modification"), whether by subsequent order of this Court or on appeal from the Order, such Modification shall not impair, limit or diminish the Receiver's Borrowings Charge, whether under the Order granting this Application (as entered prior to the Modification), under the Receivership Order, or under any of the documentation delivered pursuant thereto or hereto, including with respect to any advances made prior to entry of the Modification. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (i) As provisional relief in aid of the Receivership Order, the Receiver's Protections be given full force and effect in the United States. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).
- (j) The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor. 11 U.S.C. §§ 1519(a)(3); 1521(a)(4).
- (k) Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of the Order granting the Application be immediately effective and enforceable upon its entry and, upon its entry, become final and appealable. 11 U.S.C. §§ 1519(a)(3); 1521(a)(7); 1525(a).

- (l) The Receiver be authorized and empowered, but not obligated to (i) maintain and continue to use, with the same account numbers, all of the Debtor's existing bank accounts at depository institutions in the United States, to the extent applicable (the "Bank Accounts"); (ii) treat the Bank Accounts for all purposes as debtor-in-possession accounts; (iii) maintain and continue to use the Debtor's existing business forms, stationery and checks, all without the appellation "debtor-in-possession"; and (iv) preserve the reporting and accounting mechanisms used by the Debtors in respect of the Bank Accounts. 11 U.S.C. §§ 1519(a)(3); 1521(a)(5), (7).
- (m) The Receiver be authorized to maintain the Debtor's existing cash management system, to allow receipt and sending of transfers via the ACH or automatic clearing house system and by wire transfer (collectively, the "Cash Management System"), all subject to the terms and conditions of the Debtor's prepetition agreements with their depository institutions (including the right to pay all pre-petition and post-petition administrative fees associated with such Bank Accounts and Cash Management System); provided however, that no prepetition obligations of any kind to be paid except as authorized hereby. 11 U.S.C. §§ 1519(a)(3); 1521(a)(5), (7).
- (n) This Court retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 proceeding, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.
- (o) The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary and waived.

**C. Standard Applicable to Provisional Relief**

41. Pursuant to section 1519(e) of the Bankruptcy Code, the standard for issuance of provisional relief requires the same satisfaction as that which is required for injunctive relief. 11 U.S.C. § 1519(e).<sup>10</sup> The factors for injunctive relief as stated in *Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1187 (5th Cir. 1979), are discussed below.

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<sup>10</sup> However, an adversary proceeding need not be filed in order to obtain relief under section 1519. *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 858-59 (Bankr. C.D. Cal. 2008); *In re Ho Seok Lee*, 348 B.R. 799, 801 (Bankr. W.D. Wash. 2006).



**(1) Substantial likelihood of success on the merits**

42. There exists no credible challenge to recognition of the Canadian Proceeding, specifically in light of the Receivership Order entry, as a foreign main or, alternatively, nonmain proceeding. Courts, including within this District, have consistently recognized Canadian insolvency proceedings, including receiverships under the BIA under 11 U.S.C. § 1515(b). *See In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020) (recognizing Canadian receivership appointed under the BIA); *In re Eagle Energy Inc.*, No. 19-33868-15, ECF No. 35, ¶ J (Bankr. N.D. Tex. Dec. 5, 2019) (same). *See also In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020) *In re Calmena Energy Servs. Inc.*, No 15-30786 (Bankr. S.D. Tex. March 5, 2015) ECF No. 17 (recognizing Canadian receivership proceeding as foreign proceeding); *In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012) (the Court entered an Order recognizing the proceeding under the CCAA was a foreign main proceeding under chapter 15 of the Bankruptcy Code).<sup>11</sup>

43. The Canadian Proceeding has been pending for approximately four (4) months prior to this filing,<sup>12</sup> with notice to all relevant parties consistent with applicable Canadian law, and the

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<sup>11</sup> For numerous other examples of U.S. courts recognizing Canadian insolvency proceedings a “foreign proceedings,” *see In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010); *In re Gandi Innovations Holdings, LLC*, 09-51782-C, 2009 WL 2916908 (Bankr. W.D. Tex. June 5, 2009) (unpublished disposition); *In re GasFrac Energy Servs., Inc.*, No. 15-50161 (Bankr. W.D. Tex. Feb. 2, 2014), ECF No. 46; *In re Angiotech Pharm., Inc.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011), ECF No. 83; *In re Canwest Global Communications Corp., et al.*, No. 09-15994 (Bankr. S.D.N.Y. Nov. 3, 2009), ECF No. 30; *In re SemCanada Crude Co.*, No. 09-12637 (Bankr. D. Del. Aug. 27, 2009), ECF No. 30; *In re Quebecor World Inc.*, No. 08-13814 (Bankr. S.D.N.Y. July 1, 2009), ECF No. 12; *In re Bilrite Rubber (1984) Inc.*, et al., No. 09-31423 (Bankr. N.D. Ohio Apr. 2, 2009), ECF No. 58; *In re MAAAX Corp.*, No. 08-11443 (Bankr. D. Del. Aug. 6, 2008), ECF No. 37; *In re Destinator Techs., Inc.*, No. 08-11003 (Bankr. D. Del. June 6, 2008), ECF No. 43; *In re Innova Global Ltd.*, No. 19-10653, ECF 54 (Bankr. N.D. Okla. April 19, 2019).

<sup>12</sup> Notably, the Receiver attempted to avoid the costs associated with seeking chapter 15 relief, but files at this time (and requests emergency provisional relief) based on various recent circumstances, including but not limited to the ruling in favor of QSI and QAI via the MSJ Order, the related dismissal of QAI, the subsequent insistence by M-I to continue with the suit against QSI, and the filing of the Guarantor Action.

Receiver is not aware of any formal or informal objection to the authority of the Canadian Court or the force of its order within Canada.

44. Further, the Receiver is a proper “foreign representative” because it is a “person or body,” as defined under section 101(41) of the Bankruptcy Code, that has also been authorized in the Canadian Proceeding to act as the Debtor’s foreign representative. *See* Receivership Order, ¶ 31 (“The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order. . . .”). The Court is thus entitled to presume that the Receiver is a proper “foreign representative.” *See* 11 U.S.C. § 1516(b).<sup>13</sup>

45. The Receiver also contends that the center of main interest for the Debtor is in Canada. As set forth more fully in the Verified Petition, which is incorporated herein, QSI’s “nerve center” is in Canada because it is a liquidating Canadian corporation, is controlled by the Receiver (located in Canada), and does not have any executives or other employees (thus having no present management outside of Canada). Further, the Debtor’s headquarters is best described as of this filing as the office of the Receiver in Canada.<sup>14</sup> The Debtor’s principal assets and liabilities are located in Canada, including its (a) ownership interest in the equity of the Q’Max Group, which includes Canadian, U.S. and other international entities; (b) contractual rights, most of which were executed in Canada and are subject to Canadian law; (c) rights to the MAXSITE and certain other intellectual property; and (d) its obligations under the Credit Agreement and to other Canadian creditors, among others. With respect to the last point, amounts owed under the Credit Agreement

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<sup>13</sup> Various courts have previously considered a receiver appointed pursuant to BIA § 243(1) to be a duly authorized “foreign representative.” *See, e.g., In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Eagle Energy Inc.*, No. 19-33868-15, (Bankr. N.D. Tex. Dec. 5, 2019), ECF No. 35 (recognizing Canadian receivership proceeding as foreign proceeding); *In re Baronet U.S.A. Inc.*, No. 07-13821 (Bankr. S.D.N.Y. Jan. 1, 2008), ECF No. 15 (same).

<sup>14</sup> The Debtor’s prior headquarters and its address for service of process were located in Alberta and British Columbia, respectively.

represent the vast majority of the Debtor's outstanding obligations. The Credit Agreement is governed by the laws of the Province of Alberta and the federal Laws of Canada; the Agent is a Canadian financial institution with offices in Alberta, including branch offices in Calgary; and all but one of the present Lenders in the syndicate are Canadian entities.<sup>15</sup> (*See* Credit Agreement, section 13.3).

