

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

In re:	:	Chapter 15
	:	
Kraus Carpet Inc., <u>et al.</u> , <sup>1</sup>	:	Case No. 18-12057 (KG)
	:	
Debtors in a Foreign Proceeding.	:	Joint Administration Pending

**MOTION OF FOREIGN REPRESENTATIVE FOR ENTRY OF PROVISIONAL AND FINAL ORDERS GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF**

Kraus Carpet Inc. (“Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), respectfully moves, pursuant to sections 105(a) 362, 365(e), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) for (a) entry of a provisional order, substantially in the form attached hereto as **Exhibit A** (the “Provisional Order”), recognizing the CCAA Proceeding as a foreign main proceeding and granting a stay of execution against the Debtors’ assets and applying section 362 and 365(e) of the Bankruptcy Code on an interim basis under section 1519 of the Bankruptcy Code and (ii) a final order, substantially in the form attached hereto as **Exhibit B** (the “Final Order”), recognizing the CCAA Proceeding as a foreign main proceeding and granting related relief. In the alternative, if for any reason the Court finds that the CCAA Proceeding is not eligible for recognition as a foreign main proceeding for any of

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<sup>1</sup> The Debtors in these chapter 15 cases and the last four digits of each Debtor’s U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors’ mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

the Debtors, the Foreign Representative seeks recognition as a foreign non-main proceeding for such entity and seeks the relief requested herein under section 1521 of the Bankruptcy Code.

In support of this Motion, the Foreign Representative refers the Court to the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the “Emmott Declaration”) which has been filed contemporaneously herewith and is incorporated by reference, and further respectfully represents as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a verified petition (collectively, the “Petitions”) for recognition of the CCAA Proceeding for each Debtor pursuant to section 1515 of the Bankruptcy Code. An order (the “CCAA Order”) of the Canadian Court commencing the CCAA Proceeding and appointing the Foreign Representative is attached to each of the Petitions.

2. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

3. The statutory predicates for the relief requested herein are sections 105(a) 362, 365(e), 1517, 1519, 1520, 1521 of the Bankruptcy Code.

4. The Foreign Representative consents to entry of a final order by this Court.

### **Background**

5. As set forth in more detail in the Emmott Declaration, the Debtors are part of a group of companies (collectively, "Kraus Group") headquartered in Waterloo, Ontario, Canada. The Kraus Group was founded in 1959 in Kitchener, Ontario as a carpet manufacturer. Over the years it gradually expanded its operations and range of products. The Kraus Group is now an integrated carpet and flooring company.

6. The Kraus Group has two divisions: (i) the manufacturing of residential and commercial broadloom carpet ("Broadloom Business"); and (ii) the distribution and sale of flooring products to commercial and residential customers, including carpet tiles, vinyl tiles, laminate, and hardwood ("TPS Business").

7. Control of operations is centered in Waterloo, Ontario where main production occurs and where the management of the Debtors is located. Operations in the United States, conducted primarily through debtor Kraus USA Inc. ("Kraus USA"), are limited to U.S. sales and distribution. The Debtors conduct no manufacturing operations in the United States.

8. The Kraus Group was acquired by Hilco Capital in 2012. A turnaround plan was implemented upon its acquisition which included, among other things, hiring a new management team and implementing extensive process improvements.

9. Wells Fargo Capital Finance Corporation is the senior secured lender of the Kraus Group pursuant to credit agreement (as amended, the "Wells Credit Agreement") dated as of August 6, 2013. As of August 31, 2018, the total indebtedness outstanding under the Wells Credit Agreement, as amended, was approximately \$48,229,000.<sup>2</sup> The obligations under the Wells Credit Agreement are secured by substantially all of the Debtors' assets.

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<sup>2</sup> All dollar amounts are stated in Canadian dollars unless otherwise specified.

10. Under a series of debt transactions (the “Red Ash Debt Agreements”) described in the Emmott Declaration, Red Ash Capital Partners II Limited Partnership (“Red Ash”), is the junior secured creditor of the Kraus Group and has a second lien in substantially all of the assets of the Kraus Group. Red Ash’s general partner is Pinnacle Capital Resources Limited. Hilco UK Limited is the sole shareholder of Pinnacle Capital Resources Limited. As of July 31, 2018, the total indebtedness outstanding under the Red Ash Debt Agreements was approximately \$99,940,956.

11. The Kraus Group has operated at a net loss for the past five years and its year over year sales have declined significantly in the past two years. There are several reasons for this decline. First, due to consumer preferences towards hard surface flooring (as a trendier and healthier flooring product) and cheaper broadloom manufactured in China, the carpet sector has continued to experience declining sales and profitability over the last two decades. As a result, the North American carpet manufacturing industry has gone through significant consolidation, with smaller companies failing or getting acquired by the major manufacturers.

12. In addition to the general decline in the market, specific circumstances faced by the Kraus Group contributed to the decline in its fortunes. As a vertically-integrated producer and distributor of flooring products, the Kraus Group faced significant fixed costs, including those associated with maintaining and operating its corporate offices, and distribution and manufacturing facilities in Waterloo and a North American-wide distribution network. Those fixed costs could not be reduced or downsized to correspond with an overall decline in market demand.

13. Although the Kraus Group has taken steps since 2008 to cut costs in its manufacturing process, the Kraus Group still has not been able to improve its financial performance or to minimize its mounting debt obligations.

14. Because of this financial decline, the Kraus Group determined to explore its strategic alternatives and in the spring of 2018 engaged Deloitte Corporate Finance Inc. (“DCF”) to explore the sale of the TPS Business as a standalone business. In June, 2018, DCF’s mandate was expanded to explore a divesture of the Broadloom Business. After an extensive sale process, a purchaser was identified for the TPS Business and the parties negotiated a purchase agreement.<sup>3</sup> Based on the Debtors’ financial position, however, such sale was conditioned on Canadian Court approval under the CCAA and recognition of the CCAA proceeding by this Court.

15. Specifically, the Debtors are in default of the Wells Credit Agreement and do not have sufficient liquidity to satisfy their obligations under the Wells Credit Agreement or the Red Ash Debt Agreements. Accordingly, the Debtors are insolvent and unable to pay their debts as they become due.

16. In consultation with DCF, the Debtors concluded that it was in the best interests of the Debtors and their stakeholders to seek CCAA protection to sell the two operating divisions of the company, the TPS Business and Broadloom Business, pursuant to a sales process run by DCF, including the immediate sale of the TPS Business.<sup>4</sup> The protection of the CCAA,

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<sup>3</sup> Unfortunately, no going concern purchaser was secured for the Broadloom Business. As at August 30, 2018, the Kraus Group remains in discussion with a key supplier with respect to receiving an offer for the Broadloom Business or certain of its assets.

<sup>4</sup> The Foreign Representative has filed or will file shortly a motion for the Court to recognize the order approving the sale of the TPS business that is being sought in the CCA Proceeding. The Foreign Representative will seek to have such motion heard on the date scheduled for consideration of the Final Order.

including the stay of proceedings, will enable the Kraus Group to maintain operations while pursuing these sales processes to maximize value for the Kraus Group's stakeholders.

17. Because of the Debtors' sales and distribution presence in the United States, the Debtors determined to seek authorization under the CCAA Order for the appointment of a foreign representative to seek recognition of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code, which relief was granted in the CCAA Order. The Foreign Representative believes recognition of the CCAA Proceeding as a foreign main proceeding is appropriate under chapter 15. The Foreign Representative is a duly-appointed foreign representative of the Debtors, and the Foreign Representative has satisfied the technical requirements for recognition under the Bankruptcy Code and the Bankruptcy Rules. The CCAA Proceeding should be found to be foreign main proceeding, as the center of main interests ("COMI") of the Debtors is Canada.

18. Finally, granting of recognition would not be manifestly contrary to the public policy of the United States. Indeed, the Foreign Representative believes that granting the relief sought herein will best assure the fair and efficient administration of the CCAA Proceeding, facilitate the maximization of value of the assets of a financially troubled business for the benefit of all stakeholders, and preserve many jobs, all of which are consistent with the principles set forth in chapter 15 of the Bankruptcy Code.

19. Accordingly, the CCAA Proceeding should be recognized as a foreign main proceeding.

20. Further, the relief granted upon recognition, including the application of the stay provided in section 362 of the Bankruptcy Code is not automatic upon the filing of the Petitions, but is subject to entry of a final order granting recognition, after notice and a hearing. In the

interim, there is no automatic stay or other protections in the United States unless this Court orders otherwise. Therefore, in addition to the Final Order, the Debtors are seeking, on an interim basis, entry of the Provisional Order granting provisional relief and applying sections 362 and 365(e) pending entry of the Final Order to preserve the Debtor' assets and contracts from potential adverse creditor action pending entry of the Final Order.

**Basis for Relief**

**I. The CCAA Proceeding Meets the Requirements for Recognition as a Foreign Main Proceeding.**

21. Section 1517 of the Bankruptcy Code provides that, “after notice and a hearing, an order recognizing a foreign proceeding shall be entered” if

- (1) such foreign proceeding . . . is a foreign main or foreign nonmain proceeding;
- (2) the foreign representative applying for recognition is a person or body; and
- (3) the petition meets the requirements of section 1515.

11 U.S.C. § 1517(a)(1)—(3). For the reasons provided below, the CCAA Proceeding readily satisfies these standards and should be recognized as a foreign proceeding. Further, because the CCAA Proceeding is a proceeding pending in the Debtors' COMI, the CCAA Proceeding should be recognized as a foreign main proceeding. *See* 11 U.S.C. § 1517(b)(1).

**A. The CCAA Proceeding is a Foreign Proceeding.**

22. Section 101(23) of the Bankruptcy Code defines “foreign proceeding” as follows:

The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S. C. § 101(23). The CCAA Proceeding qualifies as a foreign proceeding under this definition.

23. Specifically, the CCAA Proceeding is a judicial proceeding in Canada, subject to the supervision of the Canadian Court, under the CCAA, which is a law relating to insolvency and adjustment of debts. This and other courts have recognized Canadian insolvency proceedings under the CCAA as qualifying as a “foreign proceeding” under the Bankruptcy Code. See, e.g., In re Catalyst Paper Corporation, Case No. 16-12419 (CSS) (Bankr. D. Del. Jan. 20, 2017); In re Thane Int’l, Inc., Case No. 15-12186 (KG) (Bankr. D. Del. Dec. 1, 2015); In re: Salerno Plastic Film and Bags (USA) Inc., Case No. 10-14505 (REL) (Bankr. N.D.N.Y Jan. 13, 2011). Accordingly, the CCAA Proceeding qualifies as a foreign proceeding under section 101(23) of the Bankruptcy Code.

**B. Foreign Representative Commenced the Chapter 15 Cases.**

24. The Foreign Representative commenced these chapter 15 cases by filing Petitions for each of the Debtors. The Bankruptcy Code defines “foreign representative” as “a person or body, including a person or body *appointed* on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or *to act as a representative of such foreign proceeding.*” 11 U.S.C. § 101(24) (emphasis added). A “person” includes an “individual, partnership, and corporation” under the Bankruptcy Code. 11 U.S.C. § 101(41). The Foreign Representative was appointed in the CCAA Order as the entity authorized to act as the Debtors’ representative in a foreign proceeding. Therefore, this Court is entitled to presume that the Foreign Representative is a “foreign representative” as defined in section 101(24) of the Bankruptcy Code. 11 U.S.C. § 1516(a).

**C. Petitions Satisfy the Procedural Requirements for Chapter 15 Recognition as a Foreign Main Proceeding.**

25. The Foreign Representative filed the Petitions in compliance with sections 1504, 1509(a), and 1515 of the Bankruptcy Code. Each of the Petitions meets the requirements of section 1515 and was accompanied by: (a) a copy of the CCAA Order effectuating the CCAA Proceedings; (b) a statement identifying all foreign proceedings known to the Foreign Representative with respect to the Debtors; (c) a corporate ownership statement containing the information described in Bankruptcy Rule 1007(a)(4); and (d) on a consolidated basis, (i) a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States, and (iii) all parties against whom provisional relief is sought pursuant to section 1519 of the Bankruptcy Code. Because the Foreign Representative has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, it has properly commenced these chapter 15 cases.

**D. The CCAA Proceeding Is a Foreign Main Proceeding.**

26. The CCAA Proceeding is a “foreign main proceeding” within the meaning of section 1502(4) and 1517(b)(1) of the Bankruptcy Code because Canada is the COMI for each of the Debtors. The Bankruptcy Code defines a “foreign main proceeding” as a “foreign proceeding pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). The foreign proceeding “shall be recognized” as a foreign main proceeding if the foreign proceeding is pending where the debtor has its COMI. 11 U.S.C. § 1517(b)(1).

27. When considering a debtor’s COMI, courts may consider the analogous concept of an entity’s “principal place of business” or “nerve center.” Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets, among other things,

to determine the foreign debtor's COMI. *Id.* at 130. "In the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests." 11 U.S.C. § 1516(c). "Registered office" refers to the place of incorporation or the equivalent for an entity that is not a natural person." 8 COLLIER ON BANKRUPTCY ¶ 1516.03 (16th ed. 2016) (citing H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 113 (2005)).

28. Each of the Debtors (other than Kraus USA) are incorporated in, and have their registered offices in, Canada. No evidence to the contrary exists sufficient to rebut the presumption of COMI in Canada with respect to such Debtors. Kraus USA, however, is incorporated in Delaware, and so would be presumed to have its COMI in the United States absent contrary evidence. However, the Foreign Representative has offered substantial evidence that Kraus USA's COMI is also in Canada.

29. The Kraus Group together forms an economic whole. Kraus USA is the only U.S. subsidiary in the larger Kraus Group. In such circumstances, bankruptcy courts have found COMI to be in the jurisdiction of the group's COMI rather than that of a specific debtor's registered office, even if that registered office is in the United States. See, e.g., In re OAS S.A., 533 B.R. 83, 101-03 (Bankr. S.D.N.Y. 2015) (COMI of debtor incorporated in Austria was Brazil rather than Austria where, among other things, it "was part of, and inseparable from, the OAS Group located in Brazil"); In re Catalyst Paper Corp., Case No. 12-10221 (PJW) (Bankr. D. Del. Mar. 5, 2012) (recognizing Canadian proceeding as foreign main proceeding with respect to 8 U.S. debtors and 9 Canadian debtors); In re Angiotech Pharm., Case No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) (recognizing Canadian proceeding as foreign main proceeding with respect to 14 U.S. debtors and 3 Canadian debtors); In re Fraser Papers, Inc., Case No. 09-

12123 (KJC) (Bankr. D. Del. July 14, 2009) (recognizing Canadian proceeding as foreign main proceeding with respect to 2 Canadian debtors and 4 U.S. debtors).

30. Here, it is undisputed that the COMI of the Kraus Group is Canada. Courts consider a number of factors when determining a debtor's COMI, including the location of (a) the debtor's headquarters, (b) the person(s) who manage the debtor, (c) the debtor's primary assets, (d) the majority of creditors affected by the proceeding, and (e) the legal jurisdiction governing most disputes, among other considerations. In re SPhinX, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006). These factors are "neither required nor dispositive" and are not mechanically applied to determine the debtor's COMI. In re Fairfield Sentry Ltd., 714 F.3d at 137.

As set forth in the Emmott Declaration:

- a. The Kraus Group's Headquarters and the place where general supervision and management of the Debtors takes place is Waterloo, Ontario, Canada;
- b. The Debtors' place of strategic control is in Canada with the CEO and all other C-Suite executives and senior management being based in Canada;
- c. The Group's accounting function is in Canada with the Kraus Group's CFO and Controller based in the Canada;
- d. The Debtors IT systems are based in Canada;
- e. The Debtors' human resources functions are based in Canada;
- f. The Kraus Group was founded in Canada;
- g. The corporate identity and branding of the Group was created in and is largely associated with the Canada;
- h. Board meetings are held in Canada;
- i. "Town Hall" meetings of Kraus Group executives and sales representatives occur in Canada; and
- j. Negotiations with the Debtors' secured creditors, namely Wells Fargo, have taken place in Canada.

Indeed, the Kraus Group's COMI as Canada is "regular and ascertainable" to all interested parties and creditors and is "not easily subject to tactical removal." *In re Fairfield Sentry Ltd.*, 714 F.3d at 137. Indeed, Kraus USA is merely a U.S. sales and distribution arm of the Kraus Group with all "nerve center" functions conducted in Canada.

31. Thus, given the Kraus Group's predominant presence in Canada the COMI of each Debtor is Canada and the CCAA Proceeding is a "foreign main proceeding" with respect to each Debtor under section 1517(b)(1) of the Bankruptcy Code.

## **II. Recognition of the CCAA Proceedings Is Not Contrary to Public Policy.**

32. The public policy exception established by section 1506 of the Bankruptcy Code has no application here. As stated above, the CCAA Proceeding is consistent with United States bankruptcy procedural norms for chapter 11 plans and is in no way "manifestly" contrary to United States policy interests. 11 U.S.C. § 1506. Creditors are treated fairly and equitably under the CCAA, with procedural protections (including notice and creditors' meetings to participate in the administration) and access to the Canadian Court. Accordingly, the procedural fairness of the CCAA Proceedings amply satisfies the public policy concerns under chapter 15.

33. Importantly, granting recognition of the CCAA Proceeding as a foreign main proceeding in the United States would prevent piecemeal litigation and disruption of the liquidation process. Granting such relief is also consistent with principles of international comity and best serves the important public policy interests of ensuring the fair and efficient administration of the CCAA Proceeding and the protection and maximization of the value of the Debtors' assets in the United States for the benefit of their international stakeholders. *See generally* 11 U.S.C. § 1501(a)(3), (a)(4).

**III. Additional Relief Pursuant to Section 1521 of The Bankruptcy Code Is Warranted.**

34. The Foreign Representative seeks an order applying sections 362 and 365(e) of the Bankruptcy Code in these Chapter 15 cases on a final basis pursuant to sections 1520 and 1521 of the Bankruptcy Code to enable the Debtors to maintain key contracts and prevent counterparties from attempting to terminate any contracts with the Debtors and permit the Debtors sufficient time to realize the greatest value from such assets.

35. In addition to the automatic stay relief provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding, the Foreign Representative requests additional relief pursuant to section 1521 of the Bankruptcy Code to protect the Debtors' assets and its creditors' interests. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant "any appropriate relief," including "any relief that may be available to a trustee," subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of chapter 15 and to protect the debtor's assets and creditors' interests. 11 U.S.C. § 1521(a)(7). Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representative requests that the Court extend the protections afforded by sections 362 and 365(e) of the Bankruptcy Code to the Debtors.

36. Section 365(e) is a fundamental provision under the Bankruptcy Code that enables a debtor to preserve valuable commercial relationships, including preventing counterparties from attempting to terminate their contracts or halt performance as a result of the debtor's insolvency. See In re Woskob, 305 F.3d 177, 184-85 (3d Cir. 2002) (explaining that section 365(e) invalidates provisions of law or contract which specify that a bankruptcy filing per se will terminate or modify the contract). Application of section 365(e) of the Bankruptcy Code in these chapter 15 bankruptcy cases is necessary to protect against any interference with the Debtors' efforts to realize value from their remaining assets that would result from any attempt

by a contract counterparty to exercise remedies or otherwise cease performance under any executory agreement with the Debtors.

**IV. Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code Is Appropriate Pending the Final Order.**

37. These cases have been commenced to obtain the assistance of this Court in aid of the CCAA Proceeding to facilitate the conduct of a single, centralized, and efficient process for the disposition of the Debtors' assets. A stay of proceedings against the Debtors' assets located in the United States, as well as the provisional application of sections 362 and 365(e) of the Bankruptcy Code, is crucial to preserve key contracts and prevent any creditors of the Debtors from pursuing remedies and taking other action that may have a cascading and devastating effect and result in significant erosion in enterprise value to the detriment of all stakeholders.

