

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

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|--|---|--------------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| THE ROCKPORT COMPANY, LLC, <i>et al.</i> , |) | Case No. 18-_____ (___) |
| |) | |
| Debtors. ¹ |) | Joint Administration Requested |
| |) | |
| |) | |

**MOTION TO AUTHORIZE ROCKPORT BLOCKER, LLC
TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

The Rockport Company, LLC (“**Rockport**”) and certain of its affiliates that are debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned Chapter 11 cases (the “**Chapter 11 Cases**”) hereby file this motion (this “**Motion**”) for entry of an order authorizing Rockport Blocker, LLC (“**Blocker**”), to serve as foreign representative on behalf of the Debtors in any foreign country, including Canada (the “**Foreign Representative**”). This Motion is supported by the *Declaration of Paul Kosturos in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) filed concurrently herewith.² In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court*

¹ The debtors and debtors in possession in these cases and the last four digits of their respective Employer Identification Numbers are: Rockport Blocker, LLC (5097), The Rockport Group Holdings, LLC (3025), TRG 1-P Holdings, LLC (4756), TRG Intermediate Holdings, LLC (8931), TRG Class D, LLC (4757), The Rockport Group, LLC (5559), The Rockport Company, LLC (5456), Drydock Footwear, LLC (7708), DD Management Services LLC (8274), and Rockport Canada ULC (3548). The debtors’ mailing address is 1220 Washington Street, West Newton, Massachusetts 02465.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the First Day Declaration

for the District of Delaware, dated February 29, 2012. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

A. The Chapter 11 Cases

3. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing the Chapter 11 Cases for relief under Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, *et. seq.* (the “**Bankruptcy Code**”). The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

5. Additional information about the Debtors’ businesses and affairs, capital structure and prepetition indebtedness and the events leading up to the Petition Date can be found in the First Day Declaration, which is incorporated herein by reference.

B. The Debtors’ Business

6. The Debtors are a leading global designer, distributor, and retailer of comfort footwear in more than fifty markets worldwide, including Canada. Rockport is the main operating company within the Debtors’ corporate structure. Debtor Rockport Canada ULC

(“**Rockport Canada**”) is the operating entity for the Debtors’ business in Canada. Rockport Canada is a wholly-owned subsidiary of Rockport, all material decisions regarding Rockport Canada and its operations are made by Rockport personnel in the United States, and substantially all of its books and records are located in the United States. As a result, the center of main interest for Rockport Canada is located in the United States.

7. Following the filing of these Chapter 11 Cases, Blocker intends to commence an ancillary proceeding (the “**Ancillary Proceeding**”) under Part IV of the Companies’ Creditors Arrangement Act (“**CCAA**”) in the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”). Blocker, as the proposed foreign representative for the Debtors in the Ancillary Proceeding, intends to seek recognition of these Chapter 11 Cases and certain orders entered in the Chapter 11 Cases.

RELIEF REQUESTED

8. By this Motion, Blocker seeks entry of an order (the “**Proposed Order**”), pursuant to Section 1505 of the Bankruptcy Code, authoring Blocker to: (i) act as the foreign representative of the Debtors; (ii) seek recognition by the Canadian Court of the Chapter 11 Cases and of certain orders made by this Court in the Chapter 11 Cases from time to time; (iii) request that the Canadian Court lend assistance to this Court; and (iv) seek any other appropriate relief from the Canadian Court that is just and proper.

BASIS FOR RELIEF

9. Section 1505 of the Bankruptcy Code allows a debtor in possession to obtain a court order recognizing the debtor in possession as the foreign representative of the debtor’s estate, in order to submit a petition to a foreign court requesting recognition of the debtor’s Chapter 11 case. Specifically, Section 1505 of the Bankruptcy Code provides:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505. Section 1505 only applies to cases filed under chapters other than Chapter 15 of the Bankruptcy Code because a Chapter 15 case does not create an estate under Section 541. For Chapter 11 cases, authority to act as a foreign representative may be granted to the debtor in possession because a “trustee,” as defined by Section 1502(6) of the Bankruptcy Code, “includes . . . a debtor in possession in a case under any chapter of this title.” *Id.* § 1502(6).

10. The purpose of Section 1505 is to allow a debtor to petition a foreign court for recognition of its Chapter 11 case, and to request that the foreign court cooperate with and lend assistance to the debtor and the United States Bankruptcy Court in meeting the objectives of both Chapter 15 of the Bankruptcy Code and the Model Law, on which Chapter 15 is based. These objectives are stated in Section 1501 of the Bankruptcy Code:

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Id. § 1501.³ Thus, the authority sought by a debtor under Section 1505 is specific to seeking recognition of the debtor's Chapter 11 case and fostering cooperation between the bankruptcy court and foreign courts.

