

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 15
)	
BOART LONGYEAR LIMITED <i>et al.</i> ,)	Case No. 21-11465 (LGB)
)	
Debtors in a Foreign Proceeding. ¹)	(Jointly Administered)
)	

**ORDER RECOGNIZING FOREIGN MAIN
PROCEEDING AND GRANTING RELATED RELIEF**

Upon the *Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Related Relief* [Docket No. 2] (the “Verified Petition”)² of Nora R. Pincus, in her capacity as the Foreign Representative of the Debtors, for an order granting: (a) recognition of the Australian Proceeding as the foreign main proceeding for each Debtor pursuant to sections 1515 and 1517 of the Bankruptcy Code; (b) recognition of the Foreign Representative as the “foreign representative” of the Debtors as such term is defined in section 101(24) of the Bankruptcy Code; and (c) certain other relief; upon consideration of the Verified Petition, the Marshall Declaration, the Pincus Declaration, and all other pleadings and papers in this case; and upon the record of the hearing (the “Hearing”) and all of the proceedings had before the Court, **IT IS HEREBY FOUND AND DETERMINED THAT:**³

¹ The debtors in these chapter 15 cases, along with the last three digits of each debtor’s Australian Company Number, are: Boart Longyear Limited (728), Boart Longyear Management Pty Limited (545), Boart Longyear Australia Pty Limited (025), Boart Longyear Investments Pty Limited (373), and Votrait No. 1609 Pty Limited (272).

² Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Verified Petition.

³ The findings and conclusions set forth herein and on the record of the hearing on the Verified Petition constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the findings of fact constitute conclusions of law, they are adopted as such; to the extent any of the conclusions of law constitute findings of fact they are adopted as such.

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.).

B. Consideration of the Verified Petition and the requested relief is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

D. This Court may enter a final order consistent with Article III of the United States Constitution.

E. Good, sufficient, appropriate, and timely notice of the filing of, and the Hearing on, the Verified Petition was given, which notice is deemed adequate for all purposes, and no further notice need be given.

F. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

G. The Chapter 15 Cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

H. The Verified Petition satisfies the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

I. Each of the Debtors has property in the United States and is eligible to be a debtor in a chapter 15 case pursuant to sections 109 and 1501 of the Bankruptcy Code.

J. The Foreign Representative is a “person” pursuant to section 101(41) of the Bankruptcy Code and is the duly appointed “foreign representative” of the Debtors as such term is defined in section 101(24) of the Bankruptcy Code with respect to the Australian Proceeding.

K. The Australian Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code, entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

L. The Australian Proceeding is pending in Australia, where each of the Debtors has its “center of its main interests” as used in section 1517(b)(1) of the Bankruptcy Code. Accordingly, the Australian Proceeding is a “foreign main proceeding” pursuant to section 1502(4) of the Bankruptcy Code, entitled to recognition as such pursuant to section 1517(b)(1) of the Bankruptcy Code.

M. The Debtor and the Foreign Representative are entitled to all of the relief set forth in section 1520 of the Bankruptcy Code without limitation.

N. The Debtor and the Foreign Representative are entitled to all of the relief set forth herein under sections 1507, 1521, and 1525 of the Bankruptcy Code.

O. Each of the injunctions contained in this Order: (a) is within the Court’s jurisdiction; (b) is essential to the success of the Schemes; (c) is an integral element of the Schemes essential to its effectuation; (d) confers material benefits on, and is in the best interests of, the Debtors and their creditors, including, without limitation, the Scheme Creditors; and (e) is important to the overall objectives of the restructuring of the Debtors and their non-Debtor affiliates. The relief granted hereby will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted.

P. Absent the relief granted hereby, the Debtors and the other Released Parties or their respective properties may be subject to judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in the United States in direct contravention of the Australian Proceeding and the Schemes, thereby interfering with and causing harm to the Debtors, their

creditors, the other Released Parties, and other parties in interest in the Australian Proceeding and, as a result, the Debtors, their creditors, the other Released Parties, and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

Q. Absent the relief granted hereby, the restructuring contemplated by the Schemes and approved by the Australian Court may be frustrated by the actions of individual Scheme Creditors, a result contrary to the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

R. All creditors and other parties in interest are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

S. The terms of the Schemes are not contrary to the public policy of the United States. The relief granted hereby pursuant to sections 1507, 1515, 1517, 1520, 1521, and 1525 of the Bankruptcy Code is necessary to effectuate the purposes of chapter 15, to protect the Debtor and the interests of its creditors, is in the interest of the public and international comity, and is not manifestly contrary to U.S. public policy or the policies of the Bankruptcy Code.

T. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the interests of the Debtors and their creditors.

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Verified Petition is granted as set forth herein.
2. All objections, if any, to the Verified Petition and Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Hearing, or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Australian Proceeding is a collective, court-supervised proceeding governed in

accordance with applicable Australian law, as it may be amended from time to time, and is granted recognition as a “foreign main proceeding” (as defined in section 1502(4) of the Bankruptcy Code) pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code, and all the effects of recognition of a foreign main proceeding set forth in section 1520 of the Bankruptcy Code shall apply to each Debtor, including, without limitation, the application of the automatic stay under section 362 of the Bankruptcy Code to the Debtors and to their property within the territorial jurisdiction of the United States.

4. The Foreign Representative is the duly appointed and authorized “foreign representative” of the Debtors within the meaning of section 101(24) of the Bankruptcy Code, and is authorized to act on behalf of the Debtors in the Chapter 15 Cases.

5. The Foreign Representative is the exclusive representative of the Debtors in the United States, and the administration, realization, and distribution of any and all of the Debtors’ assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative.

6. The Debtors and the Foreign Representative are entitled to all of the relief set forth herein under sections 105(a), 1507, 1520, 1521, and 1525 of the Bankruptcy Code.

7. The Australian Proceeding and the Schemes (including the Implementation Deeds) are hereby: (a) recognized, granted comity, and given full force and effect in the United States on a final basis, including any waivers, releases, discharges of debt, and injunctions against enforcement of claims or debts against the Debtors or the Released Parties, and (b) shall be binding on and enforceable against all parties in the United States, whether or not such parties actually voted in favor of the applicable Scheme, participated in a Scheme Meeting, or appeared in the Australian Proceeding.

8. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any action inconsistent with, or interfering with the enforcement and implementation of, the Schemes, including, without limitation:

- a. taking any of the following actions on account of any Scheme Claim:
 - (i) taking or continuing any act to obtain possession of, or exercise control over, including but not limited to, attaching, repossessing, seizing, or disposing of, as applicable, any of the Debtors' or other Released Parties' tangible or intangible property, including any proceeds thereof, that is located within the territorial jurisdiction of the United States (collectively, the "Applicable Property"), including without limitation any action pursuant to sections 361, 362, or 365(e) of the Bankruptcy Code;
 - (ii) commencing, continuing, or enforcing any action or legal proceeding within the territorial jurisdiction of the United States (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim (each, an "Action") against the Debtors, the Released Parties, or any of the Applicable Property; or
 - (iii) commencing or continuing any act or Action to create, perfect or enforce any lien, setoff or claim (including a contract claim) against the Debtors, the Released Parties, or the Applicable Property; provided, however, that no action described in sections 555, 556, 557, 559, 560, 561, 562 and 1519(d) and (f) of the Bankruptcy Code shall be enjoined by such injunction.
- b. commencing any Action in the territorial jurisdiction of the United States against the Debtors, the Foreign Representatives, the Released Parties, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with the Chapter 15 Cases, the Schemes (including the Implementation Deeds), the Convening Orders or the Sanction Order or to resolve any dispute arising out of the Schemes (including the Implementation Deeds), the Convening Orders or the Sanction Order; or
- c. declaring or considering the filing of the Australian Proceeding or the Chapter 15 Cases a default or event of default under any agreement, contract or arrangement.

9. As of the Schemes Implementation Date, any judgment, wherever and whenever

obtained, to the extent such judgment is a determination of liability of a Debtor or a Released Party with respect to any debt or liability cancelled, discharged, or restructured under the Schemes or as a result of Australian law pertaining thereto, is unenforceable in the United States to the extent its enforcement would be inconsistent with the Schemes (including the Implementation Deeds), the Convening Orders or the Sanction Order.

10. This Order is without prejudice to the Foreign Representative requesting any additional relief in the Chapter 15 Cases, including seeking recognition and enforcement in the United States of any further orders issued by the Australian Court, including any final order sanctioning the Schemes, as such order may be amended or supplemented from time to time.

11. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules or orders of this Court.

12. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

13. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Australian Proceeding, this Order, the Chapter 15 Cases, an adversary proceeding herein, if any, or any further proceeding commenced hereunder, shall constitute a waiver of the rights or benefits afforded such persons under 11 U.S.C. §§ 306 and 1510.

14. The banks and financial institutions with which the Debtors maintain bank accounts in the United States or on which checks are drawn or electronic payment requests made in payment of any prepetition or postpetition obligations are authorized and directed to continue to service and

administer (including charging all applicable fees and expenses) the Debtors' bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether issued before or after the Petition Date and draw on the Debtors' bank accounts by the respective holders and makers thereof and at the direction of the Foreign Representative or the Debtors, as the case may be, and may rely on representations by the Foreign Representative or Debtors without liability to any other party for such reliance; provided, however, that nothing herein shall affect the Debtors' obligations to comply with any cash management requirements under their secured debt facilities.

15. Except as otherwise set forth in paragraph 8 herein, no provision of this Order, or any Bankruptcy Code provisions that become effective upon entry of this Order, shall impair or restrict the terms, conditions, obligations, and limitations of the Existing ABL, or any of the other documents and agreements relating to the Existing ABL, all of which terms, conditions, obligations and limitations shall remain in force and effect.

16. Notwithstanding anything to the contrary in this Order, no provision of this Order, or any Bankruptcy Code provisions that become effective upon entry of this Order (including, without limitation, 11 U.S.C. § 552), shall restrict or prohibit the Debtors from granting, or PNC Bank, National Association ("PNC"), from receiving, continuing grants of security interests in current or after-acquired property of one or more of the Debtors as provided by, and that secure the obligations under, the Existing ABL, which security interests shall continue from and after the date of the commencement of these Chapter 15 Cases with the same effect as if these Chapter 15 Cases had not been commenced.

17. Entry of this Order is without prejudice to PNC's right to request other and further relief as may be necessary, desirable, or appropriate in order to ensure that PNC's interests are

sufficiently protected, as required by sections 1520 and/or 1522 of the Bankruptcy Code.

18. The Australian Court shall have exclusive jurisdiction to hear and determine any suit, action, claim, or proceeding, and to settle any dispute that may arise out of the construction or interpretation of the Schemes in connection with the administration of the Schemes; provided, however, that nothing in this Order affects the validity of provisions determining governing law and jurisdiction, whether contained in any contract between the Debtor and any of the Scheme Creditors or otherwise.

19. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to interpretation or implementation of this Order, including, but not limited to: (a) the enforcement, amendment or modification of this Order; (b) any requests for additional relief or any adversary proceeding brought in or through these Chapter 15 Cases; and (c) any request by an entity for relief from the provisions of this Order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

20. This Order is without prejudice to the Foreign Representative requesting any additional relief in these Chapter 15 Cases, including seeking recognition and enforcement by this Court of any further orders issued by the Australian Court.

21. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: **September 21, 2021**
New York, New York

/s/ Lisa G. Beckerman
HONORABLE LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE