

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

In re:	:	Chapter 11
Barzel Industries Inc., <u>et al.</u> ,	:	Case No. 09-13204 (CSS)
Debtors. ¹	:	(Jointly Administered)
	:	Related Docket Number: 11

**ORDER PURSUANT TO 11 U.S.C. § 105(A) APPROVING
CROSS-BORDER COURT-TO-COURT PROTOCOL**

Upon the Motion (the "Motion"),² of the above-captioned debtors for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached to the Motion as Exhibit B (the "Protocol"); and upon consideration of the Declaration of Karen G. Narwold in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings, filed concurrently with the Motion; and upon the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), (c) notice of the Motion was due and proper under the circumstances, (d) approval of the Protocol having been sought from the Canadian Court; and (e) the legal and factual bases set forth in the Motion establish cause for the relief requested in the Motion, and it appearing such relief is in the best interests of the Debtors, their estates and creditors; and upon the record in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Barzel Industries Inc. (0836), Barzel Holdings Inc. (1107), Barzel Finco Inc. (1010), Barzel Industries U.S. Inc. (6382), American Steel and Aluminum Corporation (2435), Nova Tube and Steel, Inc. (1790), Novamerican Tube Holdings, Inc. (3740) and Nova Tube Indiana, LLC (8275).

² Capitalized terms used but not defined herein have the meanings assigned to such terms in the Motion.

these proceedings; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby ordered that:

1. The Motion is GRANTED.
2. The Protocol is hereby approved in all respects, subject to approval of the same by the Canadian Court, as it may be amended or supplemented by further order of this Court, obtained after notice and a hearing.
3. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: September 17, 2009
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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

In re:	:	Chapter 11
Barzel Industries Inc., <u>et al.</u> ,	:	Case No. ___ - _____ ()
Debtors. ¹	:	Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF AN ORDER PURSUANT TO
11 U.S.C. § 105(A) APPROVING CROSS-BORDER COURT-TO-COURT PROTOCOL**

Barzel Industries Inc. ("Barzel") and certain of its affiliates, as debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors"), hereby move this Court (the "Motion") for the entry of an order substantially in the form attached hereto as Exhibit A, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached hereto as Exhibit B (the "Protocol"), and granting them such other and further relief as the Court deems just and proper. In support of this Motion, the Debtors rely on the Declaration of Karen G. Narwold in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings (the "Narwold Declaration"), filed concurrently herewith and fully incorporated herein by reference.² In further support of the Motion, the Debtors respectfully represent as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Barzel Industries Inc. (0836), Barzel Holdings Inc. (1107), Barzel Finco Inc. (1010), Barzel Industries U.S. Inc. (6382), American Steel and Aluminum Corporation (2435), Nova Tube and Steel, Inc. (1790), Novamerican Tube Holdings, Inc. (3740) and Nova Tube Indiana, LLC (8275).

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

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is section 105(a) of the Bankruptcy Code.

Background

A. Introduction

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No official committee has yet been appointed in these chapter 11 cases.

6. Simultaneously with the filing of this Motion, the Debtors have sought an order of joint administration pursuant to Rule 1015(b) of the Bankruptcy Rules that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

B. The Canadian Proceeding

7. On the date hereof, following the commencement of these chapter 11 proceedings, one of the Debtors' wholly-owned indirect subsidiaries – Barzel Industries Canada Inc. (the "Canadian Debtor") – will file an application with the Ontario Superior Court of Justice – Commercial List – (the "Canadian Court") under the Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA") (the case commenced under the CCAA by the Canadian Debtor, the "Canadian Proceedings") seeking protection from its creditors in Canada. The Canadian Debtor will continue to manage its property and operate its business under the

supervision of the Canadian Court. Davies Ward Phillips & Vineberg LLP, as counsel for the Canadian Debtor, will file the CCAA application. Deloitte and Touche Inc. has agreed to act as Monitor in connection with the Canadian Proceedings, if so appointed by the Canadian Court.

C. Debtors' Corporate Structure and Business

8. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of their bankruptcy cases, is set forth in the Narwold Declaration.