38. Pursuant to section 1517 of the Bankruptcy Code, an order recognizing a foreign proceeding may only be entered after notice and a hearing. 11 U.S.C. § 1517(a). Pursuant to Bankruptcy Rule 2002(q), the notice period must be at least 21 days. Fed. R. Bankr. P. 2002(q). Upon recognition of a proceeding as a foreign main proceeding, among other things, section 362 of the Bankruptcy Code (the automatic stay) applies. See 11 U.S.C. § 1520(a)(1). By this Motion, the Foreign Representative seeks entry of a Provisional Order enforcing the CCAA Order by making sections 362 and 365(e) of the Bankruptcy Code applicable in these Chapter 15 cases on a provisional basis pending final recognition.

39. Absent provisional relief, there is no stay applicable in the United States during the period between filing the chapter 15 petition and entry of the recognition order. Therefore, interim relief is necessary to protect the Debtors and their assets from diminution in value caused by collection or enforcement efforts of creditors prior to the disposition of the Petition for Recognition.

**A. Provisional Relief Is Available.**

40. Section 1519(a)(3) of the Bankruptcy Code authorizes the Court to grant, on a provisional basis, any relief available pursuant to section 1521(a)(7). 11 U.S.C. § 1519(a)(3). As noted above, section 1521(a)(7) provides that the Court may grant a Foreign Representative any relief available to a trustee, subject to certain exceptions that are not applicable in this case. 11 U.S.C. §1521(a)(7). The automatic stay of section 362 of the Bankruptcy Code is an essential feature of the Bankruptcy Code that clearly falls within this provision. The same is true with respect to section 365(e) of the Bankruptcy Code. Moreover, the relief authorized by the CCAA Order and under Canadian law is substantially similar to the relief available to a trustee under the Bankruptcy Code. In addition, section 105(a) of the Bankruptcy Code further allows the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a).

41. Courts within this jurisdiction frequently grant provisional relief similar to that which is sought herein, including recognition and enforcement of an order entered in the foreign proceeding and application of sections 362 and 365(e) of the Bankruptcy Code. See, e.g., Essar Steel Algoma Inc., Case No. 15-12271 (BLS) (Bankr. D. Del. Nov. 10, 2015) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of section 362, 364(e) and 365(e)); In re Thane Int’l, Inc., Case No. 15-12186 (KG) (Bankr. D. Del. Oct. 27, 2015) (granting provisional relief, including application of sections 362 and 365(e)); In re Energy Coal S.P.A., Case No. 15-12048 (Bankr. D. Del. Oct. 7, 2015) (entering a provisional order pursuant to section 1519 of the Bankruptcy Code setting in place a temporary stay, applying injunction standards, but not entering an injunction); NewSat Limited., Case No. 15-10810 (Bankr. D. Del. April 15, 2015) (entering *ex parte* temporary restraining order on the date of the chapter 15 filing and then, after notice and contested hearing,

entering preliminary injunction pending recognition hearing); In re Electro Sonic Inc., Case No. 14-10240 (Bankr. D. Del. Feb. 11, 2014) (ex parte provisional relief ordered to stay actions against U.S. assets of Canadian debtor from chapter 15 case commencement through recognition); In re Lone Pine Res. Inc., Case No. 13-12487 (BLS) (Bankr. D. Del. Oct. 24, 2013) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of section 362).

**B. Provisional Relief Is Necessary to Prevent Irreparable Harm and Is Consistent with Public Interest.**

42. The relief available under section 1519 of the Bankruptcy Code is available pursuant to “the standards, procedures, and limitations applicable to an injunction.” 11 U.S.C. § 1519(e). In the Third Circuit, the “standard for evaluating a motion for preliminary injunction is a four-part inquiry as to: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.” U.S. v. Bell, 414 F.3d 474, 478 n. 4 (3d Cir. 2005) (citing ACLU of N.J. v. Black Horse Pike Reg’l Bd. of Educ., 84 F.3d 1471, 1477 n.2 (3d Cir. 1996) (en banc)). The Foreign Representative submits that this standard is satisfied in these chapter 15 cases.

**1. There Is a Substantial Likelihood of Recognition of the Canadian Proceeding as a Foreign Main Proceeding and Application of Requested Additional Bankruptcy Code Provisions.**

43. There is a compelling case for recognition of the CCAA Proceeding as a foreign main proceeding. It is clear that the CCAA Proceeding is a “foreign main proceeding” and the Foreign Representative is a “foreign representative” as those terms are defined in the Bankruptcy Code. In addition, these Chapter 15 cases were duly and properly commenced by filing the

verified Chapter 15 Petitions accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules.

44. Upon recognition of the CCAA Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in these Chapter 15 cases pursuant to section 1520(a)(1) of the Bankruptcy Code. See 11 U.S.C. § 1520(a)(1). Moreover, the application of section 365(e) on an interim basis, preventing contract counterparties from damaging or destroying the Debtors' assets and/or terminating their prepetition contracts with the Debtors, is entirely consistent with the injunctive relief afforded by the automatic stay under section 362. Accordingly, it is likely that the Debtors' will receive final approval of all of the relief requested on an interim basis.

**2. The Debtors Will Suffer Irreparable Harm Absent Provisional Relief.**

45. The automatic stay imposed by section 362 of the Bankruptcy Code is one of the fundamental protections provided by bankruptcy law. Among other things, the automatic stay halts all contract termination, collection efforts, harassment, and foreclosure actions, and provides the necessary breathing room from the financial pressures that caused the bankruptcy filing. Section 365(e) of the Bankruptcy Code provides a debtor with similar relief by enabling a debtor to maintain key contracts and prohibiting counterparties from terminating executory contracts with the debtor solely because of the debtor's bankruptcy filing. Without the protections of sections 362 and 365(e) of the Bankruptcy Code on a provisional basis, the Debtors would face immediate and irreparable harm resulting from the termination of significant and valuable agreements and the piecemeal loss of assets from individual creditor collection and enforcement efforts prior to the Court's consideration of the Chapter 15 Petitions.

46. Courts have consistently held that “the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury.” In re Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988). Courts have also found in numerous cases that harm to an estate exists where creditor actions disrupt the orderly determination of claims and the fair distribution of assets. See Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B., 825 F.2d 709, 714 (2d Cir. 1987); see also In re MMG LLC, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“As a rule . . . irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.”) (internal citations omitted). In this case, allowing counterparties to destroy or damage the Debtors’ assets, terminate key contracts, or creditors to initiate piecemeal litigation collection efforts against the Debtors in the United States would have a detrimental impact on the Debtors’ ability to recover its assets and maximize the value of those assets for its creditors.

47. The provisional relief requested herein is necessary on an immediate basis to protect against potential destruction of asset value and interference with efforts to realize value from such assets that would result from the Debtors’ liquidity constraints and the exercise of remedies by lessors, contract counterparties, and others pending entry of the Final Order. Absent this relief, the Debtors and their creditors may suffer irreparable harm.

**3. Granting the Provisional Relief Will Not Result in Even Greater Harm to Creditors.**

48. Consideration of the balance of harms further supports entry of the Provisional Order as requested herein. Specifically, the Debtors’ creditors will not be harmed by the requested provisional relief as such relief will merely preserve the status quo for the short time necessary for the Court to rule on the Chapter 15 Petitions.

49. As the legislative history to section 362 of the Bankruptcy Code states:

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

House Report No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 340-2 (1977). Similarly, the legislative history to section 365(e) provides:

Subsection (e) invalidates ipso factor [sic] or bankruptcy clauses. These clauses, protected under present law, automatically terminate the contract or lease, or permit the other contracting party to terminate the contract or lease, in the event of bankruptcy. This frequently hampers rehabilitation efforts. If the trustee may assume or assign the contract under the limitations imposed by the remainder of the section, then the contract or lease may be utilized to assist in the debtor's rehabilitation or liquidation.

House Report No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977)

50. Creditors of the Debtors will not suffer any harm if the Foreign Representative's request for provisional relief is granted. In fact, courts have recognized that provisional maintenance of a stay "actually serve(s) to benefit the estate's creditors by allowing for an orderly administration of the Foreign Debtor's financial affairs". See In re Innua Canada, Ltd., No. 09-16362 (DHS), 2009 WL 1025088, at \*2-\*4 (Bankr. D.N.J. Mar. 25, 2009). Moreover, any creditor or potential creditor that objects to the relief requested herein will have an opportunity to be heard, and may apply to this Court for relief if such creditor believes the terms of the Provisional Order cause harm to such creditor. By contrast, the Debtors will suffer

significant injury from creditor collection efforts, including potential self-help remedies, and contract terminations if the Court does not grant the relief sought by this Motion.

#### 4. The Public Interest Favors Granting Provisional Relief.

51. The requested provisional relief is consistent with the policy underlying bankruptcy law and is in the public interest because such relief will facilitate the efforts to preserve value for the ultimate benefit of the Debtors' creditors. See In re ABC Learning Centers Ltd., 728 F.3d 301, 306 (3d Cir. 2013) (emphasizing that chapter 15 serves the "universalism" approach to transnational bankruptcy, preferring that U.S. courts act in aid of foreign proceedings); Rehabworks, Inc. v. Lee (In re Integrated Health Servs, Inc.), 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); In re Lazarus Burman Assocs., 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) ("The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization."); see also In re Adelpia Comm'ens Corp., 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007) ("The public interest requires bankruptcy courts to consider the good of the case as a whole."); Am. Film Techs v. Taritero (In re Am. Film Techs.), 175 B.R. 847, 849 (Bankr. D. Del. 1994) ("It is 'one of the paramount interests' of this court to assist the Debtor in its reorganization efforts.") (quoting Gathering Rest., Inc. v. First Nat'l Bank of Valparaiso (In re Gathering Restr., Inc.), 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986)).

52. Granting the provisional relief also promotes cooperation between jurisdictions in cross-border insolvencies, an express purpose of chapter 15 of the Bankruptcy Code. Specifically, section 1501(a) of the Bankruptcy Code provides:

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective

mechanisms for dealing with cases of cross-border insolvency with the objectives of –

...

- (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
- (4) protection and maximization of the value of the debtors' assets; and
- (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501(a).