11. An explicit grant of authority to act as the foreign representative is meant to facilitate the process of petitioning for recognition in a foreign court. For this reason, Article 5 of the Model Law provides that the person or body administering a reorganization or liquidation in a country that has enacted the Model Law (an “**Enacting State**”) “is authorized to act in a foreign State on behalf of a proceeding under . . . the laws of the enacting State relating to insolvency.” Model Law Art. 5. The Guide to Enactment explains that

[t]he lack of such authorization in some States has proved to be an obstacle to effective international cooperation in cross-border cases. An [E]nacting State in which administrators are already equipped to act as foreign representatives may decide to forgo inclusion of article 5, although even such a[n Enacting] State might

³ The preamble of the Model Law is virtually identical:

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) Protection and maximization of the value of the debtor's assets; and

(e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

want to keep article 5 in order to provide clear statutory evidence of that authority.

See Guide to Enactment ¶ 84. Clear evidence of a Chapter 11 debtor's authority to act in a foreign country is particularly necessary because a Chapter 11 case commences immediately upon the filing of a petition, with no order signed by the court that explicitly appoints the debtor as the fiduciary or trustee of the debtor's estate. The fact that a Chapter 11 debtor has this authority by virtue of being a debtor in possession may not be persuasive to a foreign court.

12. Moreover, absent a court order, a Chapter 11 debtor may find it difficult to satisfy the requirements of a petition for recognition. These requirements are substantially similar in most countries that have adopted the Model Law, including Canada. Specifically, Section 46 of the CCAA (which is similar to Chapter 15) provides that an application for recognition of a foreign proceeding made by a foreign representative shall be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

CCAA § 46. Because of the differences between Chapter 11 of the Bankruptcy Code and most other national insolvency laws, a Chapter 11 debtor generally does not have the type of evidence specified above. Congress therefore modified the text of Article 5 of the Model Law when incorporating it into Section 1505 of the Bankruptcy Code. The legislative history to Section 1505 explains the reason for this variance in the text as codified by Chapter 15:

While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law. Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision.

See H.R. Rep. No. 109-31, pt. 1, 108 (2005), as reprinted in 2005 U.S.C.C.A.N. 88, 171.

13. The relief sought by this Motion is, therefore, the first in a two-step process. If granted, Blocker expects to immediately submit an application to the Canadian Court that seeks recognition of the Chapter 11 Cases as foreign main proceedings.

14. Consistent with one of the key objectives of the Model Law—to provide “[c]ooperation between the courts and other competent authorities . . . involved in cases of crossborder insolvency” (Model Law, preamble)—the application for recognition that Blocker will file, if this Motion is granted, will seek to obtain the assistance of the Canadian Court. If the Canadian Court decides to recognize the Chapter 11 Cases as foreign main proceedings, the Debtors will benefit from the protection of an automatic stay against commencement or continuation of actions or proceedings concerning the Debtors’ assets, rights, obligations, and liabilities in Canada. Even if the Canadian Court holds that the Chapter 11 Cases are not foreign main proceedings, the Canadian Court has discretion to order a stay. In addition, the foreign representative can seek a wide range of relief from the Canadian Court where it is necessary to protect the assets of the Debtors or the interests of its creditors in Canada. Based on the foregoing, the Debtors submit that there is sufficient statutory basis and ample justification for this Court to grant the relief requested.

15. Authorizing Blocker to act as the Foreign Representative of the Debtors’ estates is appropriate. First, such relief permits the Debtors to seek recognition of their Chapter

11 Cases in Canada in order to protect and maximize the value of their global assets. Second, as a Debtor in these Chapter 11 Cases and as the ultimate parent of each Debtor, Blocker is well-positioned to represent the Debtors in foreign proceedings and to serve as a conscientious Foreign Representative to ensure that the Ancillary Proceeding is well-coordinated with these Chapter 11 Cases. Third, authorizing Blocker to serve as the Foreign Representative will avoid the added expense of retaining a third party to act as such. Additionally, the stalking horse purchaser of the Debtors' assets and the DIP Lenders requested the commencement of the Ancillary Proceeding in order to ensure that the various sale-related orders are recognized and enforceable in Canada.

16. This Court is the proper venue in these Chapter 11 Cases because the majority of assets and back-office operations of each Debtor is in the United States. The Debtors' corporate office are located in Newton, Massachusetts, and the majority of the Debtors' directors and officers, including the majority of the directors and officers of Rockport Canada, reside in the United States.