Relief Requested

9. In order to facilitate the administration of these chapter 11 cases and the Canadian Proceedings, the Debtors request that the Court enter an order, in substantially the form attached to this Motion as Exhibit A, approving the proposed cross-border court-to-court Protocol attached hereto as Exhibit B.

The Need for Cross-Border Relief

10. As set forth in further detail in the Narwold Declaration, the operations of the Canadian Debtor and the Debtors are highly integrated and all finance, regulatory, treasury, cash management and executive functions of the Canadian Debtor and the Debtors are provided by Barzel Industries, Inc. In light of the transnational nature of the businesses, the Debtors and the Canadian Debtor desire to manage their Insolvency Proceedings in a coordinated fashion. The Debtors therefore seek (and the Canadian Debtor is seeking in the Canadian Proceeding) approval of a protocol that will provide this Court and the Canadian Court (collectively, the "Courts") with a framework for the coordination and administration of this proceeding and the Canadian Proceedings (the "Insolvency Proceedings") on matters of concern to both Courts.

11. Specifically, a protocol is needed to ensure that: (i) the Insolvency Proceedings are coordinated to avoid inconsistent, conflicting or duplicative rulings by the Courts; (ii) all parties in interest are provided sufficient notice of key issues in both Insolvency Proceedings, (iii) the substantive rights of all parties in interest are protected; and (iv) the jurisdictional integrity of the Courts is preserved. The Protocol is designed to achieve these objectives by implementing a framework of general principles and timing considerations to address the basic administrative and procedural issues arising out of the cross-border nature of the Insolvency Proceedings. Such coordination is essential and should, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith, and avoid duplication of effort and the possibility of conflicting rulings by the Courts.

The Court-to-Court Protocol

12. The following is an overview of the provisions of the proposed Protocol:³

13. **Purpose and Goals:** The Protocol seeks to promote the following mutually desirable goals and objectives in both Proceedings:

- a. harmonize and coordinate activities between the Courts in the Insolvency Proceedings;
- b. promote and facilitate the fair, open, orderly, and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of same, reduce the costs associated therewith, and avoid the duplication of efforts, for the benefit of all of the Debtors' creditors, their estates, and other interested parties, wherever located;
- c. honor the respective independence and integrity of the Courts and all other courts and tribunals of the United States and Canada, respectively;
- d. promote international cooperation and respect for comity among the Courts, the Debtors, the Representatives, and all creditors and other interested parties in the Insolvency Proceedings; and

³ This overview is merely intended to provide a short summary of some of the provisions of the Protocol. If any conflict arises between this overview and the Protocol, the terms of the Protocol shall control.

- e. implement a framework of general principles to address certain issues arising out of the cross-border nature of the Insolvency Proceedings.

14. Comity and Independence of the Courts: This Court shall have sole and exclusive jurisdiction and power over the conduct of the chapter 11 proceedings and the hearing and determination of matters arising therein. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising therein. By approving and implementing the Protocol, neither this Court, the Canadian Court, the Debtors nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

15. Cooperation: To harmonize and coordinate the administration of the Insolvency Proceedings, this Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other court. In furtherance of the foregoing:

- a. This Court and the Canadian Court may communicate with one another with respect to any procedural matter relating to the Insolvency Proceedings.
- b. Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application that has been filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which to determine the issue of jurisdiction, and which process shall be subject to submissions by the Debtors, the U.S. Trustee, the Representatives (as defined in the Protocol), and any interested party prior to any determination on the issue of jurisdiction being made by either Court.
- c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any

particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

- d. This Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of the Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable.

16. Other Provisions: The Protocol also contains other provisions that, among other things, address (a) retention and compensation of estate representatives and professionals, (b) procedures for resolving disputes, and (c) the preservation of rights.

Basis For Relief

17. In order to facilitate the efficient and effective administration of cross-border issues that may arise from time to time in these Insolvency Proceedings, the Debtors believe that it is necessary and appropriate for this Court and the Canadian Court to adopt and approve a set of administrative and procedural guidelines to address cross-border issues. The proposed administrative and procedural guidelines are set forth in the proposed Protocol attached hereto as Exhibit B.