46. Upon recognition as foreign main proceedings, most of the Provisional Relief is granted automatically under section 1520, including:

- (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;
- (2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- (3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- (4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

11 U.S.C. § 1520(a).

47. Even if the Court were to determine that the Canadian Proceeding was a foreign nonmain proceeding, the Court could still order protective relief to the Receiver during the pendency of the chapter 15 proceeding. 11 U.S.C. § 1521(a). Such relief includes:

- (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);
- (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

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<sup>15</sup> Canadian-organized Lenders are owed nearly 91% of the amounts outstanding under the Credit Agreement.

- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor's assets located within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- (6) extending relief granted under section 1519(a); and
- (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a). Additionally, a court may “entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative.” 11 U.S.C. § 1521(b).

48. Here, the Provisional Relief requested is consistent with the Receivership Order and is authorized by this Court's discretionary authority under section 1519 and principles of comity.

49. Comity is a central tenet of Chapter 15. *Firefighters' Retirement Sys. v. Citco Grp. Ltd.*, 796 F.3d 520, 525 (5th Cir. 2015); *Ad Hoc Group of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The U.S. Supreme Court defines comity as “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 143 (1895).

50. Exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a fellow common law jurisdiction with procedures akin to those in the United States. *See, e.g., In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698-99 (Bankr. S.D.N.Y. 2010); *In re Blackwell*, 270 B.R. 814, 823 (Bankr. W.D. Tex. 2001); *In re Singer*, 205 B.R. 355, 357 (Bankr. S.D.N.Y. 1997).

51. The extension of comity to orders issued in Canadian insolvency proceedings is routine. *See, e.g., In re Nortel Networks, Inc.*, 469 B.R. 478, 487 (Bankr. D. Del. 2012); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 688 (Bankr. S.D.N.Y. 2010); *In re Gandi Innovations Holdings, LLC*, No. 09-51782, 2009 WL 2916908, at \*1 (Bankr. W.D. Tex. June 5, 2009); *In re Petition of Ernst & Young, Inc.*, 383 B.R. 773, 777 (Bankr. D. Colo. 2008). Indeed, the BIA is similar to chapter 7 of the Bankruptcy Code, as both are statutory regimes intended to facilitate the liquidation of a debtor, provide a “breathing spell” from creditors’ collection efforts and a centralized process to assert and resolve claims against the debtor’s estate, and provide a fair and equitable process for distribution to creditors in order of priority. *Metcalfe & Mansfield Alternative Investments*, 421 B.R. at 698 (“The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.”).

52. Courts within the Fifth Circuit have granted provisional and final relief substantially similar to the Provisional Relief sought by this Application. *See, e.g., In re BOS Solutions LTD.*, No. 20-32465, ECF No. 41 (Bankr. S.D. Tex. May 19, 2020); *In re Technicolor S.A.*, No. 20-33113, ECF No. 59 (Bankr. S.D. Tex. July 31, 2020); *In re Entrec Corporation, et al.*, No. 20-32643, ECF No. 36 (Bankr. S.D. Tex. May 29, 2020).

53. Moreover, the Bankruptcy Court for the Southern District of Texas has recognized the importance of comity in chapter 15 proceedings. *See* Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters, General Order 2019-2 (the “Cross-Border Guidelines”). For example, the Cross-Border Guidelines provide that: “The overarching objective of these Guidelines is to improve in the interests of all stakeholders the

efficiency and effectiveness of cross-border proceedings relating to insolvency. . .by enhancing coordination and cooperation among courts under whose supervision such proceedings are being conducted.” The Cross-Border Guidelines then include a non-exhaustive list of guidelines to promote efficient coordination with the foreign court, protect stakeholders’ interests, preserve the debtor’s assets, and to share information to reduce costs, among others.

54. For these reasons, the Receiver is likely to succeed in its request for recognition of the Canadian Proceeding and, to the extent necessary, in its request for section 1521 relief.

(2) **Substantial threat of irreparable injury if the injunction is not issued**

55. To the extent necessary to effectuate liquidation of the Canadian Debtors, sale of the Global Operating Companies, and to otherwise complete its duties set forth in the Receivership Order, the Receiver continues to operate QSI and/or oversee operations of the Q’Max Group through QSI. Without injunctive relief recognizing the Receiver’s authority in the United States per the Receivership Order, including the staying of the MAXSITE Action and the Guarantor Action, the Receiver will be frustrated from performing its duties, and the value of the Debtor’s assets could be jeopardized. *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (“It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury.”); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”).

56. As set forth above, the Receivership Order provides for substantially similar powers and protections pursuant to Canadian law as those afforded to a chapter 7 trustee under the Bankruptcy Code. Among others, the Receiver’s Charge, the Receiver’s Borrowings Charge, the Receiver’s Protections, the stay of all collection activities akin to 11 U.S.C. § 362, and the grant

of specific authority for the Receiver to seek international recognition of the Receivership Order provides the Receiver with vital powers to maximize value for all rightful creditors.

57. Without recognition and enforcement of the Receivership Order to the fullest extent permitted by chapter 15, the Receiver will be unable to fully discharge its duties to all creditors, specifically including direct negative impact to the Receiver's ability to sell QSI's equity interests in the Global Operating Companies for maximum value and causing the Receiver to expend finite resources to defend actions that are intended to be stayed by the Receivership Order and by operation of Canadian law.

(3) **The threatened injury to the movant outweighs any damage the injunction might cause to the opponent**

58. Any threatened injury to the Debtor outweighs any damage the injunction might cause to opponents. The requested Provisional Relief, if granted, would benefit the Debtor's creditors, as a whole, by ensuring an orderly distribution of assets by and through the Canadian Proceeding, including the contemplated sale(s). *See, e.g., In re Basis Yield Alpha Fund (Master)*, Case No. 07-12762 (Bankr. S.D.N.Y. 2007), Dkt. No. 5 (stating that failing to issue a restraining order against creditors could, *inter alia*, "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors."). Moreover, QSI creditors and interested parties will receive proper notice and have the ability to participate in the Canadian Proceeding—or, as applicable, this proceeding—to protect any rights they may have with respect to QSI.

(4) **The injunction will not disserve the public interest**

59. Finally, the requested relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it sets to facilitate a cross-border process that will provide a benefit to all rightful creditors of the Debtor. *See, e.g., Cunard S.S. Co. Ltd. v. Salen*

*Reefer Svcs. A.B.*, 773 F.2d 452, 458 (2d Cir. 1985) (“The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.”).

60. For the above stated reasons, the Provisional Relief sought is necessary and appropriate, in the interest of the public and international comity, consistent with United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.

61. Accordingly, to the extent necessary, the Receiver submits that the Court should exercise its discretion in this matter to assure an economical, expeditious, and equitable administration of the Debtor’s estate consistent with the Receivership Order. Without such relief, the Debtor will be exposed to the risk and costs of litigation and other actions against it, which is in violation of the stay provided in the Receivership Order, in contravention of the Receiver fulfilling its duties under applicable Canadian law, and thus threatens the Receiver’s efforts to maximize value for the benefit of creditors.

**D. No Bond**

62. The Receiver respectfully suggests that no bond be required under Fed. R. Bankr. P. 7065 and Fed. R. Civ. P. 7065(c). A temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c). Fed. R. Bankr. P. 7065. The Receiver, who is carrying out its duties under the BIA, the Judicature Act, and the Receivership Order, is akin to a trustee, and any bond would necessarily come from the Debtor’s assets.



**VI. CONCLUSION**

63. For the reasons stated herein and in the evidence supporting the Application, the Receiver respectfully requests entry of an order granting the Provisional Relief, and all such other and further relief to which the Receiver is justly entitled.

Dated: September 30, 2020.

