IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
Canadian Overseas Petroleum Limited, *et al.*,[1]	Case No. 24-10376 (JTD)
Debtors in a foreign proceeding.	(Jointly Administered)
	Re: Docket Nos. 44, 51, & 61

JOINDER TO FOREIGN REPRESENTATIVE'S REPLY TO BP ENERGY COMPANY'S OBJECTION TO THE MOTION OF THE FOREIGN REPRESENTATIVE FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER, (II) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' INTERESTS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, (III) CONDITIONALLY APPROVING DISMISSAL PROCEDURES FOR DEBTOR SOUTHWESTERN PRODUCTION CORPORATION; AND (IV) GRANTING RELATED RELIEF

Summit Partners Credit Fund III, L.P.; Summit Investors Credit III, LLC; Summit Investors Credit III (UK), L.P.; Summit Investors Credit Offshore Intermediate Fund III, L.P.; and ABC Funding, LLC (collectively, "Summit") the DIP lender, stalking horse bidder, and Purchasers under the Purchase Agreement between Summit and the above-captioned debtors (collectively, the "Debtors"), hereby files this joinder (this "Joinder") to the reply [Docket No. 61] (the "Reply") of Canadian Overseas Petroleum Limited ("COPL"), in its capacity as the duly-appointed foreign representative (the "Foreign Representative"), to the objection [Docket No. 51] (the "Objection") of BP Energy Company ("BP") to the *Motion of the Foreign Representative for Entry of an Order (I) Recognizing and Enforcing the CCAA Vesting Order, (II) Approving the Sale of Substantially*

[1] The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Canadian Overseas Petroleum Limited (8749); COPL Technical Services Limited (1656); Canadian Overseas Petroleum (Ontario) Limited (8319); Canadian Overseas Petroleum (UK) Limited (7063); Canadian Overseas Petroleum (Bermuda Holdings) Limited (N/A); Canadian Overseas Petroleum (Bermuda) Limited (N/A); COPL America Holding Inc. (1334); COPL America Inc. (9018); Atomic Oil and Gas LLC (8233); Southwestern Production Corporation (8694); and Pipeco LLC (0925). The location of the Debtors' headquarters and the Debtors' duly appointed foreign representative is 715 5 Avenue SW, Suite 3200, Calgary, Alberta T2P 2X6, Canada.

All of the Debtors' Interests Free and Clear of Liens, Claims, and Encumbrances, (III) Conditionally Approving Dismissal Procedures for Debtor Southwestern Production Corporation; and (IV) Granting Related Relief [Docket No. 44],[2] and in support thereof respectfully states the following:[3]

1. The terms of the Canadian-approved Transaction now before the Court are common. The Purchasers are credit bidding undisputedly senior debt they provided under the DIP Loan, assuming certain liabilities for the go forward business, and are taking the Debtors' assets free and clear of prepetition interests. There is nothing offensive or unusual about these terms.

2. BP attempts to contort ordinary sale terms to muddy the water—but its arguments find no support in law or in practice. Both in the Canadian proceeding and here, BP argues that a purchaser cannot assume debt unless it also assumes *pari passu* debt. The Canadian court dismissed this argument, and BP cites no authority to support its position here. The fact that the assumed liabilities include certain prepetition, secured claims does not harm BP's legal or economic rights in any way—to the contrary, it removes liabilities from the remaining bankruptcy estate.

3. Further, BP's legal position would practically prevent going concern sales in bankruptcy. Boiled down, BP argues that debt assumption must be subject to bankruptcy priority provisions. Therefore, BP's position would require a purchaser seeking to take on unsecured vendor claims to also assume any senior debt and all other unsecured debt—*i.e.*, going-concern purchases would require the satisfaction or ride-through of substantially all claims.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion and Objection, as applicable.

[3] As the Court is aware, BP has sought leave to appeal the Canadian Court's approval of the Vesting Order. Consistent with the Canadian justice's comments regarding timing during the May 29, 2024 hearing on BP's request for leave, Summit expects a decision on BP's request for leave to appeal before the June 5, 2024 hearing set before this Court.

4. The Objection presents no legitimate basis to deny or even question this Court's full recognition and enforcement of the CCAA Vesting Order and approval of the Transaction, and instead represents a transparent attempt to advance and relitigate arguments that were heard and overruled by the Canadian Court and are subject to appeal in Canada. The Canadian Court and this Court approved all terms of the SISP Order and the Sales Procedures contained therein. The Court-approved process ultimately resulted in Summit and the Debtors entering into the Purchase Agreement, and such process was implemented and administered pursuant to, and entirely in accordance with, the court-approved procedures.

5. BP is merely a dissatisfied creditor that is now collaterally attacking a court-approved sale process. At the April 24, 2024 sale hearing, BP admitted that it received notice of Summit's DIP Loan, the terms of Summit's stalking horse bid, and the sale process approved in the SISP. BP was even offered a participation interest in the DIP Loan, but turned it down, a position it reconfirmed during appellate arguments on May 29, 2024. BP chose not to participate in or oppose any aspect of the Canadian proceeding until the morning of the Canadian sale hearing, only after the court-approved sale process resulted in no recoveries for BP. As the Canadian court found when overruling BP's objection, "[t]his is a situation where the BP Group was aware of what was going on and at the 11th hour they are seeking to skuttle what has been going on for the past several months." *See* Apr. 24, 2024 Tr. 31:18–20. The Objection is nothing more than an untimely challenge to this Court's and the Canadian Court's previously entered orders, and BP's dissatisfaction with the outcome of the sale process is not a valid basis to reconsider the SISP Orders or delay consummation of the Transaction.

6. Moreover, recognition of the third-party releases granted by the Canadian Court is consistent with U.S. bankruptcy law and appropriate here.[4] "U.S. courts apply general comity principles in determining whether to recognize and enforce a foreign judgment. … In *Hilton v. Guyot*, the Supreme Court held that if the foreign forum provides 'a full and fair trial abroad before a court of competent jurisdiction' … the judgment should be enforced and not 'tried afresh.'" *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698–99 (Bankr. S.D.N.Y. 2010) (quoting *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895)) (internal citations omitted). "There is no question that bankruptcy proceedings in Canada—a sister common law jurisdiction with procedures akin to our own—are entitled to comity under appropriate circumstances." *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 212 (S.D.N.Y. 2002) (internal quotation marks and citations omitted).

7. Unlike the approval of the "free and clear" sale, the parties are not asking this Court to independently grant the third-party releases—the parties only ask the Court to recognize the third-party releases already granted by the Canadian Court. With respect to the transfer of the Purchased Assets, the parties ask the Court to both recognize the Vesting Order and, consistent with section 1520 of the Bankruptcy Code, separately approve the transfer of assets pursuant to section 363 of the Bankruptcy Code. Neither the Bankruptcy Code nor the parties, however, compel this Court to independently grant the third-partly releases. Rather, "principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter

[4] Notably, in the Canadian proceeding, BP did not object to the Releases sought and granted in the Canadian Vesting Order, which BP now collaterally attacks.

11 case." *Metcalfe*, 421 B.R. at 696 (Bankr. S.D.N.Y. 2010). As such, bankruptcy courts in the U.S., including in this District, regularly recognize third-party releases granted in foreign proceeding without the need to independently grant the release under the U.S. Bankruptcy Code. *See In re NextPoint Financial Inc.*, Case No. 23-10983 (TMH) (Dec. 11, 2023, Bankr. D. Del.), D.I. 155; *In re CDS U.S. Holdings, Inc.*, Case No. 20-11719 (CSS) (Oct. 29, 2020 Bankr. D. Del.), D.I. 112; *In re Avanti Commc'ns Grp. PLC*, 582 B.R. 603, 617 (Bankr. S.D.N.Y. 2018); *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 700 (Bankr. S.D.N.Y. 2010).

8. The CCAA Vesting Order, the Transaction, and the Releases contained therein were approved by the Canadian Court, and full recognition, enforcement, and approval thereof is consistent with the objectives of chapter 15 of the Bankruptcy Code and its foundational principles of comity. Moreover, the relief requested in the Motion is consistent with the applicable standards under chapter 15 of the Bankruptcy Code and the public policy of the United States. For these reasons, along with the reasons set forth in the Reply, the Objection should be denied, and the relief requested in the Motion should be granted.

Conclusion

WHEREFORE, Summit respectfully requests that the Court overrule the Objection and enter the Proposed Order granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 31, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Justin R. Alberto

COLE SCHOTZ P.C.
Justin R. Alberto (No. 5126)
Andrew Roth-Moore (No. 5988)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
Email: jalberto@coleschotz.com
aroth-moore@coleschotz.com

Co-Counsel to Summit Partners Credit Fund III, L.P.; Summit Investors Credit III, LLC; Summit Investors Credit III (UK), L.P.; Summit Investors Credit Offshore Intermediate Fund III, L.P.; and ABC Funding, LLC