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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re:*

MuscleTech Research and Development Inc.;  
HC Formulations Ltd.;  
CELL Formulations Ltd.;  
NITRO Formulations Ltd.;  
MESO Formulations Ltd.;  
ACE Formulations Ltd.;  
MISC Formulations Ltd.;  
GENERAL Formulations Ltd.;  
ACE US Trademark Ltd.;  
MT Canadian Supplement Trademark Ltd.;  
MT Foreign Supplement Trademark Ltd.;  
HC Trademark Holdings Ltd.;  
HC US Trademark Ltd.;  
1619005 Ontario Ltd. (f/k/a NEW HC US  
Trademark Ltd.);  
HC Canadian Trademark Ltd.; and  
HC Foreign Trademark Ltd.,  
  
Foreign Applicants in Foreign Proceedings.

In Cases Under  
Chapter 15 of the  
Bankruptcy Code

Case No. 06-\_\_\_\_\_

**PETITION PURSUANT TO 11 U.S.C. §§ 105(a), 1504, 1507, 1515, 1517, 1519, 1520 AND 1521,  
COMMENCING CHAPTER 15 CASES AND SEEKING ENTRY OF AN ORDER  
RECOGNIZING FOREIGN MAIN PROCEEDINGS AND GRANTING  
FURTHER RELIEF AND ADDITIONAL ASSISTANCE**

RSM Richter Inc., in its capacity as the court-appointed monitor (the "Monitor") and foreign representative of MuscleTech Research and Development Inc. ("MDI") and its above-captioned subsidiaries (together with MDI, the "Foreign Applicants") in proceedings (the "Canadian

Proceedings") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pending before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), by its United States counsel, Allen & Overy LLP, files this petition (the "Petition") for the entry of orders pursuant to sections 105(a), 1504, 1507, 1515, 1517, 1519, 1520 and 1521 of title 11 of the United States Code (as amended, the "Bankruptcy Code") in furtherance of each of the Official Form B-1 Petitions (collectively, the "Chapter 15 Petitions") filed contemporaneously herewith for the Foreign Applicants commencing chapter 15 cases ancillary to the Canadian Proceedings and seeking recognition of such proceedings as "foreign main proceedings" and the Monitor as the "foreign representative" in respect of the Canadian Proceedings and granting certain injunctive relief in aid thereof.<sup>1</sup> In support of the Chapter 15 Petitions, the Monitor states as follows:

### **PRELIMINARY STATEMENT**

1. The Monitor has commenced these chapter 15 cases pursuant to 11 U.S.C. § 1504 by filing the Chapter 15 Petitions, accompanied by all supporting documentation required pursuant to 11 U.S.C. § 1515 and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for recognition of the Canadian Proceedings as "foreign main proceedings" (as defined in 11 U.S.C. § 1502(4)) and certain injunctive relief in aid thereof, as more fully described herein.

2. The Declaration of Peter Farkas (the "Monitor's Declaration"), a Vice President and duly authorized agent of the Monitor annexed hereto as Exhibit **1** and incorporated by reference as

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<sup>1</sup> Because the Foreign Applicants require immediate assistance from this Court pursuant to 11 U.S.C. § 1519(a)(3) and (e), contemporaneously with the filing of the Chapter 15 Petitions, the Monitor also filed a complaint (the "Complaint") commencing an adversary proceeding and related application for an order to show cause with a temporary restraining order and, after notice and a hearing, a preliminary injunction (the "TRO Application") enjoining further prosecution and commencement of certain product liability litigation against the Foreign Applicants and the Non-Applicant Defendants (defined herein) in the United States, as is more fully described herein. While the Chapter 15 Petitions at present seek recognition as "foreign main proceedings", should a plan under the CCAA be agreed to in the Canadian Proceedings, the Monitor may return to this Court to request more specific additional relief consistent with any such plan.

if fully set forth herein, accurately recites the facts pertinent to, and necessary to sustain, the request for recognition of the Canadian Proceedings as "foreign main proceedings" and for the relief automatically available upon such recognition pursuant to 11 U.S.C. § 1520, including, without limitation, evidence that:

(A) The Canadian Proceedings are "foreign proceedings" (within the meaning of 11 U.S.C. § 101(23)) in respect of the Foreign Applicants that were duly commenced and are pending in Canada and have been authorized and sanctioned by the Canadian Court;

(B) the Canadian Proceedings are the only foreign proceedings in respect of the Foreign Applicants of which the Monitor has knowledge;

(C) the registered office and place of business of each of the Foreign Applicants are in Canada;

(D) the Monitor has been duly appointed by the Canadian Court to serve as the "foreign representative" (within the meaning of 11 U.S.C. § 101(23)) of the Foreign Applicants pursuant to the order of the Canadian Court dated January 18, 2006 (the "Initial CCAA Order") a true and correct copy of which is annexed to the Monitor's Declaration as Exhibit A;

(E) the Monitor, as the foreign representative of the Foreign Applicants, is duly authorized to petition for relief under chapter 15 and has been directed to do so by the Initial CCAA Order; and

(F) the Monitor is entitled to the relief herein requested on behalf of the Foreign Applicants.

3. The Foreign Applicants and a number of third parties, including affiliates of the Foreign Applicants and certain wholesalers and retailers that were involved in the sale and distribution of products sold by MDI (as set forth in detail in paragraph 24 below, the "Non-Applicant Defendants"), are defendants in numerous product liability lawsuits, pending throughout the United

States, based on allegations relating to the research, marketing, manufacture, sale and distribution primarily of products containing ephedra or prohormones (collectively, the "Product Liability Actions").<sup>2</sup> The Canadian Court has already granted injunctive relief, consistent with that requested in these cases, staying the Product Liability Actions against the Foreign Applicants and the Non-Applicant Defendants. To assist the Canadian Court and pursuant to the Initial CCAA Order, the Canadian Court has expressly authorized and directed the Monitor to seek the relief requested from this Court in these cases. The Monitor has therefore filed, contemporaneously herewith, the Complaint and the TRO Application and thereby seeks the entry of an order enjoining the Product Liability Actions and commencement of additional product liability litigation based on products sold by MDI, against the Foreign Applicants and the Non-Applicant Defendants, which injunction, if granted, would be coterminous with the Canadian stay.<sup>3</sup>

4. Taken together, the Chapter 15 Petitions, the Complaint and the TRO Application seek recognition of the Canadian Proceedings as "foreign main proceedings" and related automatic relief, including injunctive and other relief, consistent with that granted by the Canadian Court and necessary in the U.S. for the success of the Canadian Proceedings through, *inter alia*, orders of this Court substantially in the form of (A) the proposed chapter 15 order (the "Proposed Order") (annexed hereto as Exhibit **3**) issued pursuant to 11 U.S.C. §§ 1517, 1520 and 1521, granting recognition of the Canadian Proceedings, among other things, and (B) the proposed order to show cause with temporary restraining order (the "TRO") (annexed to the TRO Application as Exhibit A and the proposed preliminary injunction order (the "Preliminary Injunction") (annexed to the Coleman

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<sup>2</sup> Certain basic information concerning each of the Product Liability Actions pending against the Foreign Applicants and the Non-Applicant Defendants relating to products formerly sold by MDI is annexed hereto as Exhibit **2**.

<sup>3</sup> The Affidavit of Ken Coleman, a member of the firm of Allen & Overy LLP, in Support of the TRO Application and the Complaint (the "Coleman Affidavit") and the Declaration of Peter Farkas, C.A., C.I.R.P., C.B.V. in Support of the TRO Application and the Complaint (the "TRO Declaration"), both filed contemporaneously herewith, accurately recite the facts pertinent to, and necessary to sustain, the immediate relief requested by the Complaint and the TRO Application, and are incorporated herein by reference as if fully set forth herein.

Affidavit as Exhibit A), granting immediate and continuing relief, including injunctive and other relief, as described below. The Foreign Applicants intend to formulate, negotiate and propose a plan under the CCAA that embodies a global, equitable resolution of their liabilities, including those arising from the Product Liability Actions. As noted above, if the Foreign Applicants succeed in achieving approval of such a plan pursuant to the Canadian Proceedings, the Monitor may seek permanent injunctive relief from this Court giving effect to such plan in the United States.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

6. Venue is proper in this District pursuant to 28 U.S.C. § 1410 as there are actions pending against the Foreign Applicants in this District and the Foreign Applicants do not have principal places of business or principal assets in this or any other District.

7. The statutory predicates for the relief requested herein are sections 105(a), 1504, 1507, 1515, 1517, 1519, 1520 and 1521 of the Bankruptcy Code.

### **BACKGROUND**

8. The affidavit of Barry Kadoch sworn to on January 13, 2006 (the "Kadoch Affidavit") and filed with the Canadian Court in support of the Canadian Proceedings, and the exhibits thereto, describe in detail the Foreign Applicants, their operations, and the Canadian Proceedings. A true and correct copy of the Kadoch Affidavit is annexed hereto as Exhibit **4** and incorporated by reference as if fully set forth herein.

## **The Foreign Applicants**

9. MDI is a privately-held Canadian company that was incorporated under the laws of the Province of Ontario, Canada, on December 5, 1997, and is the parent company of the other Foreign Applicants. Although at one time an operating company, MDI today is a holding company. Paul Gardiner ("Mr. Gardiner"), a resident of Ontario, Canada, is the sole director of MDI and serves as its Secretary, Treasurer and President.

10. The other Foreign Applicants are single-purpose Canadian corporate entities that can be divided into two groups: (a) those that own or owned certain product formulations, patents, know-how and trade secrets (collectively, the "Formulation Companies") and (b) those that own or owned certain trademarks and copyrights (collectively, the "Trademark Companies").

11. The Formulation Companies include the following Foreign Applicants: HC Formulations Ltd., CELL Formulations Ltd., NITRO Formulations Ltd., MESO Formulations Ltd., ACE Formulations Ltd., MISC Formulations Ltd. and GENERAL Formulations Ltd. Each of the Formulation Companies is a direct subsidiary of MDI, is incorporated pursuant to the laws of the Province of Ontario, Canada and has its registered office and mailing address at 5100 Spectrum Way, Mississauga, Ontario, Canada. Mr. Gardiner is also the sole director of each of the Formulation Companies.

12. The Formulation Companies own or owned certain product formulations, trade secrets, know-how and patents (collectively, the "Formulations") associated with certain health supplement, weight-loss and sports nutrition products formerly sold by MDI.

13. The Trademark Companies include the remaining Foreign Applicants: ACE US Trademark Ltd., MT Canadian Supplement Trademark Ltd., MT Foreign Supplement Trademark Ltd., HC Trademark Holdings Ltd., HC US Trademark Ltd., 1619005 Ontario Ltd. (f/k/a NEW HC US Trademark Ltd.), HC Canadian Trademark Ltd. and HC Foreign Trademark Ltd. Each of the

Trademark Companies is a direct or indirect subsidiary of MDI, is incorporated pursuant to the laws of the Province of Ontario, Canada and has its registered office and mailing address at 5100 Spectrum Way, Mississauga, Ontario, Canada. Mr. Gardiner is also the sole director of each of the Trademark Companies.

14. With the exception of HC Trademark Holdings Ltd., which owns the shares of four of the Trademark Companies, the Trademark Companies own or owned the trademarks associated with certain products formerly sold by MDI and certain other miscellaneous trademarks (collectively, the "Trademarks"), some of which are Canadian trademarks and others of which are U.S. or foreign trademarks.

15. The Foreign Applicants are all Canadian companies, with registered offices and places of business in Canada. The Foreign Applicants are direct or indirect subsidiaries of Iovate Health Sciences Group Inc., a company incorporated pursuant to the laws of Ontario, Canada on November 30, 1998. Certain of Iovate Health Sciences Group Inc.'s direct and indirect subsidiaries, other than the Foreign Applicants (collectively, the "Iovate Group Companies") are involved in the development and sale of health supplements and weight-loss and sports nutrition products and carry on business in many countries around the world, although primarily in Canada and the U.S. Certain of the foregoing business activities were formerly carried on by MDI. The Foreign Applicants have no physical place of business in the United States.

#### **The Foreign Applicants' Business**

16. The Formulation Companies and Trademark Companies maintain or maintained ownership of the Formulations or the Trademarks, as the case may be, and pursuant to various licensing agreements, license the Formulations and Trademarks, respectively, to certain of the Iovate Group Companies for use in their business, which is the administration, research, marketing and manufacture

of health supplements, weight-loss and sports nutrition products for sale and distribution primarily in Canada and the United States, and to a lesser extent, in many other countries around the world.

17. Pursuant to various agreements between the Foreign Applicants and certain of the Iovate Group Companies, such Iovate Group Companies provide or provided a number of services and functions that are integral to the Foreign Applicants and their Formulations and Trademarks.

18. The Foreign Applicants do not provide any business functions to the Iovate Group Companies.

### **The Product Liability Actions and Non-Applicant Defendants**

19. The Foreign Applicants face significant challenges as a result of being named as defendants, together with many of their competitors and customers, in a large number of product liability lawsuits pending throughout the United States based on allegations primarily relating to the use of products containing ephedra.<sup>4</sup> To date approximately 1,000 ephedra-related lawsuits have been commenced industrywide, many of which have implicated at least five (5) of MDI's competitors as defendants, including Nutraquest, Inc., Twinlab Corp., NVE, Inc., Metabolife International Inc. and AST Sports Science, Inc., all of which have since filed for protection under chapter 11 of the Bankruptcy Code.

20. The first Product Liability Action against the Foreign Applicants was commenced in 2000, and a steady stream of similar actions followed, accelerating after the U.S. Food and Drug Administration's (the "FDA") 2004 ruling regarding ephedra products, the validity of which has since been called into question.<sup>5</sup> To date, one or more of the Foreign Applicants has been named as

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<sup>4</sup> Ephedra is an herbal supplement found in various over-the-counter products designed to help people lose weight or increase energy levels.

<sup>5</sup> In December, 2003, the FDA announced its intention to ban the sale of ephedra and products containing ephedra, alleging that they represented an unreasonable risk of illness or injury. The FDA also issued a consumer alert warning the public to stop buying and using products containing ephedra. On February 11, 2004, the FDA issued a ruling under 21 U.S.C. § 321(ff)(3)(A) that dietary supplements containing ephedrine alkaloids are "adulterated" under 21 U.S.C. § 342(f). The FDA's ruling was prospective, and did not take effect until April 12, 2004. In 2005, a U.S. District Court overturned

a defendant in approximately ninety-six (96) Product Liability Actions pending throughout the U.S. Of the ninety-six (96) Product Liability Actions, twenty (20) new Product Liability Actions were commenced against one or more of the Foreign Applicants in 2005 alone.

21. Several of the Product Liability Actions against the Foreign Applicants are pending before the U.S. District Court for the Southern District of New York as part of a Multidistrict Litigation proceeding, as well as before various state courts throughout the United States. A few Product Liability Actions have also been filed as class actions pending in various jurisdictions, including California, Illinois, Wisconsin, Florida and New York. MDI was also a co-defendant with two (2) of its competitors, Nutraquest, Inc. and Twinlab Corp., in approximately twelve (12) actions. These latter twelve (12) lawsuits have been resolved.

22. The vast majority of the Product Liability Actions arise from allegations relating to the use of ephedra in a product formerly sold by MDI. Two Product Liability Actions are purported class actions that arise out of allegations relating to the marketing and advertising of the ephedra product formerly sold by MDI. Two other Product Liability Actions against the Foreign Applicants are purported class actions that arise out of allegations that the sale by MDI of products containing prohormones violated various state and federal consumer protection statutes. One pending individual action contains similar allegations. Additionally, two Product Liability Actions against the Foreign Applicants arise out of allegations related to contamination by a third party manufacturer that has indemnified MDI.

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the FDA's ruling to the extent it applied to supplement formulations containing ten (10) milligrams or less of ephedra. That holding is currently subject to an appeal.

23. MDI ceased the production and sale of products containing ephedra and prohormones in December 2002. None of the Iovate Group Companies has produced or sold product formulations that are the subject of the Product Liability Actions, nor has any of the Iovate Group Companies owned any of the intellectual property pertaining to such product formulations.

24. Nevertheless, some of the plaintiffs in the Product Liability Actions against one or more of the Foreign Applicants (collectively, the "Product Liability Plaintiffs"), have named as defendants the following parties ((A) – (G), collectively, the "Non-Applicant Defendants"):

(A) Mr. Gardiner and Terry Begley (collectively, the "Principals");

(B) the Paul Gardiner Family Trust, which owns 100% of the common shares of Iovate Health Sciences Group Inc.;

(C) Iovate Health Sciences Group Inc., Iovate Health Sciences Inc., Iovate Health Sciences Research Inc., Iovate Health Sciences International Inc., Iovate Health Sciences U.S.A. Inc., Iovate Health Sciences Capital Inc. and Iovate Copyright Ltd.;

(D) HVL, Inc., a company located in Pittsburgh, Pennsylvania retained by MDI to manufacture the Hydroxycut product for MDI (the "Manufacturer") and Douglas Laboratories, Inc. under whose label HVL, Inc. sells its own in-house products;

(E) Peak Wellness, Inc. and Miami Research Associates Inc., each a research organization, that conducted clinical trials involving the Hydroxycut product, and Carlon Colker, M.D. and Douglas Kalman who oversaw such clinical trials (collectively, the "Researchers");

(F) Stuart Lowther, the former Research & Development Manager of MDI (the "Former Employee"); and

(G) certain of the Foreign Applicants' customers that are wholesalers and retailers in the U.S. that sell MDI's products to the general public (collectively, the "Retailers"), namely:

Walgreen Co.; Wal-Mart Stores, Inc.; General Nutrition Corporation, n/k/a GN Oldco Corporation; General Nutrition Companies Inc., n/k/a GNCI Oldco, Inc.; General Nutrition Inc., n/k/a GNI Oldco, Inc.; GN Oldco Corporation, f/k/a General Nutrition Corporation; General Nutrition, Inc.; GNC Franchising, LLC; General Nutrition Distribution, L.P.; General Nutrition Distribution Corporation; General Nutrition Sales Corporation; General Nutrition Centers, Inc.; General Nutrition Centers, Inc., n/k/a Oldco Corporation; General Nutrition Companies, Inc.; General Nutrition Center, Store 100122; General Nutrition Center, Store 101603; GNC Corporation; General Nutrition Center International, Inc.; Raaj Singh, individually and t/a GNC/General Nutrition Center #0948; Vitamin World, Inc.; GNC Franchising, Inc.; Mandeville GNC, a/k/a Mackie Shilstone's GNC; CVS Corporation; James R. Wilson; Jackie Kneifel; and Rite Aid Corporation.

25. The Product Liability Plaintiffs generally allege that the Non-Applicant Defendants acted in concert with the Foreign Applicants in the research, marketing, manufacture, sale and distribution primarily of products containing ephedra or prohormones.

26. The Product Liability Actions pertain only to products formerly sold by MDI, and, therefore, any liability of the Non-Applicant Defendants is derivative of, and inextricably linked to, the liability of the Foreign Applicants in those actions. In addition, the Principals have the benefit of contractual indemnities and indemnities in the by-laws of the Foreign Applicants. The Retailers and/or their parent companies and affiliates have the benefit of an indemnity clause in their respective contracts with MDI pertaining to the sale of the subject products. The Manufacturer has the benefit of an indemnity clause in its contracts with MDI for the manufacture of the Hydroxycut product. The Researchers have the benefit of an indemnity clause in their respective contracts with MDI pertaining to the research and development services. The Former Employee has the benefit of an indemnity clause in his termination contract with MDI. Each of these indemnification obligations of the Foreign

Applicants might give rise to further claims against the Foreign Applicants if the Non-Applicant Defendants incur any loss or liability in connection with any of the Product Liability Actions.

27. The Foreign Applicants strongly believe in the safety of their products and that their position is supported by the best experts and evidence available. Accordingly, the Foreign Applicants have been vigorously defending the Product Liability Actions and, to date, the Foreign Applicants and their insurers<sup>6</sup> have spent tens of millions of dollars in defense costs relating to the Product Liability Actions. The Foreign Applicants have settled several of these actions, but there remain approximately thirty-nine (39) active cases pending against the Foreign Applicants and Non-Applicant Defendants in various state and federal courts in the United States. There have been no claims made in Canada in respect of Hydroxycut or any other product manufactured or distributed by MDI or the Iovate Group Companies. The Foreign Applicants continue to dispute the substantive allegations made against them in the Product Liability Actions, and believe in the safety and efficacy of the products formerly sold by MDI. Nevertheless, the Foreign Applicants no longer have sufficient resources to continue to fund defense costs or pay judgments that may arise or to settle the existing Product Liability Actions (let alone any new actions that may arise). The remaining Product Liability Actions and the specter of new actions against the Foreign Applicants are the principal factors contributing to the Foreign Applicants' current financial crisis.

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<sup>6</sup> MDI has certain insurance policies with Zurich Insurance Company and believes that it is insured, in full or in part, with respect to certain of the Product Liability Actions whether or not MDI is ultimately held liable for such claims. MDI and Zurich Insurance Company and Zurich American Insurance Company (collectively, "Zurich") are involved in litigation in California and Ontario, Canada over the scope of coverage and Zurich's liability to cover certain liability and defense expenses incurred by MDI in connection with the Product Liability Actions.

In California, a motion to dismiss MDI's claims on the basis that California is not a convenient forum was granted by the California state court.

In Ontario, Canada, Zurich commenced an action for declaratory relief in connection with certain coverage issues. MDI cross-claimed for damages for breach of duties to defend and to indemnify MDI in connection with the product liability litigation, involving expenditures exceeding USD 20 million. Both proceedings are in the preliminary stages. Zurich's liability in either proceeding (the "Zurich Cause of Action") has not yet been determined and it is not known when a final determination will be made.

### **The Foreign Applicants' Financial Crisis**

28. The particulars of the Foreign Applicants' assets and liabilities are set forth in more detail in the Kadoch Affidavit. The Foreign Applicants' Statement of Income and Retained Earnings, as well as unaudited consolidated financial statements, current to November 30, 2005 (before the foreclosure of certain security against the Foreign Applicants) and to December 26, 2005 (after the foreclosure of certain security against the Foreign Applicants), are annexed as Exhibit B to the Kadoch Affidavit.

29. The Foreign Applicants' financial condition is precarious even without considering their potential liabilities arising from the Product Liability Actions. The Foreign Applicants' Statement of Income and Retained Earnings, reflects that the Foreign Applicants have generated significant losses for approximately two (2) years. To date, these losses have been funded internally, by bank borrowing and by other of the Iovate Group Companies. As a result of the Product Liability Actions, as well as certain outstanding secured claims, the Foreign Applicants are insolvent.

### **The Canadian Proceedings**

30. Faced with these financial challenges, on January 18, 2006, the Foreign Applicants commenced the Canadian Proceedings. The Foreign Applicants, under the supervision of the Monitor and the Canadian Court, are pursuing a restructuring of their business and affairs under the CCAA.

31. The Foreign Applicants, together with their other constituencies, intend to formulate, negotiate and propose a plan that embodies a global, equitable resolution of their liabilities, including any resulting from the Product Liability Actions. If the Foreign Applicants succeed in achieving approval of such a plan, the Monitor may seek a permanent injunction from this Court giving effect in the United States to such plan and any related orders of the Canadian Court.

32. The Canadian Proceedings offer the only practicable means to achieve a global, equitable resolution of their liabilities, including any liabilities arising from the Product Liability Actions, and to restructure, rather than liquidate, their companies. The Foreign Applicants will also use the Canadian Proceedings as a vehicle for managing the Zurich Cause of Action.

33. Pursuant to the Initial CCAA Order, the Canadian Court appointed the Monitor to monitor the business and financial affairs of the Foreign Applicants and assist the Foreign Applicants to formulate, negotiate and seek approval of a plan.

34. The Initial CCAA Order, among other things, includes a stay until 11:59 pm on February 17, 2006 (or such later date or dates that may be provided for in further orders of the Canadian Court), against all litigation, including the Product Liability Actions against the Foreign Applicants and the Non-Applicant Defendants, giving the Foreign Applicants time to attempt to resolve, compromise or otherwise address their liabilities, including claims relating to the Product Liability Actions, and negotiate the terms of a plan under the CCAA without the cost or distraction of litigation. The Canadian Court has expressly authorized and directed the Monitor to seek the relief requested in these cases from this Court in aid of the Canadian Proceedings.

35. The process of resolving the claims against the Foreign Applicants under the CCAA is expected to entail, among other things: (a) an identification of the parties with an interest in the Foreign Applicants' estates; (b) multi-party negotiations and discussions; (c) a consideration of various alternatives; and (d) the building of a consensus on the terms of a plan. This process necessarily requires a stay of the Product Liability Actions against the Foreign Applicants and the Non-Applicant Defendants in the United States while the Foreign Applicants seek to resolve, compromise or otherwise address the claims against them. The Initial CCAA Order accordingly authorizes and directs the Monitor to: (a) commence these chapter 15 cases for the Foreign Applicants, (b) seek injunctive relief consistent with that granted under the Initial CCAA Order enjoining further prosecution of the

Product Liability Actions and commencement of additional product liability litigation based on products sold by MDI, against the Foreign Applicants, the Non-Applicant Defendants or their respective assets and proceeds thereof, while the Foreign Applicants and other parties in interest attempt to negotiate a global, equitable resolution of the Foreign Applicants' liabilities and a plan, (c) seek recognition and enforcement in the United States of the Initial CCAA Order and related orders of the Canadian Court, and (d) seek such additional assistance as the Monitor may request from time to time to facilitate the Canadian Proceedings and the orderly administration of the Foreign Applicants' affairs.

36. The Monitor is not aware of any other foreign proceedings within the meaning of 11 U.S.C. § 101(23) with respect to the Foreign Applicants.

### **RELIEF SOUGHT**

37. For the reasons more fully discussed in the Memorandum of Points and Authorities in Support of the Chapter 15 Petitions and the TRO Application (the "Memorandum") filed contemporaneously herewith, the Canadian Proceedings constitute "foreign main proceedings" commenced for purposes of restructuring the Foreign Applicants under the CCAA.

38. The Initial CCAA Order appoints the Monitor as the "foreign representative" with respect to the Canadian Proceedings for the purpose of commencing these chapter 15 cases. Accordingly, the Monitor hereby seeks entry of an order of this Court, substantially in the form of the Proposed Order, granting the following relief in support of the Canadian Proceedings:

(A) recognition of the Canadian Proceedings as "foreign main proceedings" as defined in 11 U.S.C. § 1502(4) pursuant to 11 U.S.C. § 1517;

(B) recognition of the Monitor as the "foreign representative" of the Foreign Applicants within the meaning of 11 U.S.C. § 101(24) and for all purposes under chapter 15 of the Bankruptcy Code;

(C) all relief afforded foreign main proceedings automatically upon recognition, as of right pursuant to 11 U.S.C. § 1520, or, if not as of right, then as additional relief to the extent authorized by 11 U.S.C. § 1521.<sup>7</sup>

39. To best preserve assets that should be made available to satisfy claims of all creditors of the Foreign Applicants and to promote a uniform and equitable resolution of the Foreign Applicants' liabilities, including liabilities arising from the Product Liability Actions, the Foreign Applicants also require an immediate stay of the Product Liability Actions so as to allow for the development and approval of a plan under the CCAA.

40. For this reason, contemporaneously with the filing of the Chapter 15 Petitions, the Monitor has filed the Complaint and the TRO Application and thereby seeks the entry of an order enjoining the Product Liability Actions and the commencement of additional product liability litigation based on products sold by MDI, against the Foreign Applicants or the Non-Applicant Defendants, that would be coterminous with the Canadian Court's stay. As explained more fully in the Complaint and TRO Application, and the TRO Declaration and Coleman Affidavit, the Monitor believes the TRO and Preliminary Injunction are necessary and in the best interests of the Foreign Applicants and their creditors and foreign estates. The continued prosecution of the Product Liability Actions and the commencement of additional product liability litigation in the U.S. will irreparably harm the Foreign Applicants and substantially deplete the foreign estates' resources, thereby limiting the Foreign Applicants' ability to pursue recoveries under the Zurich insurance policies, which will be determined in

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<sup>7</sup> While the relief the Monitor seeks initially in these cases may not require the Court to invoke section 1521 of the Bankruptcy Code at this stage, the Monitor nevertheless seeks recognition that it is entitled to relief under section 1521, and

the Zurich Cause of Action, and which should be made available on an equitable basis for all creditors of the Foreign Applicants' estates. The proposed relief will ease these concerns and allow for the negotiation of a global plan to resolve finally and equitably all of the Foreign Applicants' liabilities.

41. In furtherance thereof, the Monitor also hereby seeks the following additional relief, pursuant to 11 U.S.C. §§ 105(a), 1504, 1507, 1515, 1517, 1519, 1520 and 1521 and, if and as necessary Rule 65 of the Federal Rules of Civil Procedure as made applicable herein by Rule 7065 of the Federal Rules of Bankruptcy Procedure, as set forth in the form of the Proposed Order, in order to best advance the goals of the Canadian Proceedings and allow negotiation among the various parties in interest of a potential global and equitable resolution of the Foreign Applicants' liabilities:

- (A) all of the following relief:
  - (i) staying the commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Foreign Applicants in respect or for the benefit of the Foreign Applicants to the extent not stayed under 11 U.S.C. § 1520(a);
  - (ii) staying the continued prosecution (including scheduled discovery) of any Product Liability Actions and the commencement of additional product liability litigation based on products sold by MDI, against the Foreign Applicants, the Non-Applicant Defendants or their respective assets (to the extent not already stayed by an order of this Court);
  - (iii) staying execution against the assets of the Foreign Applicants to the extent not stayed under 11 U.S.C. § 1520(a);

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should the Foreign Applicants succeed in implementing a plan under the CCAA restructuring their business and affairs, the Monitor reserves the right to seek further specific relief as may be required under section 1521 by motion or otherwise.

(iv) suspending the right to transfer or otherwise dispose of any assets of the Foreign Applicants to the extent this right has not been suspended under 11 U.S.C. § 1520(a);

(v) recognizing and giving effect in the United States to the Initial CCAA Order and any further orders of the Canadian Court, including, without limitation, orders relating to the filing, administration and resolution of claims against and interests in the Foreign Applicants and their assets; and

(vi) otherwise granting comity to and giving full force and effect to any plan approved by the Canadian Court; and

(B) such further relief as the Monitor may request from time to time, to the extent authorized by 11 U.S.C. § 1507 and additional assistance as authorized by 11 U.S.C. § 1507, and granting the Monitor such other and further relief as this Court may deem just and proper.

#### **BASES FOR SUCH RELIEF**

42. The ultimate goal of the Foreign Applicants is to ensure an orderly administration of their financial affairs and to maximize the value to be distributed to all parties in interest, under the auspices of the Canadian Court in the Canadian Proceedings and with the aid of this Court as requested herein. The Monitor is informed and believes that granting the relief sought in the Chapter 15 Petitions will best assure an opportunity for the Foreign Applicants to resolve, compromise or otherwise address the Product Liability Actions, and, consequently, to ensure the just treatment of all holders of claims against and interests in the Foreign Applicants and the Foreign Applicants' property, protection of creditors in the United States against prejudice, distribution of proceeds of the Foreign Applicants' property and any other settlement funds substantially in accordance with the Bankruptcy

Code, and the economical and expeditious administration of the Foreign Applicants' affairs, consistent with the principles of 11 U.S.C. §1507(b).

43. For the reasons more fully discussed in the Memorandum, the Canadian Proceedings and the Monitor are entitled to recognition under section 1517 of the Bankruptcy Code because:

(A) the Canadian Proceedings are (i) foreign proceedings within the meaning of 11 U.S.C. § 101(23), and (ii) foreign main proceedings within the meaning of 11 U.S.C. §§ 1502(4), including because the Foreign Applicants' registered offices, as well as their places of business are located in Canada, which is the Foreign Applicants' center of main interests within the meaning of 11 U.S.C. § 1516(c);

(B) the Monitor is a foreign representative within the meaning of 11 U.S.C. § 101(24);

(C) the Petition meets the requirements of 11 U.S.C. § 1515.

Moreover, recognizing the Canadian Proceedings would not be manifestly contrary to the public policy of the United States under 11 U.S.C. § 1506. In fact, granting recognition will promote the U.S. public policy of respecting foreign proceedings as articulated in, *inter alia*, 11 U.S.C. §§ 1501(a) and 1508. Thus, the conditions for mandatory recognition of the Monitor and the Canadian Proceedings under 11 U.S.C. § 1517 have been satisfied.

44. Finally, for the reasons more fully discussed in the Memorandum, the Canadian Proceedings and the Monitor are also entitled to the additional immediate relief, including injunctive and other relief, requested in the Complaint and TRO Application in order to best advance the goals of the Canadian Proceedings and allow negotiation among the various parties in interest towards a potential global, equitable resolution of the Foreign Applicants' liabilities, and because the Foreign Applicants and the Canadian Proceedings would suffer irreparable harm if such relief is not granted.

## CONCLUSION

WHEREFORE, the Monitor respectfully requests that this Court grant the Chapter 15 Petitions and enter the Proposed Order, pursuant to section 1517 of the Bankruptcy Code recognizing the Canadian Proceedings as "foreign main proceedings" and the Monitor as the "foreign representative" of the Foreign Applicants in respect of such proceedings and granting such other further relief and additional assistance, as described above.

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