

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

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In re	:	Chapter 15
	:	
Crystallex International Corporation <sup>1</sup>	:	Case No. 11-14074 (LSS)
	:	
Debtor in a Foreign Proceeding.	:	<b>Ref. Docket No. 194</b>
	:	
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**FOREIGN REPRESENTATIVE’S OBJECTION TO THE MOTION OF  
HUNTINGTON INGALLS INCORPORATED TO EXPEDITE HEARING AND  
SHORTEN NOTICE PERIOD WITH RESPECT TO MOTION OF HUNTINGTON  
INGALLS INCORPORATED FOR AN ORDER (A) DETERMINING THAT THE  
AUTOMATIC STAY DOES NOT APPLY OR (B) GRANTING RELIEF FROM THE  
AUTOMATIC STAY WITH RESPECT TO MISSISSIPPI LITIGATION**

Crystallex International Corporation, in its capacity as the court-appointed foreign representative (the “Foreign Representative”) for the above captioned debtor (the “Debtor”) in a proceeding under Canada’s Companies’ *Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List), respectfully submits this objection (the “Objection”) to the *Motion of Huntington Ingalls Incorporated to Expedite Hearing and Shorten Notice Period with respect to Motion of Huntington Ingalls Incorporated for an Order (A) Determining that the Automatic Stay Does Not Apply or (B) Granting Relief From the Automatic Stay with respect to Mississippi Litigation* [Docket No. 194] (the “Motion to Shorten”).<sup>2</sup> In support of this Objection, the Foreign Representative respectfully represents as follows:

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<sup>1</sup> The last four digits of the Debtor’s United States taxpayer identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1201, Toronto, Ontario, M5C 1B5, Canada.

<sup>2</sup> Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Motion to Shorten.

## OBJECTION

1. Simply put, there is no basis to justify shortening notice for the *Motion of Huntington Ingalls Incorporated for an Order (A) Determining that the Automatic Stay Does Not Apply or (B) Granting Relief From the Automatic Stay with respect to Mississippi Litigation* [Docket No. 193] (the “Stay Relief Motion”). As such, the Motion to Shorten should be denied.

2. Exigent circumstances are required to shorten notice,<sup>3</sup> and the exigent circumstances Ingalls claims justify shortening notice are that “Crystallex is pressing forward in the New York District Court with its competing claim to the BNYM account funds and is seeking to compel BNYM to turn over the funds to Crystallex to satisfy its judgment lien against Venezuela.”<sup>4</sup> Although the Debtor is seeking turnover of the funds in the account held by BNYM (the “Funds”) to satisfy its judgment lien and the turnover action is a summary proceeding, it is not moving on such an expedited timeline that it in any way justifies shortening notice for the Stay Relief Motion or results in any prejudice to Ingalls. On September 14, 2017, the Debtor filed a turnover action in the United States District Court for the Southern District of New York (the “Southern District of New York”) seeking to compel BNYM to turnover the Funds (the “Turnover Motion”),<sup>5</sup> but BNYM has been given an extension to October 16th to file its response to the Turnover Motion. No hearing on the Turnover Motion has been scheduled by the Southern District of New York as briefing thereon is not completed and is not currently scheduled to be completed until October 23, 2017. Moreover, absent an unexpected event that alters the current posture or circumstances, the Debtor does not intend to take any affirmative

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<sup>3</sup> Del. Bankr. L.R. 9006-1(e).

<sup>4</sup> Motion to Shorten, ¶ 9.

<sup>5</sup> *Petition for an Order Directing Respondent the Bank of New York Mellon to Turnover Debts and Property of Judgment Debtor the Bolivarian Republic of Venezuela, Crystallex Inter. Corp. v. Bank of New York Mellon*, 1:17-cv-7024 (VSB) (S.D.N.Y. Sept. 14, 2017), EFC No. 1.

action to prosecute the Turnover Motion until such time as the issues raised by Ingalls in the Stay Relief Motion have been addressed by this Court. Accordingly, there is no justification, let alone exigent circumstances, for shortening the twenty-one day notice period required under the Bankruptcy Rules to a mere eight days (i.e., October 3, 2017), especially in light of an intervening Jewish holiday during that eight-day period.

3. As mentioned above, on September 14, 2017, the Debtor filed its Turnover Motion in the Southern District of New York, where the BNYM account holding the Funds is located, and informed Ingalls' counsel that it was doing so that same day. One day later, Ingalls filed a summary judgment motion requesting that the Mississippi Court rule in favor of Ingalls on its most recent claim for relief and permanently enjoin BNYM from transferring, or allowing to be transferred, the Funds for any purpose other than to pay Ingalls.<sup>6</sup> Unlike the Debtor, Ingalls has no arbitration award and no related judgment against Venezuela, much less a lien, yet the summary judgment motion requests, among other things, that "the [Mississippi] Court should declare that Crystallex's lien . . . is not superior to Ingalls interest" in the Funds.<sup>7</sup> Because Ingalls is seeking, pursuant to its summary judgment motion, to directly impact property of the Debtor, counsel to the Foreign Representative contacted counsel to Ingalls, informed them of this chapter 15 proceeding and of the application of the Automatic Stay thereto,<sup>8</sup> and requested that Ingalls immediately withdraw the summary judgment motion. Ingalls responded stating it would

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<sup>6</sup> *Motion for Summary Judgment on Its Ninth Claim for Relief and for a Permanent Injunction Mississippi Proceeding, Northrop Grumman v. Ministry of Defense, et al.*, Case No. 1:02-cv-00785 (S.D. Miss Sept. 15, 2017) (the "Mississippi Proceeding"), ECF No. 339.

<sup>7</sup> *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment on Its Ninth Claim for Relief and for a Permanent Injunction*, Mississippi Proceeding, ECF No. 340 (the "Memorandum of Law"), at 18.

<sup>8</sup> Counsel to the Foreign Representative also provided a copy of this Court's *Order Granting Final Relief in aid of Canadian Proceeding Pursuant to Sections 105(a), 1517, 1520, and 1521 of the Bankruptcy Code* [Docket No. 44] (the "Recognition Order") to counsel to Ingalls.

take appropriate action after consideration of the circumstances. However, there was no indication that it would withdraw the summary judgment motion or an acknowledgement or agreement not to prosecute it in light of the Foreign Representative's position regarding the impact of the automatic stay. As a result, the Foreign Representative prepared a motion to enforce the automatic stay and obtained a hearing date for its motion to enforce the automatic stay for October 17, 2017, at 10:00 a.m. to enable that motion to be heard on normal notice as required by the Bankruptcy Rules. The October 17th hearing date was conveyed to counsel for Ingalls late Monday afternoon and, thereafter, before the Debtor's enforcement motion could be filed, Ingalls filed the Stay Relief Motion and Motion to Shorten. Given the lack of exigent circumstances justifying shortening notice of the Stay Relief Motion (including that the Debtor does not intend to take any affirmative action to prosecute the Turnover Motion until such time as the issues raised by Ingalls in the Stay Relief Motion have been addressed by this Court) and the existence of a hearing date already scheduled in the chapter 15 proceeding, the Stay Relief Motion should be heard under normal notice at the hearing already scheduled for October 17th, which will allow all parties in interest an adequate and sufficient opportunity to analyze the relief requested.

4. Finally, having the Stay Relief Motion heard on normal notice will not negatively impact the Mississippi Action. Ingalls commenced the Mississippi Action in 2002.<sup>9</sup> According to Ingalls' papers filed in the Mississippi Action, the arbitral tribunal will make a decision on the merits no later than December 5, 2017.<sup>10</sup> If the arbitral tribunal ultimately decides in Ingalls' favor, that is far from the end of the matter as Ingalls would also have to move to have the arbitral award recognized by a United States District Court (in an action separate and

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<sup>9</sup> Mississippi Proceeding (Oct. 24, 2002), ECF No. 1.

<sup>10</sup> Memorandum of Law, at 1.

apart from the pending Mississippi Action) and survive a motion to vacate any such arbitral award by Venezuela, which would be heard in Venezuela, in order to obtain a judgment. Even after obtaining a judgment, the Foreign Sovereign Immunities Act, in particular 28 U.S.C. § 1610, gives a foreign sovereign a reasonable period of time to pay the judgment before enforcement can begin. It is only after a United States District Court issues an order finding that sufficient time has passed that Ingalls could seek to enforce the judgment by moving to seize the Funds. As such, even the December 5th deadline is illusory, and given that the Mississippi Action has been ongoing for fifteen years, it is hard to see how Ingalls' request is anything other than a litigation tactic meant to deprive the Foreign Representative, the Debtor, and other interested parties from having a meaningful opportunity to adequately analyze and address the issues raised by Ingalls in the Stay Relief Motion.

### **CONCLUSION**

5. Ingalls will suffer no prejudice if the Stay Relief Motion is heard at the hearing on October 17th. On the other hand, the Foreign Representative and the Debtor, as well as other parties in interest in this chapter 15 case including the debtor-in-possession lender, will be prejudiced if they are not afforded a reasonable period of time to fully respond to the arguments raised in the Stay Relief Motion. Due to this, and given that there is no justification for shortening notice on the Stay Relief Motion, the Foreign Representative respectfully requests that the Motion to Shorten be denied and the Stay Relief Motion scheduled to be heard at the hearing on October 17, 2017 at 10:00 a.m. (ET).

Dated: September 26, 2017  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn

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