Respectfully submitted,

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capacity as court-appointed receiver  
and manager of Q'Max Solutions Inc.***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on September 30, 2020. It was further served by electronic mail and by U.S. first-class mail on the parties set forth on the attached service list (at the electronic and physical mail addresses indicated thereon, as applicable).

/s/ Grant M. Beiner

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

In re:	§	
	§	Chapter 15
	§	
Q'MAX SOLUTIONS INC.,	§	
	§	Case No. 20-34791 (MI)
	§	
Debtor in a Foreign Proceeding.	§	
	§	

**ORDER GRANTING RECEIVER'S EMERGENCY EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND RELIEF PURSUANT TO  
SECTIONS 105(A) AND 1519 OF THE BANKRUPTCY CODE  
[Dkt. No. \_\_\_\_]**

KPMG Inc. (“KPMG”), solely in its capacity as court appointed receiver and manager (“Receiver” or “Foreign Representative”) of Q’Max Solutions Inc. (“QSI” or the “Debtor”), and certain other related Canadian entities, pursuant to the *Consent Receivership Order* dated May 28, 2020 (the “Receivership Order”), entered by the Court of Queen’s Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2001-06722 (the “Canadian Court” and the “Canadian Proceeding”) pending under Canada’s Bankruptcy and Insolvency Act (“BIA”), and as authorized foreign representative of the above captioned Debtor, filed its *Receiver’s Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* (the “Application”), in this chapter 15 proceeding.

The Court finds that notice was proper, or that to the extent that notice was insufficient, this Order should be issued without notice to avoid irreparable harm to the Debtor, and that no party in interest made any response in opposition to the Application, or, if so, the relief requested

in any such response was denied for the reasons stated on the record, and further finds that the relief requested in the Application should be granted on a provisional basis.

This Court has considered and reviewed the (a) *Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”); (b) *Declaration of Receiver in Support of the Verified Petition and this Application* (the “Receiver Declaration”); (c) *Declaration of Foreign Counsel* (the “Osler Declaration”; and together with the Receiver Declaration, the “Supporting Declarations”); and (d) the Receivership Order; and all other exhibits introduced and admitted at the hearing on the Application, as well as all matters for which judicial notice was taken.<sup>1</sup> Based on the evidence presented and arguments of counsel, the Court **FINDS AND CONCLUDES** as follows:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- B. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
- C. Venue is proper pursuant to 28 U.S.C. § 1410. This Court has the authority to enter a final order consistent with Article III of the United States Constitution.
- D. The Debtor is Q’Max Solutions Inc.
- E. On May 27, 2020, HSBC Bank Canada, as administrative agent (“HSBC” or the “Agent”) for certain Lenders, filed an *Application for Appointment of a Receiver* seeking the appointment of KPMG as receiver under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c, B-3, section 13(2) of the Judicature Act, R.S.A. 2000 c J-2 (the “Judicature Act”), and 65(7) of the Personal Property Security Act, R.S.A. 2000, c P-7.
- F. On May 28, 2020, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243 of the BIA and section 13(2) of the Judicature Act.
- G. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and sections 109 and 1501 of the Bankruptcy Code. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(P).

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Application.

- H. Venue is proper pursuant to 28 U.S.C. § 1410(1) and (2).
- I. The Receiver 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.
- J. This case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code. Notice of the Application was sufficient, given the circumstances of the case and the potential for irreparable harm to the Debtor.
- K. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. *See Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014).
- L. There is a substantial likelihood that the Court, upon final consideration, will find that the Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.
- M. There is a substantial likelihood that the Court, upon final consideration, will find that the Canadian Proceeding will be entitled to recognition as a foreign main proceeding or, alternatively, as a foreign nonmain proceeding pursuant to section 1517(b) of the Bankruptcy Code.
- N. Relief is urgently needed to protect the assets of the Debtor or the interests of the creditors pursuant to 11 U.S.C. § 1519(a). To the extent necessary to effectuate liquidation of the Debtor and the other Canadian Debtors, sale of the Global Operating Companies, and to otherwise complete its duties set forth in the Receivership Order, the Receiver continues to operate QSI and/or oversee operations of the Q’Max Group through QSI. Without injunctive relief recognizing the Receiver’s authority in the United States per the Receivership Order, including the staying of the MAXSITE Action and the Guarantor Action, the Receiver will be frustrated from performing its duties, and the value of the Debtor’s assets could be jeopardized. Therefore, the Receiver is entitled to provisional relief afforded under section 1519 of the Bankruptcy Code.
- O. The relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.
- P. As described above, the Receiver has a substantial likelihood of prevailing on the merits. Even if the Canadian Proceedings are “foreign nonmain proceedings,” there is a substantial likelihood that the Receiver will be able to demonstrate that it is entitled to relief under 11 U.S.C. § 1521(a).
- Q. There is a substantial threat of irreparable injury if the injunction does not issue.

