THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Case No. 06-11156 (KJC)
	:	
SEA CONTAINERS LIMITED, *et al.*,	:	Jointly Administered
	:	Chapter 11
Debtors.	:	
		Re: D.I. 1709

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SEA CONTAINERS SERVICES LTD'S LIMITED OBJECTION TO THE DEBTORS' MOTION FOR ORDER AUTHORIZING SCL'S ENTRY INTO FRAMEWORK AGREEMENT WITH GECC FOR GLOBAL SETTLEMENT OF PENDING CLAIMS AND OTHER MATTERS REGARDING GE SEACO

The Official Committee of Unsecured Creditors of Sea Containers Services Ltd. (the "SCSL Committee"), by its attorneys, Willkie Farr & Gallagher LLP and Pepper Hamilton LLP, hereby provides the following limited objection (the "Objection") to the motion (the "Motion") of the above captioned debtors and debtors in possession (collectively, the "Debtors") for an order authorizing one of the Debtors, Sea Containers, Ltd. ("SCL"), to enter into a framework agreement with GECC (as defined below) providing for a global settlement of pending claims and other matters regarding GE SeaCo SRL ("GE SeaCo").

In the midst of their fourth arbitration, the Debtors and their joint venture partner, General Electric Capital Corporation ("GECC"), on behalf of itself and certain of its subsidiaries, have been working to resolve a number of intractable issues related to their joint venture, GE SeaCo. The Debtors' interest in GESeaCo represents the estates' principal asset. Following consultations with the Debtors, the SCSL Committee signaled its willingness to assist in negotiating a fair and beneficial settlement and, to that end, provided the Debtors with a discrete set of issues that –if successfully resolved – would garner the support of the SCSL Committee.

Unfortunately, after only a brief and rushed series of negotiations, the Debtors presented a framework agreement (the "Framework Agreement") as a *fait accompli*. The Framework Agreement as proposed fails to address satisfactorily (if at all) the SCSL Committee's limited concerns, and, accordingly, the SCSL Committee, cannot support the Framework Agreement in its current form.

OBJECTION

1. In analyzing settlements filed pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), courts have noted that "the law favors compromise" See In re Foundation For New Era Philanthropy, 1996 Bankr. LEXIS 1891 at *19 (Bankr. E.D. Pa. July 22, 1996). Such settlements and compromises are "a normal part of the process of reorganization." Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)). As bankruptcy jurisprudence promotes compromise among parties, the SCSL Committee is supportive of the Debtors attempt to resolve substantial (though potentially meritless) claims asserted by GE SeaCo. The SCSL Committee also acknowledges that settlements by definition often contain provisions which may be distasteful or unacceptable in isolation, yet are tolerable in the broader context where the relevant benefits and burdens can be weighed. As such, there are a number of terms within the Framework Agreement that the SCSL Committee dislikes, but is prepared to accept (e.g. (i) while it is possible that information rights accorded in section 1.5 of the Framework Agreement are sufficient to permit the post-restructuring owner of GE SeaCo to be able to obtain a stock market listing, there is a material risk that those rights will not be sufficient, and (ii) section 2.2(c) of the Framework Agreement, which provides that GE SeaCo may return the money it wrongfully withheld from SCL without

the interest earned on such funds during the period it was withheld). However, there remain flaws within the Framework Agreement that cannot be tolerated for the sake of settlement *per se*.

The Release Provisions

2. The Framework Agreement purports to provide a "global settlement and release of outstanding claims among the Debtors, GECC and GE SeaCo." Motion p. 16. Per the Motion, this release (the "Release") is intended to be a "global, mutual release of all pending and possible claims, including the claims currently subject to arbitration and SCL's application for recovery of attorneys' fees from the Change of Control arbitration, all arising out of, related to or in connection with GE SeaCo and its business." Motion p. 19. The Release is subject to carve-outs, which according to the Debtors are "designed to capture certain ordinary course operating obligations among the parties and any specified 'bad acts' occurring after entry into the Definitive Settlement Agreement." Id. In fact, the Release is conceptually flawed as it contains gaping holes which provide the GECC Release Parties (as defined below) with free reign over GE SeaCo and no exposure to liability for their future behavior.

3. First, under the Framework Agreement, only the GECC Release Parties are releasing the Debtors. The GECC Release Parties include:

> General Electric Company, General Electric Capital Services, Inc. ("GECS"), GECC and GECS' and GECC's subsidiaries other than subsidiaries (i) in which a person who is not a GECC Release Party holds more than 20% of the outstanding voting securities or similar equity interests or (ii) with respect to whom GE, GECS, GECC or one of GECS' or GECC's other subsidiaries has existing contractual or other legal obligations limiting the discretion of GE GECS, GECC or any of GECS' or GECC's subsidiaries to require the subject to grant the release . . .

Framework Agreement § 2.1. Therefore, less than wholly-owned subsidiaries are not releasing the Debtors and their affiliates. If such subsidiaries are able to assert claims that should have been released pursuant to the Framework Agreement, then, effectively, the Release is of no value.

4. Second, the Release is intended to cover all claims arising through the Effective Date[1] except for those occurring in the ordinary course, that may arise in the quarter during which the Effective Date takes place or the immediately preceding fiscal quarter. See Framework Agreement § 2.1. Additionally, the Release includes claims arising before the Effective Date but after the date the parties enter into a Definitive Settlement Agreement (which may be well in advance of the Effective Date), except for claims based on acts or omissions based on fraud, willful misconduct or breaches of the joint venture documents. Id. Accordingly, per the terms of the Framework Agreement the GECC Release Parties essentially have a release for their future conduct in managing GE SeaCo, from the date hereof through the Effective Date. The limited "bad-act" carve-out applies only to claims arising in the period between entry into the Definitive Settlement Agreement and the Effective Date. Therefore, it appears that the drafters of the Framework Agreement intended that any "bad-acts" occurring between today and the date of entry into the Definitive Settlement Agreement are automatically released.

5. Pursuant to the Framework Agreement, the Debtors are relegated to being minority owner of GE SeaCo, and certain of the GECC Release Parties will continue to control the management of GE SeaCo. In light of SCL's minority role in GE SeaCo, and the historically

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Framework Agreement.

litigious relationship between the joint venture partners, the SCSL Committee does not believe it is appropriate or prudent for the Debtors to release the GECC Release Parties from any future liability. However, the SCSL Committee would be supportive of a release through and including the date that the parties entered into the Framework Agreement.

Indemnification Provisions

6. Section 1.5 of the Framework Agreement contemplates that GE SeaCo will provide SCL/Newco with certain financial information. However, incredibly, the Framework Agreement also provides that SCL/Newco "shall indemnify, defend and hold harmless GE SeaCo and GECC and its affiliates" from any claims arising out of or in connection with the use of any such information provided to SCL/Newco by GE SeaCo without precluding indemnification liability arising from errors in the information provided by GE SeaCo. See Framework Agreement § 1.5(e). SCL/Newco should not be required to indemnify GE SeaCo, GECC or any affiliates for liability arising out of GE SeaCo's erroneous financial statements or misinformation. GE SeaCo should bear the responsibility for all mistakes and errors in the financial statements that they alone prepare.

CONCLUSION

7. The SCSL Committee would be prepared to support the Framework Agreement were it tailored to ensure that (i) all of GECC's and GECS' less than wholly-owned subsidiaries release the Debtors, (ii) the Debtors do not release future unknowable claims against any of the GECC Release Parties, and (iii) SCL/Newco is not required to indemnify GECC and GE SeaCo for claims arising out of their erroneous financial statements. Accordingly, the SCSL

Committee respectfully requests that the Court condition its approval of the Framework Agreement on resolution of the issues raised in this Objection.

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Wilmington, DE

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