

**CANADA'S FIRST APPLICATION UNDER CHAPTER 15  
OF THE U.S. BANKRUPTCY CODE GETS OFF TO AN INTERESTING START**

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The case of MuscleTech Research and Development Inc. ("MT") and its subsidiaries (collectively with MT, the "Debtors") is one of the first Canadian cross-border proceedings that has tested the ancillary relief provisions under the newly-enacted Chapter 15 of the U.S. Bankruptcy Code and the case has certainly got off to an interesting start.

The Debtors were involved in the development and sale of health supplements, weight-loss and sports nutrition products and carried on business in many countries around the world, although primarily in Canada and in the United States of America. The Debtors were each incorporated in Ontario and had substantial connections to Ontario. The Debtors had no physical place of business in the United States, however a large portion of the revenues generated from the sale of MT's products was derived from sales in the United States. Prior to December 2002, MT sold products containing ephedra. From 1999 to the end of 2005, the Debtors were named in numerous lawsuits commenced throughout the United States as a result of allegations concerning injuries caused by the ingestion of ephedra contained in products formerly sold by MT. A number of non-Debtor parties were also implicated in the lawsuits.

At first, the Debtors vigorously defended the product liability litigation. However, on January 18, 2006, the Debtors sought protection in Canada under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") with the hope of using the proceedings to achieve a global resolution of the litigation. By that time, at least five of the Debtors' competitors had already sought bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code.

The Ontario Superior Court of Justice, before whom the CCAA application was brought, granted the Debtors protection under the CCAA proceedings and authorized and directed the Monitor to bring an application before the U.S. Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") seeking an Order pursuant to Chapter 15 of Title 11 of the U.S. Bankruptcy Code ("Chapter 15"): (a) recognizing the Monitor as a "foreign representative"; and (b) recognizing the CCAA proceedings and giving full force and effect to the terms of the CCAA order granted by the Ontario Court.

On January 18, 2006, the Monitor filed petitions in the U.S. Bankruptcy Court commencing Chapter 15 cases ancillary to the CCAA proceedings and seeking recognition that the CCAA proceedings were "foreign main proceedings". It was also necessary for the Monitor to request interim relief in respect of the Debtors and the non-

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Debtor parties as before the U.S. Bankruptcy Court could consider or grant the Chapter 15 Petition, 20 days' notice of the Chapter 15 Petitions was required to be given to all parties to the pending litigation in the United States in which the Debtors were a party. Additionally, as Chapter 15 does not contemplate automatic relief in respect of non-Debtor parties, relief was required to be sought in order to effect a stay of proceedings in respect of the non-Debtor parties.

As a result of the foregoing, and contemporaneously with the filing of the Chapter 15 Petitions, the Monitor also filed an Application for the Entry of an Order to Show Cause With Temporary Restraining Order and a Preliminary Injunction (the "TRO/PI Application") prohibiting all persons from commencing or continuing the prosecution of the product liability actions against the Debtors and the non-Debtor parties. The U.S. Bankruptcy Court entered the TRO on January 18, 2006 and that is when things got more interesting.

In what we understand to be an unusual occurrence, on January 20, 2006, the District Court unilaterally withdrew the Chapter 15 Petitions and the TRO/PI Application from the U.S. Bankruptcy Court and transferred those proceedings to the docket of the District Court. The District Court was and remains seized of the ephedra Multidistrict Litigation in respect of the Debtors and other debtor companies. The TRO/PI Application was considered and ultimately granted by the District Court in respect of the Debtors and the non-Debtor parties and has been extended from time to time. The Chapter 15 Petitions were ultimately granted by the District Court in respect of the Debtors on March 2, 2006 with the District Court satisfied that Canada was the Debtors' "centre of main interest" for the purposes of Chapter 15.

The stay of proceedings and other relief currently in effect by virtue of the simultaneous application of the CCAA Order, the TRO and the Chapter 15 Petitions, has so far proven instrumental in establishing a forum for the parties in interest to pursue what they hope will be a global resolution of all the product liability litigation claims.