NECESSITY OF IMMEDIATE RELIEF AND WAIVER OF STAY

17. Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting ...(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" Fed. R. Bankr. P. 6003. The Debtors submit that because the Debtors cannot commence the Ancillary Proceeding under the CCAA until a Foreign Representative is appointed, the relief requested by this Motion is necessary to avoid immediate

irreparable harm. Accordingly, the Debtors respectfully submit that, because of the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

NOTICE

18. Notice of this Motion will be given to: (i) Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Brya M. Keilson, brya.keilson@usdoj.gov; (ii) the Debtors' thirty (30) largest unsecured creditors, as identified in their Chapter 11 petitions; (iii) counsel to the Prepetition Noteholders and DIP Note Purchasers, (a) Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, Attn: My Chi To, mcto@debevoise.com, and Daniel E. Stroik, destroik@debevoise.com, and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Bradford J. Sandler, bsandler@pszjlaw.com and James E. O'Neill, joneill@pszjlaw.com; (iv) counsel to the Collateral Agent and DIP Notes Agent, (a) Holland & Knight LLP, 131 South Dearborn Street, 30th Floor, Chicago, Illinois 60603, Attn: Joshua Spencer, joshua.spencer@khlaw.com, and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Bradford J. Sandler, bsandler@pszjlaw.com and James E. O'Neil, joneill@pszjlaw.com; (v) counsel to the ABL Administrative Agent and ABL DIP Agent, (a) Riemer Braunstein LLP, Three Center Plaza, 6th Floor, Boston, Massachusetts, 02108, Attn: Donald E. Rothman, drothman@riemerlaw.com, Lon M. Singer, lsinger@riemerlaw.com, Jaime Rachel Koff, jkoff@riemerlaw.com, and Jeremy Levesque, jlevesque@riemerlaw.com, and (b) Ashby & Geddes, P.A., 500 Delaware Ave., 8th Floor, Wilmington, Delaware 19801, Attn: Gregory A. Taylor, GTaylor@ashbygeddes.com; (vi) counsel to the Stalking Horse Bidder, (a) Goodwin Procter LLP, 100 Northern Avenue, Boston, Massachusetts 02210, Attn: Jon Herzog, jherzog@goodwinlaw.com and Joseph F. Bernardi, Jr., jbernardi@goodwinlaw.com, (b) Goodwin Procter LLP, The New York Times Building, 620

Eighth Avenue, New York, New York 10018, Attn: William Weintraub, wweintraub@goodwinlaw.com, and (c) Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, Delaware 19899, Attn: David Fournier, fournierd@pepperlaw.com and Evelyn Meltzer, meltzere@pepperlaw.com; and (vii) all parties entitled to notice pursuant to Local Rule 9013-1(m). A copy of this Motion and any order approving it will also be made available on the Debtors' case information website located at <http://www.cases.primeclerk.com/rockport>. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and granting the Debtors such other and further relief as may be just.

Dated: May 14, 2018
Wilmington, Delaware

/s/ Mark D. Collins

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Proposed Counsel to the Debtors

Exhibit A

Proposed Order

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

| | | |
|--|---|--------------------------------|
| |) | |
| |) | Chapter 11 |
| In re: |) | |
| |) | Case No. 18-_____ (___) |
| THE ROCKPORT COMPANY, LLC, <i>et al.</i> , |) | |
| |) | Joint Administration Requested |
| Debtors. ¹ |) | |
| |) | Re: Docket No. ___ |

**ORDER AUTHORIZING ROCKPORT BLOCKER, LLC
TO ACT AS FOREIGN REPRESENTATIVE OF THE DEBTORS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), pursuant to Section 1505 of the Bankruptcy Code, for authorization for Rockport Blocker, LLC to act as the foreign representative of the Debtors in Canada in order to seek recognition of the Chapter 11 Cases on behalf of the Debtors, and to request that the Ontario Superior Court of Justice (the “**Canadian Court**”) lend assistance to this Court in protecting the Debtors’ property, and to seek any other appropriate relief from the Canadian Court that the Canadian Court deems just and proper, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and it appearing that no other or further

¹ The debtors and debtors in possession in these cases and the last four digits of their respective Employer Identification Numbers are: Rockport Blocker, LLC (5097), The Rockport Group Holdings, LLC (3025), TRG 1-P Holdings, LLC (4756), TRG Intermediate Holdings, LLC (8931), TRG Class D, LLC (4757), The Rockport Group, LLC (5559), The Rockport Company, LLC (5456), Drydock Footwear, LLC (7708), DD Management Services LLC (8274), and Rockport Canada ULC (3548). The debtors’ mailing address is 1220 Washington Street, West Newton, Massachusetts 02465.

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

notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Rockport Blocker, LLC is hereby authorized (a) to act as the foreign representative of the Debtors, (b) to seek recognition by the Canadian Court of the Chapter 11 Cases and of certain orders made by the Court in the Chapter 11 Cases from time to time, (c) to request that the Canadian Court lend assistance to this Court, and (d) to seek any other appropriate relief from the Canadian Court that the Debtors deem just and proper.
3. This Court requests the aid and assistance of the Canadian Court to recognize these Chapter 11 Cases as a “foreign main proceeding” and Rockport Blocker, LLC as a “foreign representative” pursuant to the Companies’ Creditors Arrangement Act and to recognize and give full force and effect to this Order in all provinces and territories of Canada.
4. This Court requests the assistance of the Canadian Court to act in aid of and be auxiliary to this Court in relation to the protection of the Debtors’ assets in Canada, including by giving effect to the automatic stay under Section 362(a)d of the Bankruptcy Code in Canada.
5. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the Motion or otherwise deemed waived.

6. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

7. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: _____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE