

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

In re:)	Chapter 11
)	
SEA CONTAINERS LTD., <i>et al.</i> , ¹)	Case No. 06-11156 (KJC)
)	(Jointly Administered)
)	
Debtors.)	Objection Deadline: At Hearing
)	Hearing Date: November 6, 2008 at 3:00 p.m. (Proposed)
)	(Proposed)

**DEBTORS' MOTION FOR ORDER AUTHORIZING (A) ENTRY INTO EXIT
FINANCING COMMITMENT LETTER AND (B) PAYMENT OF
CERTAIN FEES IN CONNECTION THEREWITH**

The above-captioned debtors in possession (collectively, the "Debtors") file this motion (the "Motion") for entry of an order authorizing (a) SCL's entry into a commitment letter (the "Commitment Letter") with Fortis Bank (Nederland) N.V. ("Fortis") and DVB Bank S.E. ("DVB," and together with Fortis, the "Exit Lenders") setting forth the terms of the Debtors' exit financing facility and (b) payment of certain fees in connection therewith. A copy of the Commitment Letter is attached hereto as Exhibit A. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The 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. The basis for the relief sought herein is § 363 of title 11 of the United States Code, 11 U.S.C. § § 101, *et seq.* (the "Bankruptcy Code").

¹ The Debtors in these chapter 11 cases are Sea Containers Caribbean Inc. ("SCC"), Sea Containers Ltd. ("SCL") and Sea Containers Services Ltd. ("SCSL").

BACKGROUND

General Background

2. On October 15, 2006, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On October 17, 2006, the Court entered an order directing the joint administration and procedural consolidation of these chapter 11 cases. The Debtors are continuing in possession of their respective properties and have continued to operate and maintain their respective businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. At the outset of these chapter 11 cases, the United States Trustee appointed an Official Committee of Unsecured Creditors for SCL (the "SCL Committee"), the membership of which was modified on January 23, 2007, on June 4, 2007, and again on June 27, 2007. Also on January 23, 2007, the United States Trustee appointed an Official Committee of Unsecured Creditors for SCSL (the "SCSL Committee," and together with the SCL Committee, the "Creditors' Committees").

4. On September 22, 2008, the Court entered an order approving the Debtors' amended disclosure statement related to the Second Amended Joint Plan Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan"). Pursuant to this order, the Debtors will commence the solicitation process in connection with the Plan.

5. The other facts and circumstances further supporting this Motion are more fully set forth in the disclosure statement related to the Plan and are incorporated herein by reference.

Process to Obtain Exit Financing

6. To successfully emerge from these chapter 11 cases and consummate the transactions contemplated under the Plan, including repayment of the DIP financing, the Debtors need to secure exit financing. In addition to repaying the DIP loan, the Plan contemplates that

the Debtors will use the proceeds of their exit financing to fund certain payments under the Plan and provide working capital for SeaCo Finance Ltd., the entity to which SCL's container interests will be transferred in connection with the Plan.

7. Beginning in September 2007, SCL, with the assistance of its financial advisors, PricewaterhouseCoopers ("PwC"), initiated discussions with, and solicited financing proposals from, potential exit lenders. On November 20, 2007, to assist the Debtors in inducing potential lenders to undertake the expensive work required for an exit financing commitment, the Court entered an order permitting the Debtors to pay the due diligence fees or expenses of potential exit lenders up to a maximum amount of \$500,000 per lender and \$1.5 million in the aggregate for reasonable expenses incurred in connection with financial and legal due diligence and development of exit financing proposals to the extent such proposals relate to taking out the DIP loan upon the Debtors' emergence from chapter 11.

8. The Debtors, in conjunction with PwC, identified ten lenders that the Debtors believed could provide competitive exit financing terms. These lenders included the Debtors' debtor in possession financing lenders, certain of SCL's existing bondholders, and lenders that had experience financing container leasing companies. All of these lenders entered into nondisclosure agreements and participated in a preliminary round of due diligence.

9. After conducting initial due diligence, three of the ten lenders provided letters of intent to SCL. These three lenders were subsequently invited to attend a presentation by SCL's management. Additionally, these lenders received further diligence materials, including certain diligence with respect to GE SeaCo SRL, SCL's joint venture with GE Capital and SCL's principal asset.

10. At the conclusion of this diligence process, SCL requested that each lender provide a revised letter of intent setting forth more-detailed terms of its exit financing proposal. After carefully analyzing the three revised letters of intent received, the Debtors, in consultation with their legal advisors and PwC, determined that the terms embodied in Fortis' letter of intent represented the best exit financing terms reasonably available to the Debtors, including, notably, the most favorable pricing. After entering into a revised letter of intent, SCL and the Exit Lenders engaged in intensive, arm's-length negotiations with respect to the exit financing commitment. While conducting negotiations with the Exit Lenders, the Debtors regularly apprised the Creditors' Committees of the status and progress of the negotiations. On November 3, 2008, after extensive discussions between the parties, the Exit Lenders provided SCL with the Commitment Letter.

The Exit Facility

11. Under the Commitment Letter and the term sheet attached thereto, the Exit Lenders have agreed to provide SCL with exit financing consisting of a term loan facility in the amount of up to \$150 million (the "Exit Facility").

12. The material terms of the Exit Facility contemplated under the Commitment Letter and the term sheet attached thereto are as follows:²

Borrower	SeaCo Finance Ltd.
Guarantors	(i) Sea Containers SPC Ltd. ("Asset SPC"), (ii) Quota Holdings Ltd. ("Quota Holdings"), and (iii) Newco America.
Topco	A limited purpose entity that may be formed on or prior to the Funding Date in order to acquire the shares of Borrower. If established, Topco will be an additional guarantor of the Term Loan Facility and will pledge its shares in Borrower.

² Capitalized terms used in the summary of the Commitment Letter that are not defined herein shall have the meaning given in the Commitment Letter. To the extent of any inconsistency between the summary of the Commitment Letter set forth herein and the Commitment Letter, the terms and conditions of the Commitment Letter shall govern.

Administrative Agent	Fortis Bank (Nederland) N.V.
Lenders	Fortis (or one or more of its affiliates) and DVB (or one or more of its affiliates). Fortis and DVB reserve the right to arrange after the Commitment Date a syndicate of financial institutions and institutional lenders.
Term Loan Facility	Aggregate principal amount of up to \$150 million will be available pursuant to a five-year term loan facility.
Maturity	The fifth year anniversary after the Funding Date.
Purpose	Proceeds of the Term Loan Facility shall be used (i) to repay in full the Debtors' DIP loan, (ii) to pay all fees (including Commitment Fees), costs and expenses incurred in connection with the Term Loan Facility, (iii) for working capital, capital expenditures and other lawful corporate purposes of the Borrower, and (iv) to make a loan to SCL to fund the costs incurred in connection with the liquidation of SCL and its respective subsidiaries.
Security	Each of the Borrower and Asset SPC shall grant the Administrative Agent, for the benefit of the Lenders, valid and perfected first priority liens and security interests in all of the present and future property and assets, real and personal, of the Borrower and Asset SPC and proceeds thereof, subject to customary and negotiated exceptions; <u>provided</u> that neither the Borrower or Asset SPC shall grant any lien or security interest in (i) the shares of Quota Holdings or Newco America or (ii) any of their rights under any agreement with GE Capital or any affiliate thereof other than any of their rights to payment under the AREMA and the MLA Termination Agreement. Newco America shall grant the Administrative Agent, for the benefit of the Lenders, valid and perfected first priority liens and security interests in all of the container chassis it holds and rights to payment under the Equipment Management Agreement of GE SeaCo America LLC. Additionally, subject to customary and negotiated exceptions, (i) Quota Holdings will not grant any security interests in the Class A Quotas in GE SeaCo, the Class B Quotas in GE SeaCo, the Class E Quotas in GE SeaCo, or the Class F Quotas in GE SeaCo and (ii) Newco America will not grant any security interests in its interests in GE SeaCo America and (iii) Borrower will not grant security interests in its interest in Quota Holdings.
Interest Rates	<p>The interest rates per annum applicable to the Term Loan Facility will be LIBOR <i>plus</i> the Applicable Margin (as hereinafter defined) or, under the circumstances outlined in the penultimate paragraph of this section, the Base Rate (to be defined as the highest of (x) the Citibank N.A. prime rate, (y) the Federal Funds rate <i>plus</i> 0.50%) and (z) the highest actual funding costs incurred by an Initial Lender in obtaining monies needed to fund or maintain an investment in a loan (as such actual funding costs shall be determined by such Initial Lender in accordance with its normal practices and shall be applied in a non-discriminatory manner) <i>plus</i> percentage per annum determined as follows: (i) at all times from the Funding Date to the six month anniversary of the Funding Date, 6.40%; or (ii) at all times not covered by clause (i), one of the following: (A) if Effective Advance Rate is greater than 50%, 6.15%; (B) if the Effective Advance Rate is equal to or less than 50% but greater than or equal to 40%, 3.65%; or (C) if the Effective Advance Rate is less than 40%, 2.65%. During the continuance of any default under the loan documentation, interest rate shall increase by 2.0% per annum.</p> <p>The Borrower may select an interest period of one month or three months for LIBOR loans. Interest shall be payable at the end of the selected interest period.</p> <p>In the event, three Business Days prior to the commencement of any interest</p>

	<p>period relating to any LIBOR rate loan, (a) the Administrative Agent shall determine (which determination shall be conclusive and binding on the Borrower) that adequate and reasonable methods do not exist for ascertaining LIBOR that would otherwise determine the rate of interest to be applicable to any LIBOR rate loan during any interest period, or (b) any Initial Lender advises the Administrative Agent that LIBOR for such interest period will not adequately and fairly reflect the cost to such Initial Lender of making or maintaining their LIBOR rate loans during such period (which determination by such Lender shall be conclusive and binding), the Administrative Agent shall forthwith give the LIBOR Notice, which shall be conclusive and binding, by facsimile or other electronic communication of such determination to the Borrower. In such event (i) all loan requests with respect to LIBOR rate loans shall be automatically withdrawn and shall be deemed a request for a Base Rate Loan, and (ii) all LIBOR rate loans will automatically, on the last day of the then current interest period relating thereto, become a Base Rate Loan, and the obligation of all Lenders to make LIBOR rate loans shall be suspended until such affected Initial Lender(s) determines that the circumstances giving rise to such suspension no longer exist, whereupon such affected Initial Lender shall promptly so notify the Administrative Agent and the Borrower and all Base Rate loans shall automatically convert to LIBOR rate loans on the last day of the then current interest period.</p>
<p>Fees</p>	<p>The following fees are required to be paid:</p> <ul style="list-style-type: none"> • <u>Upfront Fee</u>: 1.75% of the initial principal amount under the Term Loan Facility to be payable by the Borrower on the Funding Date to the Administrative Agent on behalf of the Lenders; • <u>Administrative Agent Fee</u>: \$75,000 fixed annual fee payable annually in advance, commencing on the Funding Date; • <u>Commitment Fee</u>: 3% per annum of the Facility Amount on the Commitment Date for the period between the Commitment Date and the earlier of (i) the Funding Date and (ii) delivery by SCL or the Borrower to the Administrative Agent of written notice that SCL or the Borrower, as applicable, has elected to terminate the commitment with respect to the Term Loan Facility; <u>provided</u> that (i) the Commitment Fee shall cease to accrue upon the Termination Date and (ii) a Lender shall not be entitled to receive its share of the Commitment Fee if such Lender fails to fund its commitment (A) after satisfaction or waiver of all of the Conditions Precedent to Funding set forth in this Summary of Indicative Terms and Conditions or (B) as a result of the occurrence of the circumstances described in clause (xiii) of the section entitled "Conditions Precedent to Funding"; • <u>Termination Fee</u>: Amount equal to (i) 75% of the Upfront Fee, calculated for this purpose on the amount of the commitment minus (ii) the amount of the Work Fee that has been paid prior to the effective date of a plan in which the Borrower or the Guarantors obtain exit financing other than with the Administrative Agent and the Lenders; <u>provided</u> that the Borrowers or the Guarantors obtain such alternative financing within 12 months of execution of the Commitment Letter; and • <u>Work Fee</u>: \$250,000. <p>Neither the Administrative Agent nor the Lenders shall have the right to an Upfront Fee or an Administrative Agent Fee if the Funding Date does not occur. The Work Fee shall be credited as a reduction of any Upfront Fee or</p>

	Termination Fee that may be payable.
Conditions Precedent to Funding	Usual and customary conditions for transactions of this type, including, without limitation, absence of material adverse effect in the international or any relevant domestic syndicated loan, debt, bank or capital market, confirmation of the Plan, approval of the Bermuda Scheme of Arrangement, delivery of final sources and uses statement, and absence of material change of composition and profile of Containers.
Representations and Warranties	Usual and customary for transactions of this type and subject to appropriate carveouts, materiality and knowledge qualifiers and other exceptions and limitations.
Covenants	Usual and customary covenants, subject to appropriate carveouts, for transactions of this type, including, without limitation, the delivery of financial statements, access to books and records, restrictions on liens and additional indebtedness, and certain consultation rights, and reporting requirements.
Events of Default	Usual and customary in transactions of this type (subject as appropriate to carveouts, materiality and knowledge qualifiers and other exceptions and limitations and subject to cure provisions), including, without limitation, nonpayment of principal, interest and fees and failure to perform or observe covenants.
Remedies Upon an Event of Default	<p>Upon the occurrence of an Event of Default, the Lenders shall be entitled to accelerate the payment of all obligations owing under the Term Loan Facility and instruct the Borrower to sell or otherwise liquidate the owned Containers, any finance leases, and the Repatriation Note with any proceeds received on account of such sales or liquidations being applied first to satisfy the obligations owing under the Term Loan Facility.</p> <p>If, on the date that is the earlier to occur of (i) 120 days after the date of Borrower's receipt of the notice instructing Borrower to sell the Containers and (ii) the twentieth day after the date on which all, or substantially all, of the Containers have been sold (provided that the date set forth in clause (ii) shall not be earlier than seventy five (75) days after the date on which such Event of Default occurred) all of the obligations owing to the Lenders under the Term Loan Facility have not been paid in full, the Administrative Agent, on behalf of the Lenders, shall notify the Borrower in writing if the Lenders desire to (A) subject to certain conditions and restrictions, convert any deficiency amount to common stock in the Borrower (or Topco, if applicable) (the "Equity Conversion Option") or (B) direct that the the Class A Quotas (or, if applicable, the Class F Quotas) and Class B Quotas owned by Quota Holdings and Newco America's interests in the GE SeaCo America be sold, in each case, in accordance with the operative GE SeaCo definitive settlement documents (the "Quota Sale Option"). The Administrative Agent and the Lenders shall be entitled to exercise only one of the Equity Conversion Option or the Quota Sale Option.</p> <p>So long as each Credit Party is complying with its obligations under this section entitled "Event of Default" in relation to the liquidation of assets and, if applicable, conversion of debt to equity, neither the Administrative Agent nor the Lenders shall commence enforcement actions prior to the Container Liquidation Date against (A) Quota Holdings with respect to the Class A Quotas (or, if applicable, the Class F Quotas) or the Class B Quotas owned by Quota Holdings or (B) Newco America with respect to the GE SeaCo America Interests, or (C) Borrower with respect to Borrower's shares in Asset SPC or Newco America. In all events, any sale, transfer or other disposition of the</p>

	Quotas, the GE SeaCo America Interests, the stock of Quota Holdings, or the stock of Newco America (by judicial sale or otherwise) by the Lenders and the Administrative Agent shall be conducted or made in accordance with, and pursuant to, the procedures set forth in Section 5.4 of the Members' Agreement (or the equivalent provision of the Operating Agreement in the case of the GE SeaCo America Interest) and otherwise in accordance with the provisions set forth in the Members' Agreement or the Operating Agreement, as the case may be, applicable to such sales.
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RELIEF REQUESTED

13. By this Motion, the Debtors seek Court authority, pursuant to Bankruptcy Code § 363, authorizing and approving SCL's (a) entry into the Commitment Letter and (b) payment of certain fees related therewith.

BASIS FOR RELIEF

14. Bankruptcy Code § 363(b)(1) provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under § 363(b)(1), a court generally should approve a non-ordinary course transaction if the proposed use of estate assets is within the debtor's reasonable business judgment. *See e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (stating that the court generally defers to the trustee's judgment so long as there is a legitimate business justification); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (noting that courts have applied the "sound business purpose" test to evaluate motions brought pursuant to section 363(b)); *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (same).

15. The Debtors believe there is ample justification for SCL's entry into, and performance under, the Commitment Letter and all other documents necessary and appropriate to consummate the Exit Facility. First and foremost, no party disputes that a sizable exit facility is necessary for the Debtors to emerge from chapter 11 and that securing such exit financing is a necessary condition to effect the terms of the Plan. Second, faced with a highly challenging

lending environment in which many companies are unable to obtain adequate financing, the Debtors and their advisors worked arduously to ensure that the Debtors received the financing necessary to exit these chapter 11 cases.

16. Moreover, the terms of the Exit Facility, as reflected in the Commitment Letter, are reasonable and the best available to the Debtors and were finalized after lengthy negotiations and thorough consideration of numerous financing arrangements from the three institutions submitting final proposals. Accordingly, the Debtors believe that they should be authorized to enter into the Commitment Letter, to perform their obligations thereunder, and to pay the required fees, expenses and other obligations. Absent such approval, the Debtors will be hard-pressed to maintain their exit timetable, which provides for a confirmation hearing in November 2008.

17. The Debtors are seeking approval of the fee provisions of the Commitment Letter in advance of confirmation of the Plan because the Exit Lenders have required such approval as a condition to consummating the transaction. On the advice of their financial advisors, the Debtors submit that the terms embodied in the Commitment Letter represent the best terms reasonably available to the Debtors in the current credit market.

18. For all the reasons set forth in this Motion, the Debtors respectfully submit that SCL's entry into the Commitment Letter and payment of fees set forth thereto is within the Debtors' sound business judgment and is in the best interests of the Debtors' estates and their creditors.

NOTICE

19. Notice of this Motion has been provided to the Office of the United States Trustee, the SCL Committee, the SCSL Committee, counsel to Fortis, all known secured

creditors 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.

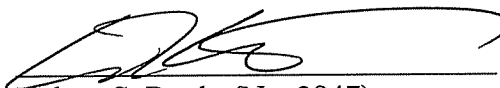
NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form attached hereto as Exhibit B, (a) authorizing (i) SCL's entry into the Commitment Letter and (ii) payment of the fees set forth in the Commitment Letter and (b) granting such other relief as may be just and proper.

Dated: Wilmington, Delaware
November 3, 2008

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