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CROSS-BORDER STRATEGY: O CANADA — U.S. COMPANIES LOOK NORTH FOR MAIN INSOLVENCY PROCEEDINGS

This article examines the emerging trend of U.S.-based companies with Canadian ties initiating primary insolvency proceedings in Canada and seeking recognition in the United States under Chapter 15 of the U.S. Bankruptcy Code. As described herein, this two-step strategy enables debtors to take advantage of the flexibility and efficiency of Canadian restructuring regimes, while securing key U.S. bankruptcy protections.

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A STRATEGIC SHIFT IN CROSS-BORDER INSOLVENCY

Recently, certain U.S.-based companies with Canadian ties have opted to file their primary insolvency proceedings in Canada and then seek recognition in the United States under Chapter 15 of the United States Bankruptcy Code. This strategy allows debtors to leverage the flexibility of Canadian restructuring regimes under either the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") or the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), while preserving access to U.S. protections such as the automatic stay, enforcement of non-U.S. orders (including releases), and sale processes, including sales of assets pursuant to Section 363 of the U.S. Bankruptcy Code. The CCAA offers many of the attributes of Chapter 11 together with expediency. In addition, Chapter 15 has become a robust tool for facilitating sales of U.S.-based assets, the imposition of a broad stay that is effective within the United States, and the implementation of third-party releases. Specifically, this approach has become increasingly attractive in the wake of the U.S. Supreme Court decision in *Purdue*,[1] which severely limited the ability to obtain nonconsensual third-party releases under Chapter 11. In contrast, Canadian courts have shown greater flexibility in approving such provisions when they are fair and reasonable.[2]

A TWO-STEP CROSS-BORDER PLAYBOOK:

The typical structure of these cross-border filings involves two key steps:

1. *Initiation of a Canadian Proceeding*: The debtor, often a Canadian parent or a U.S. subsidiary, commences a restructuring under the CCAA or BIA. The CCAA is primarily used

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[1] *Harrington v. Purdue Pharma L. P.,* 603 U.S. 204, 206 (2024).

[2] *Metcalfe & Mansfield Alt. Invs. II Corp.* (2008), 296 D.L.R. 4th 135, para. 39 (Can. Ont. C.A.).

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