53. Under section 1525(a) of the Bankruptcy Code, “consistent with section 1501, this court shall cooperate to the maximum extent possible with a foreign court or a foreign representative.” 11 U.S.C. § 1525(a); see also 11 U.S.C. § 1501. Entry of the Provisional Order is necessary to give effect to the CCAA Proceeding and assist the Foreign Representative in accomplishing the Foreign Representative’s objectives. Thus, in addition to the reasons set forth above, this Court should grant the requested relief in accordance with well-established principles of international comity, as embodied in sections 1501 and 1525 of the Bankruptcy Code.

#### **Notice**

54. Notice of this Motion has been provided to: (i) counsel to Wells Fargo Capital Finance Corporation Canada (the Debtors’ prepetition senior secured lender); (ii) Red Ash Capital Partners II Limited Partnership (the Debtors’ prepetition junior secured lender), (iii) counsel to the Debtors in the Canadian Proceeding on behalf of the Debtors; (iv) the Office of the United States Trustee for the District of Delaware; and (v) any party that files a notice of appearance in the Chapter 15 Cases. Notice will be further provided in accordance with any order the Court may enter with respect to the *Foreign Representative’s Motion for Order Scheduling Hearing on Verified Petition under Chapter 15 for Recognition of a Foreign Main*

*Proceeding and for Additional Relief and Assistance under 11 U.S.C. §§105(a), 1507 and 1521 and Specifying Form and Manner of Service of Notice of Hearing*, filed contemporaneously herewith. In light of the nature of the relief requested herein, the Foreign Representatives submits that no other or further notice of the Motion is necessary or required.

**Conclusion**

55. For the foregoing reasons, the CCAA Proceeding fulfills the requirements for recognition as a foreign main proceeding for each Debtor. The recognition and enforcement of the CCAA Proceeding is consistent with principles of international comity and facilitates the Debtors' orderly liquidation and maximization of value for creditors. Recognition also avoids the irreparable harm of piecemeal litigation and asset disposition that could arise if such relief is not granted by the Court. Accordingly, the Foreign Representative respectfully requests that this Court grant the relief requested in this Motion and such further relief as may be just and proper.

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Dated: September 11, 2018  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Derek C. Abbott*

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**EXHIBIT A**

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

-----X  
 In re: : Chapter 15  
 :  
 Kraus Carpet Inc., et al.,<sup>1</sup> : Case No. 18-12057 (KG)  
 :  
 Debtors in a Foreign Proceeding. : Jointly Administered  
 -----X

**PROVISIONAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN  
PROCEEDING AND CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Kraus Carpet Inc. (the “Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), pursuant to sections 105(a) 362, 365(e), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) for (a) entry of a provisional order recognizing the CCAA Proceeding as a foreign main proceeding and granting a stay of execution against the Debtors’ assets and applying section 362 and 365(e) of the Bankruptcy Code on an interim basis under section 1519 of the Bankruptcy Code and (ii) a final order recognizing the CCAA Proceeding as a foreign main proceeding and granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with sections 157 and 1334 of title 28 of the United States Code, sections 109 and

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<sup>1</sup> The Debtors in these chapter 15 cases and the last four digits of each Debtor’s U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors’ mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1501 of the Bankruptcy Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and due and proper notice of the provisional relief sought in the Motion having been provided under the circumstances; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the "Emmott Declaration"), and the verified chapter 15 petitions, filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor,

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

D. Venue for this proceeding is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

E. On September 11, 2018, these chapter 15 cases were commenced by the Foreign Representative's filing of a verified voluntary *Chapter 15 Petition for Recognition of a Foreign Proceeding* ("Verified Petition") for each Debtor. Attached to the Verified Petition was an order (the "CCAA Order") of the Canadian Court in the CCAA Proceeding appointing the Foreign Representative and granting additional relief.

F. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the CCAA Proceeding is a "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the CCAA Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code, (d) upon recognition of the CCAA Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in these Chapter 15 cases pursuant to section 1520(a)(1) of the Bankruptcy Code, and (e) that application of section 365(e) on an interim basis to prevent contract counterparties from terminating their prepetition contracts with the Debtors is entirely consistent with the injunctive relief afforded by the automatic stay under section 362.

G. The Foreign Representative has demonstrated that (a) the commencement or continuation of any proceeding or action in the United States against the Debtors and their business and all of its assets should be stayed pursuant to sections 105(a), 1519, and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the CCAA Proceeding for the benefit of all stakeholders and (b) the relief requested in the Motion will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

H. The Foreign Representative has demonstrated that without the protections of section 365(e) of the Bankruptcy Code, there is a material risk that key contracts will not be preserved and that counterparties to certain of the Debtors' agreements will take the position that the commencement of the CCAA Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder.

I. The Foreign Representative has demonstrated that such termination or acceleration of the Debtors' contracts, if permitted and valid, would result in irreparable damage to the value of the Debtors' assets in the United States, and cause substantial harm to the Debtors' creditors and other parties in interest.

J. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' assets and property in the absence of the relief requested in the Motion.

K. The interests of the public and public policy of United States will be served by entry of this Order.

L. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

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

1. The Motion is granted as set forth herein.
2. The CCAA Order is hereby given full force and effect on an interim basis, including, without limitation, the stay of proceedings to the extent set forth in the CCAA Order, and shall be given full force and effect in the United States until otherwise ordered by this Court.
3. While this Order is in effect, the Foreign Representative and the Debtors are entitled to the full protections and rights pursuant to section 1519(a)(1) of the Bankruptcy Code, which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States.
4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code are hereby made applicable in this case to the Debtors and their property within the territorial jurisdiction of the United States.
5. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its authorized representatives and agents, are hereby enjoined from:

- a) execution against any of the Debtors' assets;
- b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the

United States;

- c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors' or any of their property;
- d) transferring, relinquishing, or disposing of any property of the Debtors by any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e) commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities; and
- f) terminating contracts or otherwise accelerating obligations or exercising remedies thereunder.

6. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

7. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

\_\_\_\_\_  
Honorable Kevin Gross  
United States Bankruptcy Judge

**EXHIBIT B**

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

-----X  
 In re: : Chapter 15  
 :  
 Kraus Carpet Inc., et al.,<sup>1</sup> : Case No. 18-12057 (KG)  
 :  
 Debtors in a Foreign Proceeding. : Jointly Administered  
 -----X

**FINAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING  
AND CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Kraus Carpet Inc. (the “Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), pursuant to sections 105(a) 362, 365(e), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) for (i) entry of a provisional order (“Provisional Order”), recognizing the CCAA Proceeding as a foreign main proceeding and granting a stay of execution against the Debtors’ assets and applying section 362 and 365(e) of the Bankruptcy Code on an interim basis under section 1519 of the Bankruptcy Code and (ii) entry of a final order recognizing the CCAA Proceeding as a foreign main proceeding and granting related relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with sections 157 and 1334 of title 28 of

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<sup>1</sup> The Debtors in these chapter 15 cases and the last four digits of each Debtor’s U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors’ mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

the United States Code, sections 109 and 1501 of the Bankruptcy Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and due and proper notice of the relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having entered the Provisional Order [Docket No. ] on \_\_\_\_\_, 2018; and a hearing having been held to consider the relief requested in the Motion (the "Hearing") on a final basis; and the appearances of all interested parties having been noted in the record of the Hearing; and upon the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the "Emmott Declaration"), and the verified Chapter 15 petitions, filed contemporaneously with the Motion, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

D. Venue for this proceeding is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

E. On September 11, 2018, these chapter 15 cases were commenced by the Foreign Representative's filing of a verified voluntary Chapter 15 Petition for Recognition of a Foreign Proceeding ("Verified Petition") for each Debtor. Attached to the Verified Petition was an order (the "CCAA Order") of the Canadian Court in the CCAA Proceeding appointing the Foreign Representative and granting additional relief.

F. The CCAA Proceeding is a "foreign proceeding" pursuant to section 101(23) of the Bankruptcy Code.

G. The Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

H. These Chapter 15 cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

I. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

J. The CCAA Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

K. Canada is the center of main interests of each of the Debtors, and accordingly, the CCAA Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

L. The Foreign Representative is entitled to all the relief available pursuant to section 1520 of the Bankruptcy Code including, without limitation, application of the automatic stay pursuant to section 362 of the Bankruptcy Code.

M. The Foreign Representative is further entitled to application of section 365(e) of the Bankruptcy Code pursuant to section 1521 of the Bankruptcy Code.

N. The Foreign Representative has demonstrated that application of section 365(e) of the Bankruptcy Code, as made applicable by sections 1521(a)(7) and 105(a) of the Bankruptcy Code, is necessary to provide the Debtors with the ability to assume or reject a contract or compel a contract counterparty to perform under a contract and that, absent protections pursuant to section 365(e), there is a material risk that one or more of their contract counterparties may terminate agreements or discontinue performance on the incorrect assumption that such non-Debtor counterparty is not bound by any decision made in the CCAA Proceeding and any such termination or discontinuance of performance could impose severe economic consequences on the Debtors and will interfere with efforts to realize maximum value from the Debtors’ assets.

O. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Verified Petitions and the Motion are granted as set forth herein.

2. The CCAA Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

3. The CCAA Order is hereby enforced on a final basis and given full force and effect in the United States, including, without limitation, the stay of proceedings to the extent set forth in the CCAA Order.

4. All relief afforded to foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to the CCAA Proceeding, the Debtors, and the Foreign Representative as applicable.

5. Sections 362 and 365(e) of the Bankruptcy Code shall hereby apply with respect to the Debtors and the property of Debtors that is within the territorial jurisdiction of the United States.

6. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its authorized representatives and/or agents are hereby enjoined from:

- a) execution against any of the Debtors' assets;
- b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;
- c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of its property;
- d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e) commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities; and
- f) terminating contracts or otherwise accelerating obligations or exercising

remedies thereunder provided.

7. Subject to sections 1520 and 1521 of the Bankruptcy Code, the CCAA Proceeding, and the CCAA Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the U.S. to the same extent as in Canada, and each is binding on all creditors of the Debtors and any of their successors and assigns.

8. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

9. Notwithstanding any applicable Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. The Foreign Representative, the Debtors, and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

12. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief, any adversary proceeding brought in and through these chapter 15 bankruptcy cases, and any request by an entity for relief from the provisions of this Order that is properly commenced and within the jurisdiction of this Court.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

\_\_\_\_\_  
Honorable Kevin Gross  
United States Bankruptcy Judge