18. The Protocol is designed to promote the orderly and efficient administration of the Insolvency Proceedings, honor the independence and integrity of this Court and the Canadian Court, promote international cooperation and respect for comity among this Court and the Canadian Court, facilitate the fair and open administration of the Insolvency Proceedings and implement a framework to address issues that will arise in these cases.

19. The relief requested herein is authorized under the Court's general equitable powers, which are codified in section 105(a) of the Bankruptcy Code. Under section 105(a), the court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to

assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, ¶ 105.01, at 105-6 (15th ed. rev.).

20. A number of courts in this District and elsewhere, have authorized similar protocols for managing cross-border insolvency proceedings. See, e.g., In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 14, 2009); In re Progressive Molded Prods., Case No. 08-11253 (KJC) (Bankr. D. Del. 2008 July 14, 2008); In re Quebecor World (USA) Inc., Case No. 08-10152 (Bankr. SD.N.Y. Apr. 8, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. 2007 Dec. 14, 2007); In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. 2007 Apr. 12, 2007); In re Systech Retail Sys. (U.S.A.), Inc., Case No. 03-00142 (Bankr. E.D.N.C. 2003); In re Federal Mogul Global, Inc., Case No. 01-10578 (JKF) (Bankr. D. Del. 2001 Feb. 7, 2002). The Debtors submit that there is ample authority and precedent for approving the proposed Protocol.

21. For the foregoing reasons, the Debtors assert that the Protocol is necessary to promote the efficient and effective administration of these chapter 11 cases with the Canadian Proceedings and is in the best interest of the Debtors’ estates, their creditors, and all parties in interest.

Notice

22. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) those entities or individuals included on the Debtors’ list of largest unsecured creditors on a consolidated bases; (vi) counsel to the agent for the Debtors’ prepetition and postpetition lenders; and (vii) counsel to Barzel Industries Canada, Inc. Notice of this Motion and any order entered

hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

No Prior Request

23. The Debtors have not previously sought the relief requested herein from this or any other Court in the United States. The Canadian Debtor are simultaneously seeking approval of the proposed Protocol by the Canadian Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form attached hereto as Exhibit A, (i) authorizing and approving the Protocol and (ii) granting such other and further relief as the Court may deem just and proper.

Dated: September 15, 2009
Wilmington, Delaware

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.

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Proposed Counsel for the Debtors
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EXHIBIT A
PROPOSED ORDER

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

In re:	:	Chapter 11
	:	
Barzel Industries Inc., <u>et al.</u> ,	:	Case No. ___ - _____ (___)
	:	
Debtors. ¹	:	Joint Administration Requested
	:	
	:	Related Docket Number: _____

**ORDER PURSUANT TO 11 U.S.C. § 105(A) APPROVING
CROSS-BORDER COURT-TO-COURT PROTOCOL**

Upon the Motion (the "Motion"),² of the above-captioned debtors for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), approving that certain cross-border court-to-court protocol attached to the Motion as Exhibit B (the "Protocol"); and upon consideration of the Declaration of Karen G. Narwold in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings, filed concurrently with the Motion; and upon the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), (c) notice of the Motion was due and proper under the circumstances, (d) approval of the Protocol having been sought from the Canadian Court; and (e) the legal and factual bases set forth in the Motion establish cause for the relief requested in the Motion, and it appearing such relief is in the best interests of the Debtors, their estates and creditors; and upon the record in

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² Capitalized terms used but not defined herein have the meanings assigned to such terms in the Motion.

these proceedings; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby ordered that:

1. The Motion is GRANTED.
2. The Protocol is hereby approved in all respects, subject to approval of the same by the Canadian Court, as it may be amended or supplemented by further order of this Court, obtained after notice and a hearing.
3. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

CROSS-BORDER COURT-TO-COURT PROTOCOL

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule A hereto, shall be incorporated by reference and form part of this Protocol. To the extent that there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Barzel Industries Inc. and certain of its affiliates (collectively, the "U.S. Debtors")¹ have commenced reorganization cases (collectively, the "U.S. Proceedings") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware ("U.S. Court"), and such cases have been consolidated for procedural purposes only under Case No. 09-_____. The Debtors continue to operate and maintain their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Office of the United States Trustee may appoint an official committee of unsecured creditors (the "Creditors Committee") in the chapter 11 cases.

2. On the date hereof, following the commencement of these chapter 11 proceedings, one of Barzel Industries Inc.'s wholly-owned indirect subsidiaries – Barzel Industries Canada Inc. (the "Canadian Debtor") – filed an application with the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") pursuant to the Companies' Creditors

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Barzel Industries Inc. (0836), Barzel Holdings Inc. (1107), Barzel Finco Inc. (1010), Barzel Industries U.S. Inc. (6382), American Steel and Aluminum Corporation (2435), Nova Tube and Steel, Inc. (1790), Novamerican Tube Holdings, Inc. (3740), and Nova Tube Indiana, LLC (8275).

Arrangement Act, R.S.C. 1985, c. C-36 (the “CCAA”) seeking relief from its creditors (the “Canadian Proceeding”). The Canadian Debtor has obtained an initial order (the “CCAA Initial Order”) of the Canadian Court (the “Canadian Order”), pursuant to which it, *inter alia*, granted the application of the Canadian Debtor for protection under the CCAA, imposed a stay of all proceedings (the “CCAA Stay”) against the Canadian Debtor and its property in Canada, appointed Deloitte and Touche Inc. as the Monitor (the “Monitor”) in the Canadian Proceedings, and set forth certain other limitations and procedures for all parties in interest in the Canadian Proceeding.

3. For convenience, (a) the U.S. Debtors and the Canadian Debtor shall collectively be referred to herein as the “Debtors”, (b) the U.S. Proceedings and the Canadian Proceedings shall collectively be referred to herein as the “Insolvency Proceedings”, (c) the U.S. Court and the Canadian Court shall collectively be referred to herein as the “Courts”, (d) any estate representative appointed in the U.S. Proceedings, including any official committee of unsecured creditors appointed in the U.S. Proceedings and any examiner or trustee appointed pursuant to section 1102 of the Bankruptcy Code shall collectively be referred to herein as the “U.S. Representatives”, (e) the Monitor and its respective officers, directors, employees, counsel and agents, wherever located shall be collectively referred to herein as the “Monitor Parties”, (f) the Monitor Parties and any other estate representatives appointed in the Canadian Proceedings shall collectively be referred to herein as the “Canadian Representatives”, and (g) the U.S. Representatives and the Canadian Representatives shall collectively be referred to herein as the “Representatives.”

B. Purpose and Goals

4. While the Insolvency Proceedings are pending in the United States and Canada, the implementation of basic administrative procedures is necessary to coordinate certain activities therein, to effectuate an orderly and efficient administration of the Insolvency Proceedings, and to best maintain the Courts' respective independent jurisdiction and to give effect to the doctrine of comity. The Debtors have drafted this Protocol to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

- (a) harmonize and coordinate activities between the Courts in the Insolvency Proceedings;
- (b) promote and facilitate the fair, open, orderly, and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of same, reduce the costs associated therewith, and avoid the duplication of efforts, for the benefit of all of the Debtors' creditors, their estates, and other interested parties, wherever located;
- (c) honor the respective independence and integrity of the Courts and all other courts and tribunals of the United States and Canada, respectively;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the Representatives, and all creditors and other interested parties in the Insolvency Proceedings; and
- (e) implement a framework of general principles to address certain issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii)

defer to the jurisdiction of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of the matter by both Courts.

C. Comity and Independence of the Courts

5. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Representatives, nor any creditors or other interested parties in the Insolvency Proceedings, shall be deemed to have approved or engaged in any infringement on the sovereignty of either the United States or Canada.

6. The U.S. Court shall have sole and exclusive jurisdiction and power over all aspects of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over all aspects of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

7. In accordance with the principles of comity and judicial independence, nothing contained herein shall be construed to:

- (a) increase, decrease, or otherwise modify the independence, sovereignty, or jurisdiction of the U.S. Court, the Canadian Court, or any other court or tribunal in the United States or Canada, including, but not limited to, the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;
- (b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;
- (c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

- (d) require the Debtors, the Representatives or the Office of the United States Trustee (the "U.S. Trustee") to take any action or refrain from taking any action that would result in a breach of any duty imposed on such parties by any applicable law;
- (e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and hearing (except to the extent that such action is specifically described in this Protocol); or
- (f) preclude the Debtors, the Representatives, the U.S. Trustee, any creditor, or any other parties in interest from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

8. The Debtors, the Representatives, and their respective employees, members, agents, and professionals shall respect and comply with the independent, nondelegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, and other applicable laws.

D. Cooperation

9. To assist in the efficient and orderly administration of the Insolvency Proceedings, and in recognition of the fact that the U.S. Debtors and Canadian Debtor may be creditors of the others' estates, the Debtors and their respective Representatives shall, where appropriate, (i) cooperate with each other in connection with any actions they may take in the U.S. Court and the Canadian Court and (ii) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

10. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider

whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

- (a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Insolvency Proceedings.
- (b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application that has been filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which to determine the issue of jurisdiction. Such process shall be subject to submissions by the Debtors, the U.S. Trustee, the Representatives, and any interested party prior to any determination on the issue of jurisdiction being made by either Court.
- (c) The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter, or other proceeding is determined in a single Court.
- (d) The U.S. Court and the Canadian Court may, but are not required to, conduct joint hearings (each, a “Joint Hearing”) with respect to any matter or the interpretation or implementation of this Protocol where both Courts consider such a Joint Hearing to be necessary or advisable and, in particular, to facilitate or coordinate proper and efficient conduct of the Insolvency Proceedings. With respect to any such Joint Hearing, unless otherwise ordered by both Courts, the following procedures will be followed:
 - (i) a telephone or video link shall be established so that each Court will be able to simultaneously hear the proceedings in the other Court.
 - (ii) submissions, motions, or applications by any party that are or become the subject of a Joint Hearing (collectively, the “Pleadings”) shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleading to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed in advance of the Joint Hearing with both Courts.

- (iii) any party intending to rely on written evidentiary materials in support of a submission to either Court in connection with any Joint Hearing (collectively, the “Evidentiary Materials”) shall submit such Evidentiary Materials in identical form to each Court. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be consistent with the procedural and evidentiary rules and requirements of each Court;
- (iv) if a party has not previously appeared in or attorned to the jurisdiction of either Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the act of such filing, being deemed to have appeared in or attorned to the jurisdiction of such Court in which such material is filed, so long as such party does not request in its materials or submissions any affirmative relief from such Court;
- (v) the Judge of the U.S. Court and Justice of the Canadian Court who will preside over the Joint Hearing shall be entitled to communicate with each other in advance of such Joint Hearing, with or without counsel being present to: (1) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and any other papers, and for the rendering of decisions; and (2) address any related procedural; administrative or preliminary matters; and
- (vi) the Judge of the U.S. Court and Justice of the Canadian Court who will preside over the Joint Hearing shall be entitled to communicate with each other after such Joint Hearing, with or without counsel being present, for the purposes of: (1) determining whether consistent rulings can be made by both Courts; (2) coordinating the terms of the Courts’ respective rulings; and (3) addressing any related procedural or administrative matters.

11. Notwithstanding the terms of paragraph 10 above, this Protocol recognizes that the U.S. Court and Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, either of the Courts may at any time exercise its independent jurisdiction and authority with respect to: (i) the matters

presented to and properly before such Court; and (ii) the conduct of the parties appearing in such matters.

12. Where one Court has jurisdiction over a matter the determination of which requires the application of the law of the jurisdiction of the other Court, such Court may, among other things, hear expert evidence on such law or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 27 herein, which advice will be made available to all parties in interest.

E. Recognition of Stays of Proceedings

13. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the Debtors and their property under section 362 of the Bankruptcy Code (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (i) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

14. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtor and its property under the CCAA and the Initial Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (i) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the United States.

15. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

Motions brought respecting the application of the stay of proceedings with respect to assets or operations located in Canada shall be heard and determined by the Canadian Court. Motions brought respecting the application of the stay of proceedings with respect to assets or operations located in the United States shall be heard and determined by the U.S. Court.

F. Retention and Compensation of Representatives and Professionals

16. Canadian Representatives shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters including, without limitation: (i) the Canadian Representatives' tenure in office; (ii) the retention and compensation of the Canadian Representatives; (iii) the Canadian Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Insolvency Proceedings; and (iv) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives, their Canadian and U.S. counsel and any other professionals retained therefor shall not be required to seek approval of their retention, compensation or reimbursement of out-of-pocket expenses in the U.S. Court. Additionally, the Canadian Representatives, their counsel (whether Canadian or U.S.) and such other Canadian professionals: (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable Canadian laws or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S. Court.

17. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA

Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

18. Any U.S. Representative shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including, without limitation: (i) the U.S. Representative's appointment and tenure in office; (ii) the retention, compensation and reimbursement of out-of-pocket costs of the U.S. Representative; (iii) the U.S. Representative's liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Insolvency Proceedings; and (iv) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives, their counsel and any other professionals retained therefor shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives, their counsel and such other professionals: (i) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (ii) shall not be required to seek approval of their compensation in the Canadian Court.

19. Any professionals, including without limitation, counsel and financial advisors, retained by the Canadian Debtor (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (i) shall be subject to the procedures and standards for the retention and compensation of professionals that are applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the Canadian Court; and (ii)

shall not be required to seek approval of their retention or compensation in the U.S. Court with respect to services performed on behalf of the Canadian Debtor.

20. Any professionals, including without limitation, counsel and financial advisors, retained by the U.S. Debtors and any professionals, including without limitation, counsel and financial advisors, retained by the Creditors Committee, if any, (collectively, the “U.S. Professionals”) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (i) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (ii) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed on behalf of the U.S. Debtors.

G. Appearances

21. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Creditors Committee, the Representatives and the U.S. Trustee, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

H. Notice Procedures

22. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile or other electronic forms of communication) to the following: (i) all creditors and other interested parties, in accordance with

the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (ii) to the extent not otherwise entitled to receive notice under clause (i) of this paragraph 22, counsel to the Debtors, the U.S. Trustee, the Monitor and such other parties as may be designated by either of the Courts from time to time. When any Pleading that has a cross-border effect is filed by either the U.S. Debtors or the Canadian Debtors in the U.S. Proceedings or the Canadian Proceedings, respectively, the Debtors or the Canadian Debtor, as applicable, shall serve such papers promptly on counsel for the other Debtors and Canadian Debtor, the U.S. Trustee, the Monitor, and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtor shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

23. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to herein.

I. Effectiveness; Modification

24. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

25. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after

notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 22 above.

J. Procedures for Resolving Disputes Under this Protocol

26. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with notice provisions outlined in paragraph 22 above. In rendering a determination in any such dispute, the Court to which the issues addressed: (i) shall consult with the other Court; and (ii) may, in its sole and exclusive discretion, either: (a) render a binding decision after such consultation; (b) defer to the jurisdiction of the other Court by transferring the matter, in whole or in part, to such other Court; or (c) seek a joint hearing of the matter by both Courts in accordance with paragraph 10 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

27. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;
- (c) copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 22 above;
- (d) the Courts may jointly decide to invite the Debtors, the Committee, the Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and

- (e) the provisions of this paragraph shall not be construed to restrict the ability of either Court to confer with the other Court as provided in paragraph 10 above whenever it deems it appropriate to do so.

K. Preservation of Rights

28. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under this Protocol shall: (i) prejudice or affect the powers, rights, claims and defenses of the Debtors and their respective estates, the Creditors' Committees, the Representatives, the U.S. Trustee, the Monitor or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CCAA and the orders of the Courts; or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

SCHEDULE A

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

Guidelines

Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines – in whole or in part, with or without modifications – should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just

resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to

the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and
- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and
- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of

decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and to be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications

or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.