

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
HARTFORD COMPUTER HARDWARE,) Case No. 11-49744 (PSH)
INC., *et al.*,¹) (Joint Administration Pending)
)
Debtors.) Hon. Pamela S. Hollis

**DEBTORS’ MOTION PURSUANT TO SECTION 1505 OF THE BANKRUPTCY CODE
FOR AUTHORIZATION OF HARTFORD COMPUTER HARDWARE, INC.
TO ACT AS THE DEBTORS’ FOREIGN REPRESENTATIVE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this motion for entry of an order authorizing Hartford Computer Hardware, Inc. (“HCH”) to take the following actions: (i) act as the foreign representative of the Debtors; (ii) seek recognition by the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”) of these Chapter 11 Cases (as herein defined) and of certain orders of the Court made from time to time in these Chapter 11 Cases; (iii) request that the Ontario Court lend assistance to this Court; and (iv) seek any other appropriate relief from the Ontario Court that the Debtors deem just and proper. In support of this motion, the Debtors submit the Declaration of Brian Mittman in Support of Chapter 11 Petitions and First Day Motions and Applications, sworn to on the date hereof (the “Declaration in Support of First Day Relief”), and respectfully represent as follows:

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).



INTRODUCTION

1. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") commencing the above captioned chapter 11 cases (the "Chapter 11 Cases") and filed various motions and applications seeking certain typical "first day" orders.

2. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee(s) has been appointed in these cases.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' chapter 11 cases and this motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

5. The statutory bases for the relief requested herein are sections 105(a), 541, and 1505 of the Bankruptcy Code.

BACKGROUND

6. The Debtors are one of the leading providers of repair and installation services in North America for consumer electronics and computers. The Debtors operate in three complementary business lines: parts distribution and repair, depot repair, and onsite repair and installation. Products serviced include laptop and desktop computers, commercial computer systems, flat-screen television, consumer gaming units, printers, interactive whiteboards, peripherals, servers, POS devices, and other electronic devices. The Debtors, though all U.S. companies, operate a significant portion of their business in Markham, Ontario, Canada.

7. A more detailed explanation of the Debtors' businesses and operations, and the events leading to the commencement of these cases, is provided in the Declaration of Brian

Mittman filed in Support of First Day Relief contemporaneously herewith and which is incorporated herein by reference.

8. Following the filing of the Chapter 11 Cases, Debtor Hartford Computer Group, Inc. (“HCG”) intends to commence an ancillary proceeding (the “Ancillary Proceeding”) under Part IV of the *Companies’ Creditors Arrangement Act* (“CCAA”) in the Ontario Court. HCH, 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.

9. In connection with the Ancillary Proceeding, the appointment of an information officer (“Information Officer”) is standard practice. The Information Officer serves as an independent party to the Ancillary Proceeding by relaying information between HCH and the court. By way of example, the Information Officer:

- a. reports to the court at least once every three months with respect to the status of the CCAA proceedings and the status of the Chapter 11 Cases, which reports may include information relating to Debtors’ property, the business, or such other matters as may be relevant to the proceedings;
- b. obtains full and complete access to Debtors’ property, including the premises, books, records, data, including data in electronic form, and other financial documents of Debtors, to the extent that is necessary to perform its duties; and
- c. shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations.

10. HCH intends to seek the appointment of FTI Consulting Canada Inc. as the Information Officer.

11. Under the Ancillary Proceeding, HCH is responsible for paying the fees of the Information Officer and its independent counsel. Debtors' debtor-in-possession lender, Delaware Street Capital Master Fund, L.P. has agreed to fund the payment to the Information Officer pursuant to the budget submitted with the Debtors' Motion requesting authority for Debtors to enter into a senior secured post-petition loan agreement, pursuant to section 364 of the Bankruptcy Code, which is being filed contemporaneously herewith.

RELIEF REQUESTED

12. By this motion, Hartford seeks authorization, pursuant to section 1505 of the Bankruptcy Code, to take the following actions: (i) act as the foreign representative of the Debtors; (ii) seek recognition by the Ontario Court of the Chapter 11 Cases and of certain of the orders made by the Court in the Chapter 11 Cases from time to time; (iii) request that the Ontario Court lend assistance to this Court; and (iv) seek any other appropriate relief from the Ontario Court that is just and proper.

BASIS FOR RELIEF REQUESTED

13. 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.

14. 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 for the value of the debtor's assets; and

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

11 U.S.C. § 1501.² 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.

² 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;

15. A 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 including of article 5, although even such a[n Enacting] State might 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 explicitly appointing 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.

16. 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 Article 15.2 of the Model Law) provides that an application for recognition of a foreign proceeding made by a foreign representative shall be accompanied by:

-
- (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.

- (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 foregoing proceeding;
- (b) a certified copy of the instrument, however designed, 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 or supervision.

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

17. The relief sought by this Motion is, therefore, the first in a two step process. If granted, Hartford expects to submit promptly an application to the Ontario Court seeking recognition of the Chapter 11 Cases as foreign main proceedings.

18. 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 cross-border insolvency” (Model Law, preamble) — the application for recognition that Hartford will file if this Motion is granted will seek to obtain the assistance of the Ontario Court. If the Ontario 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 Ontario Court holds that the Chapter 11 Cases are not foreign main proceedings, the Ontario Court has discretion to order a stay. In addition, the foreign representative can seek a wide range of relief from the Ontario 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.

NOTICE

19. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. The Debtors will provide notice of this Motion to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Debtors' secured lenders; (c) the creditors holding the thirty (30) largest unsecured claims on a consolidated basis; and (d) all known taxing authorities that have claims against the Debtors. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

20. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein, and such other and further relief as the Court deems just and proper.

Dated: December 12, 2011

Respectfully submitted,

By: /s/ John P. Sieger

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In re:) Chapter 11
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HARTFORD COMPUTER HARDWARE,) Case No. 11-49744 (PSH)
INC., *et al.*,¹) (Joint Administration Pending)
)
Debtors.) Hon. Pamela S. Hollis

**ORDER AUTHORIZING HARTFORD COMPUTER HARDWARE, INC. TO ACT AS
THE FOREIGN REPRESENTATIVE OF THE DEBTORS**

This matter coming before the Court on the Motion of the Debtors for an pursuant to section 1505 of title 11 of the United States Code (the “Bankruptcy Code”), for authorization for Hartford Computer Hardware, Inc. 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 (Commercial List) (the “Ontario Court”) lend assistance to this Court in protecting the Debtors’ property, and to seek any other appropriate relief from the Ontario Court that the Ontario Court deems just and proper (the “Motion”)²; the Court having reviewed the Motion and the Declaration in Support of First Day Relief; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion having been sufficient under the circumstances; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED as follows:

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).

² Capitalized terms not defined herein shall have the meaning given to them in the Motion.

1. The Motion is GRANTED.

2. All objections to the Motion or the relief requested therein that have not been made, withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.

3. Notice of the Motion was proper, timely, adequate and sufficient under the particular circumstances.

4. Debtor Hartford Computer Hardware, Inc. is hereby authorized (a) to act as the foreign representative of the Debtors in Canada, as such term is defined in the CCAA, (b) to seek recognition by the Ontario 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 Ontario Court lend assistance to this Court, and (d) to seek any other appropriate relief from the Ontario Court that the Debtors deem just and proper.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2011

UNITED STATES BANKRUPTCY JUDGE