

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

In re:	)	
	)	Chapter 11
	)	
SEA CONTAINERS LTD., et al., <sup>1</sup>	)	Case No. 06-11156 (KJC)
	)	
	)	Jointly Administered
Debtors.	)	Objection Deadline: November 17, 2008 at 4:00 p.m.
	)	Hearing Date: December 9, 2008 at 10:00 a.m.

**DEBTORS' MOTION FOR ORDER APPROVING STIPULATION IN AID OF  
IMPLEMENTATION OF PENSION SCHEMES SETTLEMENT AGREEMENT  
WITH RELATED TECHNICAL AMENDMENTS**

The above-captioned debtors in possession (collectively, the "Debtors") submit this motion (this "Motion") for entry of an order, substantially in the form attached as Exhibit A, approving the stipulation in aid of implementation of the Pension Schemes Settlement Agreement (the "Settlement Agreement") with related technical amendments attached hereto as Exhibit B (the "Stipulation") among the Debtors, the Official Committee of Unsecured Creditors for SCSL (the "SCSL Committee"), the Sea Containers 1983 Pension Scheme (the "1983 Scheme"), and the Sea Containers 1990 Pension Scheme (the "1990 Scheme," and together with the 1983 Scheme, the "Schemes"). In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. § § 1408 and 1409.

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<sup>1</sup> The Debtors are Sea Containers Caribbean Inc., Sea Containers Ltd. and Sea Containers Services Ltd.

2. The statutory basis for the relief sought in the Motion is FED. R. BANKR. P. 9019.

### **BACKGROUND**

#### ***General Background***

3. On October 15, 2006, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On October 17, 2006, this Court entered an order directing the joint administration and procedural consolidation of these chapter 11 cases.

4. At the outset of the chapter 11 cases, the United States Trustee appointed an Official Committee of Unsecured Creditors for SCL, the membership of which was modified on January 23, 2007 (the "SCL Committee"). On January 23, 2007, the United States Trustee appointed the SCSL Committee (and together with the SCL Committee, the "Committees").

#### ***The Settlement Agreement***

5. The Schemes are defined benefit pension schemes created and regulated under the laws of England and Wales. Prior to the filing of these chapter 11 cases, SCL and certain of its affiliates maintained the Schemes to provide benefits to, and in respect of, certain current and former employees. The substantial majority of the Debtors' pension-related liabilities arose on account of the Schemes.

6. On July 9 and July 12, 2007, respectively, the trustees of the 1983 Scheme and the 1990 Scheme filed proofs of claims in these chapter 11 cases against each of the Debtors. The 1983 Scheme proofs of claim asserted claims of in excess of \$240 million against each Debtor and the 1990 Scheme proofs of claim asserted claims of in excess of \$55 million against each Debtor. The Schemes based their claims on, among other things, the Debtors' inability to fully fund their pension obligations under the Schemes' governing rules and applicable U.K. law.

7. On May 23, 2008, the Debtors filed the Settlement Agreement under which the Schemes' claims against the Debtors are fully resolved (Docket No. 1831). On September 19, 2008, this Court approved the Settlement Agreement (Docket No. 2185).

*The Stipulation*

8. Section 5.2 of the Settlement Agreement requires each Debtor to use commercially reasonable efforts to ensure that each Scheme is eligible for protections from the U.K. Pension Protection Fund.<sup>2</sup> The Debtors' obligations under section 5.2 are buttressed by section 5.4(d) of the Settlement Agreement, which contemplates that certain of the former participating employers to the Schemes participate in schemes of arrangement under U.K. law.

9. Sea Containers Ferries Scotland Limited ("Ferries"), a former participating employer to the 1990 Scheme, is insolvent. The Debtors, the SCSL Committee, and the trustees for the 1990 Scheme determined that liquidation of Ferries was more efficient and cost-effective than instituting a scheme of arrangement as contemplated under section 5.4(d) of the Settlement Agreement. Accordingly, the parties engaged in discussions regarding amending section 5.4(d) to allow Ferries to liquidate.

10. As a result of those discussions, the Debtors, the SCSL Committee, and the Schemes entered into the Stipulation under which only one provision of the Settlement Agreement — section 5.4(d) — has been amended so as to allow Ferries to forego a U.K. scheme of arrangement and commence liquidation proceedings. Notably, the amendments to

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<sup>2</sup> The protections provided by the U.K. Pension Protection Fund to U.K. defined benefit pension schemes are similar to the pension guarantees the Pension Benefit Guarantee Corporation provides to U.S. defined benefit pension plans.

section 5.4(d) of the Settlement Agreement set forth in the Stipulation do not materially affect the terms of the Settlement Agreement.

### **RELIEF REQUESTED**

11. By this Motion, pursuant to FED. R. BANKR. P. 9019, the Debtors seek this Court's approval of the Stipulation and authority to take all actions contemplated thereunder.

### **BASIS FOR RELIEF**

12. FED. R. BANKR. P. 9019 provides, in pertinent part, that "[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or a settlement." FED. R. BANKR. P. 9019. Settlements are tools for expediting the administration of a case and reducing administrative costs and are favored in bankruptcy. *See Protective Comm. of Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) ("In administering reorganization proceedings in an economic and practical matter it will often be wise to arrange the settlement of claims."); *see also In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy 9019.03[1] (15th Ed. 1993)) ("[c]ompromises are favored in bankruptcy.").

13. The Stipulation ensures that Ferries is able to wind-down its operations in the most cost-effective manner. The Debtors have determined that there is no dividend forthcoming to the 1990 Scheme in connection with Ferries' liquidation. As a result, the amendments to the Settlement Agreement agreed upon in the Stipulation do not materially affect the terms of the Settlement Agreement.

14. If the parties did not agree to the Stipulation, the parties would likely become embroiled in a dispute over whether the liquidation of Ferries violated the terms of the Settlement Agreement. The expenses incurred to resolve such a dispute would be an additional

burden to the estates and their creditors. The Stipulation avoids these disputes and preserves funds for distribution to the Debtors' creditors. Accordingly, the Debtors respectfully request that this Court approve the Stipulation.

**NOTICE**

15. Notice of this Motion has been provided to the Office of the United States Trustee, the SCL Committee, the SCSL Committee, the Schemes' trustees and all parties who have properly filed a notice of appearance in these chapter 11 cases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**NO PRIOR REQUEST**

16. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court enter an order, in substantially the form attached as Exhibit A, (a) approving the Stipulation and (b) granting such other and further relief as this Court deems appropriate.

Dated: Wilmington, Delaware  
October 28, 2008

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