- R. Any threatened injury to the Debtor outweighs any damage the injunction might cause to opponents. The requested Provisional Relief, if granted, would benefit the Debtor's creditors, as a whole, by ensuring an orderly distribution of assets by and through the Canadian Proceeding, including the contemplated sale(s).
- S. The injunction will not disserve the public interest. The injunctive relief is in the public interest. It will facilitate a cross-border reorganization that provides benefit to all rightful creditors of the Debtor.
- T. The Receiver, in its role as foreign representative of the Debtor, is entitled to the full protections and rights available pursuant to section 1519(a) of the Bankruptcy Code.
- U. Permitting the Debtor's current cash management system to continue pursuant to existing agreements between the Debtor and its existing depository and disbursement banks (collectively, the "Banks") will facilitate the continued operations of the Debtor while the Canadian Proceeding and this proceeding are ongoing.
- V. In the Receivership Order, the Canadian Court grants the Receiver a charge (the "Receiver's Charge") on all of the Canadian Debtor's current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the "Property") to secure payment of the reasonable fees and expenses of the Receiver and its counsel, not to exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize). The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.
- W. In the Receivership Order, the Canadian Court also authorized the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$8,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms set forth in paragraph 21 of the Receivership Order. The Canadian Court granted a charge (the "Receiver's Borrowings Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order.
- X. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* . . ." (the "Receiver's Protections").

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. All relief granted herein is on a provisional basis, subject to this Court's recognition of the Canadian Proceeding as a foreign main or nonmain proceeding and any subsequent orders of the Court.

2. A hearing to consider preliminary and permanent relief as requested by the Verified Petition is set for October \_\_\_\_, 2020 at \_\_\_\_\_ (Central time), at Courtroom 404, 515 Rusk Street, Houston, Texas (the "Recognition Hearing"). Counsel for the Receiver shall serve this Order on parties in interest in this chapter 15 proceeding and provide notice of the hearing.

3. The commencement or continuation of any action or proceeding concerning the assets, rights, obligations, or liabilities of the Debtor, including any action or proceeding against KPMG in its capacity as Receiver, is hereby stayed in a manner coextensive with 11 U.S.C. § 362.

4. Execution against the assets of the Debtor is hereby stayed.

5. The administration or realization of all or part of the assets of the Debtor within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order to the extent set forth herein shall apply to the Debtor, its creditors, the Receiver, and any other parties-in-interest.

6. The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtor is hereby suspended unless authorized in writing by the Receiver or by Order of this Court.

7. As provisional relief in aid of the Receivership Order, the Receiver's Charge and the Receiver's Borrowings Charge and priorities as set forth in the Receivership Order, including paragraphs 18 and 21 of the Receivership Order, are hereby enforced against the Property in accordance with the terms of the Receivership Order.



8. Subject to the terms and conditions of the Receivership Order, the Receiver is authorized to execute all necessary documentation related to Receiver's Borrowings Charge and to pay and perform all indebtedness, interest, fees, liabilities, and obligations when the same become due and are to be performed. The Receiver, in its discretion, may (but is not required to in order for the Receiver's Borrowings Charge and priorities to be enforceable) file a photocopy of this Order and/or the Receivership Order as a financing statement, notice of lien, or similar document with any recording officer designated to file financing statements, notices of lien or similar documents in any U.S. jurisdiction, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Order and/or the Receivership Order.

9. The Receiver is authorized and empowered, but not obligated to (a) maintain and continue to use, with the same account numbers, all of the Debtor's existing bank accounts (the "Bank Accounts") at depository institutions in the United States (the "Banks"); (b) treat the Bank Accounts for all purposes as debtor-in-possession accounts; (c) maintain and continue to use the Debtor's existing business forms, stationery and checks, all without the appellation "debtor-in- possession"; and (d) preserve the reporting and accounting mechanisms used by the Debtor in respect of the Bank Accounts.

10. Those certain existing deposit agreements between the Debtor and the Banks shall continue to govern the post-petition cash management relationship between the Debtor and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. The Receiver and the Banks may, without further Order of this Court, agree to and implement changes to the cash management systems and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts.

11. Each of the Debtor's and/or Receiver's Banks is authorized to debit the Debtor's accounts in the ordinary course of business without the need for further order of this Court. Any of the Debtor's Banks may rely on the representations of the Receiver with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Commencement Date should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Receiver as provided for herein.

12. The Receiver is authorized to maintain the Debtor's existing cash management system, to allow receipt and sending of transfers via the ACH or automatic clearing house system and by wire transfer (collectively, the "Cash Management System"), all subject to the terms and conditions of the Debtor's prepetition agreements with their depository institutions (including the right to pay all pre-petition and post-petition administrative fees associated with such Bank Accounts and Cash Management System), provided however, that no prepetition obligations of any kind shall be paid except as authorized hereby.

13. If any of the provisions of this Order related to the Receiver's Borrowings Charge shall subsequently be stayed, modified, amended, reversed or vacated in whole or in part (collectively, a "Modification") whether by subsequent order of this Court or on appeal from this Order, such Modification shall not impair, limit or diminish the Receiver's Borrowings Charge, whether under this Order (as entered prior to the Modification), under the Receivership Order, or under any of the documentation delivered pursuant thereto or hereto, including with respect to any advances made prior to entry of the Modification.

14. As provisional relief in aid of the Receivership Order, the Receiver's Protections are given full force and effect in the United States.

15. The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor.

16. Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.

17. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through these Chapter 15 foreign proceedings, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

18. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in this case and is therefore waived.

19. This Order applies to all parties in interest in this Chapter 15 proceeding and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

20. Any party in interest may make a motion seeking relief from, or modification of, this Order on not less than three (3) business days' notice to the Receiver's U.S. counsel (collectively, "U.S. Counsel"):

John D. Cornwell  
Grant M. Beiner  
**Munsch Hardt Kopf & Harr, P.C.**  
700 Milam Street, Suite 2700  
Houston, Texas 77002  
Telephone: (713) 222-1470

Facsimile: (713) 222-1475  
jcornwell@munsch.com  
gbeiner@munsch.com

21. The notice required in paragraph 21 above on objections, if any, submitted for the purpose of opposing the Receiver's request for a preliminary and permanent injunction sought in the Application must be made in writing describing the basis therefor, filed with the Court and served on the U.S. Counsel in a manner whereby such notice or objections are actually received by U.S. Counsel at least three (3) business days prior to (i) any hearing scheduled on any motion seeking relief from, or modification of this Order, or (ii) the hearing date scheduled in paragraph 2 above for the hearing on the preliminary and permanent injunction.

22. If no objections to the Receiver's request for a preliminary and permanent injunction are made as herein provided, the Court may enter an order granting the preliminary and permanent injunction requested in the Application without holding a hearing.

23. To the extent of any conflict or inconsistency between this Order and the Receivership Order, the Receivership Order as amended, supplemented, or modified shall control.

24. Time of Issuance: This order is issued on October \_\_\_\_, 2020 at \_\_\_\_ (CT).

25. Duration: This order shall remain in effect through October \_\_\_\_, 2020 at \_\_\_\_ (Central time) unless extended pursuant to applicable law.

SIGNED: \_\_\_\_\_

\_\_\_\_\_  
MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE