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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re Chapter 11
:
THE SINGER COMPANY N.V., Case Nos.: 99-
et al., : through 99-
Debtors. : (Jointly Administered)
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APPLICATION
FOR AN ORDER PURSUANT TO 11 U.S.C. § 105 APPOINTING
RICHARD A. GITLIN AND EVAN D. FLASCHEN
AS JOINT FOREIGN REPRESENTATIVES AND SETTING
THE RESPONSIBILITIES OF THE FOREIGN REPRESENTATIVES

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby apply to this Court on an emergency basis for the entry of an order appointing Evan D. Flaschen and Richard A. Gitlin as Joint Foreign Representatives (the "Foreign Representatives") and setting their responsibilities. In support of this Application, the Debtors respectfully represent as follows:

BACKGROUND

Chapter 11 Filing

1. On September 12, 1999 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors are part of an international group of affiliated companies engaged in business using the tradenames "Singer" and "Pfaff", among others (the "Singer Group").

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

4. On the Petition Date and contemporaneously with the filing of this Application, the Debtors filed a motion requesting that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

5. Also on the Petition Date, the Debtors filed an application (the “Bingham Application”) for an order authorizing the retention of Bingham Dana LLP (“Bingham”) as special international bankruptcy co-counsel.

6. Singer has a long and distinguished history, dating back nearly 150 years through predecessors in interest, and is one of the most widely recognized and respected brands in the world. Singer and its debtor subsidiaries, as well as the majority of Singer operating units that are not chapter 11 debtors and should not be materially affected by the cases (collectively, the “Singer Companies”), are the world’s leading manufacturers and distributors of consumer sewing machines and are international retailers and distributors of consumer durable products, doing business in approximately 150 countries. The Singer Companies’ sales in 1998 were approximately \$1.3 billion. The Singer Companies and the Company's operating affiliates have a distribution network that includes both developed and emerging economies, and consists of over 1,400 retail outlets, approximately 56,700 outlets operated by independent dealers and mass merchants, as well as over 16,000 door-to-door salespersons. The Singer Companies (excluding operating affiliates) employ approximately 16,300 people worldwide.

7. The immediate precipitating events resulting in the Debtors' chapter 11 filings were the September 6, 1999 commencement of reorganization proceedings in Germany by G.M. Pfaff AG, an 80% owned subsidiary of Singer, and the September 7, 1999 chapter 11 filings by Semi-Tech Corporation ("Semi-Tech") and two of its subsidiaries. Neither Semi-Tech and its two debtor subsidiaries nor Pfaff and its subsidiaries are Debtors in these cases.

8. During the past several years, the Company has been adversely impacted by a number of global economic developments that have weakened the Company and created an excessive debt burden. These include the devaluations and resulting economic slowdown in Asia and selected Latin America markets, economic weakness in Europe, the strength of the U.S. dollar and, most recently, the sharp decline in the industrial sewing market. The negative impact of these events was exacerbated by the capital needs flowing from the largely unsuccessful expansion program undertaken by previous management, including a furniture acquisition in the United States and investments in certain emerging markets where the Company was unable to develop the required critical mass as well as the outflow of approximately \$130 million on account of transactions in December 1997 involving the transfer of Pfaff from Akai Holdings Limited (which was an affiliate of Semi-Tech until approximately September 8, 1999) to Singer for \$80 million in cash and additional securities and the transfer of \$50 million on account of a proposed Russian asset transaction

(that was not consummated on the 1997 terms) which was to be held in a depository account under the contract terms but which instead was apparently received by Akai.

9. As a result of these recent events, the Debtors concluded that the commencement of these chapter 11 cases were in the best interests of all stakeholders because it would be difficult, outside of reorganization proceedings for at least the parent, the intermediate holding companies and some troubled operating companies, to take advantage of the improvement in the economic environment that is now occurring. The Debtors believe that the commencement of these chapter 11 cases will enable the Company to move forward with a refocused strategic plan based on its successful distribution channels and core business as a retailer of consumer durables in selected markets in Asia, Southern Europe, Mexico and the Caribbean while the Debtors restructure their burdensome debt load and wholesale sewing products distribution businesses to make them more efficient and profitable.

Application For Order Appointing Foreign Representatives

Need for Cross-Border Cooperation and Coordination

10. Various of the Debtors are incorporated, domiciled or have a principal place of business outside the United States. The same is true for other members of the Singer Group.

11. As of the date hereof, the Debtors have only commenced the within insolvency proceedings and have not commenced any parallel or ancillary

proceedings in any other jurisdiction. The same is true for the other members of the Singer Group, except that on September 6, 1999, G.M. Pfaff AG (“Pfaff”), a majority-owned subsidiary, commenced insolvency proceedings in Germany.

12. At some point, it may be in the best interests of the Debtors’ estates to commence parallel or ancillary foreign insolvency proceedings with respect to some members of the Singer Group. For example, it is likely that Singer do Brasil Indústria e Comércio Ltda. (Singer do Brasil”) will commence *concordata* proceedings in Brazil as early as September 13, 1999. At the same time, in light of the within filings and although the Debtors intend to make every effort to avoid such litigation, it is possible that local insolvency proceedings may be commenced involuntarily against some members of the Singer Group. While Singer's senior management has explained the basis of the chapter 11 cases that have been commenced and the fact that most Singer operating entities have not been filed as debtors in these reorganization cases, it is also possible that local boards of directors may consider it advisable under local law to commence local insolvency proceedings, as was the case with Pfaff.

13. The Singer Group’s operations are spread throughout the world. While some of the local operations may be relatively self-sufficient (such as Pfaff), many of the operations are interdependent on other members of the Singer Group. For example, the Singer Group’s Mexican distribution and retail operations may be dependent on the Singer Group’s Brazilian manufacturing operations.

14. In general, it has long been the policy of US courts, wherever possible, to seek coordination and cooperation with related actions pending in courts outside the United States. In the bankruptcy arena in particular, both the law (e.g., Bankruptcy Code § 304) and the jurisprudence favor coordination and cooperation with foreign insolvency proceedings, both as a matter of international comity and as a matter of value maximization for the benefit of all stakeholders wherever located. The Bankruptcy Court for the Southern District of New York in particular has had extensive experience and success in coordinating and harmonizing cross-border insolvency proceedings, including matters such as Maxwell, Culmer, Nakash, Livent, and many more.

15. In the present case, there is a substantial likelihood that, over time, a number of foreign insolvency proceedings will be commenced in respect of the Debtors and other members of the Singer Group. Thus, this is a classic situation in which cross-border cooperation and coordination will be desirable from an international comity point of view and essential from a value maximization point of view.

The Need for Foreign Representatives

16. Some foreign jurisdictions do not have any legal mechanisms for recognizing or coordinating with non-local insolvency proceedings. However, the majority of jurisdictions do have statutory, jurisprudential or implicit mechanisms for working with non-local insolvency proceedings and the representatives of those proceedings. In the United States, for example, a “foreign representative” of a “foreign proceeding” is recognized both in the statute, see, e.g., Bankruptcy Code §§ 303(b)(4), 304(a), 305(b) & 306, and in the case law, see, e.g., the Maxwell and Nakash chapter 11 cases, in which, respectively, UK joint administrators and the Official Receiver of Israel were recognized as foreign representatives.

17. Bankruptcy Code § 101(24) defines the term “foreign representative” as a “duly selected trustee, administrator, or other representative of an estate in a foreign proceeding.” Under United States bankruptcy law, unless otherwise ordered, the debtor in possession would constitute the “foreign representative” of the US estate for the purposes of seeking recognition internationally of the chapter 11 proceedings. As this court is aware, however, the “debtor in possession” concept, while integral to the US system, is not followed or recognized in many other jurisdictions.

18. US courts have dealt with cross-border cooperation in several ways. For example, in cross-border cases with Canada, the level of experience and

comfort of the courts of the US and Canada with each other is such that the US debtor in possession is able to act in Canadian CCAA in its own right, typically with substantial involvement by the US creditors committee and the Canadian monitor. See, e.g., Livent, Cadillac-Fairview and Loewen.

19. In other circumstances, especially when there is a strong adversarial relationship involved, US courts have sometimes appointed an examiner with special powers to serve as the US estate's foreign representative. In the Maxwell case, for example, the UK administrators obtained an order from the UK High Court ordering Maxwell's directors to dismiss the parallel chapter 11 case filed in the US. In the face of this conflict between the High Court's order and the policies of chapter 11, this Court (Brozman, J.) appointed an examiner with special powers to seek cooperation and harmonization of the UK administration with the US chapter 11. Similarly, in the Nakash case, the US debtor was engaged in a bitter and protracted dispute with the Official Receiver of the State of Israel. This Court (Lifland, J.) appointed an examiner to serve as a facilitator and mediator. Both cases resulted in the negotiation of a "cross-border protocol" that fostered international cooperation and coordination, and both cases were ultimately resolved on an internationally cooperative and consensual basis.

20. The instant chapter 11 cases present a different situation than either of the foregoing examples. The current Debtors are variously incorporated in

Australia, Austria, the Bahamas, Bermuda, Brazil, the British Virgin Islands, Germany, the Isle of Man, Italy, Mexico, the Netherlands, the Netherlands Antilles, South Africa, Spain and Turkey. Other members of the Singer Group are incorporated in such far-flung jurisdictions as Bulgaria, Chile, the Czech Republic, France, Guyana, Hong Kong (China), Japan, Singapore, Vietnam, and many more. Thus, it is highly probable that there will be foreign insolvency proceedings in which the local court and office holder may have statutory or cultural barriers to the recognition of the US debtors in possession as the appropriate foreign representatives of the US estates.

21. At the same time, there are no major adversarial relationships or other sensitive situations relevant to the Debtors' cases. Thus, there is no need at this time for the appointment of an examiner or other independent office holder to serve as a mediator.

22. In these circumstances, the Debtors respectfully request that this Court make a special appointment of Foreign Representatives whose duties would include serving as the official representatives of the Debtors' estates in foreign insolvency proceedings and as the emissaries of this Court in seeking cooperation and harmonization. Consistent with the strong US policy favoring the debtor in possession, the Foreign Representatives should be part of the Debtors' team. At the same time, consistent with the desire to be sensitive to foreign reluctance to recognize the

debtor in possession itself, it may be preferable that the Foreign Representatives not be an “insider” of the Debtors such as a director, officer or employee.

23. The Debtors respectfully suggest that their special international bankruptcy co-counsel satisfies both of the foregoing criteria. They are part of the Debtors’ team, but they are also “outsiders” with duties not only to the Debtors as his clients but also to this Court as officers of the court.

The Foreign Representatives’ Qualifications

24. The Debtors respectfully propose Evan D. Flaschen and Richard A. Gitlin to serve as the Foreign Representatives. Mr. Flaschen is a partner with Bingham and the co-head of Bingham’s 30+ lawyer financial restructuring group. Mr. Gitlin is also a partner with Bingham in its financial restructuring group. Bingham’s experience in international and cross-border insolvency proceedings in described in the Bingham Application. Either Mr. Flaschen or Mr. Gitlin has been the lead lawyer in many of the chapter 11 cases and cross-border matters described in the Bingham Application, and together (with Mr. Gitlin as Examiner and Mr. Flaschen as Examiner’s lead counsel) they were the team for Hebb & Gitlin (Bingham’s predecessor in interest) in the negotiation of the Maxwell and Nakash cross-border insolvency protocols. Mr. Flaschen is also currently serving as lead counsel to the official creditors committee of The Loewen Group, Inc., which also involved a negotiated cross-border insolvency protocol. Mr. Gitlin is also currently serving as lead outside

counsel to the Government of Indonesia’s Jakarta Initiative Task Force, which is charged with assisting in the restructuring of distressed Indonesian corporate credits. The Debtors submit that both Mr. Flaschen and Mr. Gitlin possess the requisite credentials, experience and international profile to fulfill the role of Foreign Representatives.

25. It is, of course, self-evident that the Debtors’ lead counsel, Skadden, Arps, Slate, Meagher & Flom LLP and law practice affiliates (“Skadden”) also has the requisite credentials, experience and international profile to represent fully the interests of the Debtors and the other members of the Singer Group both domestically and abroad. In practice, Skadden will take the lead in international discussions and negotiations, with the Joint Representatives (and the rest of the Bingham team) providing such strategic advice and assistance as may be considered appropriate under the circumstances. However, a key element to the appointment of the two Bingham lawyers as the Foreign Representatives is to assist in those situations where a foreign court or foreign office holder might feel that Skadden, as lead counsel to the Debtors, is too closely linked to the “debtor in possession” concept itself.

Duties of the Foreign Representatives

26. The Debtors propose that the Foreign Representatives be assigned the general mandate to serve as the official United States representatives of

the Debtors' estate in other countries and as this Court's emissaries to other courts in order to seek to coordinate and harmonize any foreign insolvency proceedings ("Relevant Foreign Proceedings") that may now or hereafter be opened or commenced with respect to any of the Debtors or any other members of the Singer Group, in all cases in coordination with Skadden as the Debtors' lead counsel.

27. In furtherance of the foregoing general mandate, the Debtors request that the Foreign Representatives, jointly and severally, be appointed and instructed to:

a. act as the representative of the Debtors' estates, and to seek formal recognition as such, in Relevant Foreign Proceedings;

b. where appropriate under the circumstances, act in the name of the Debtors in Relevant Foreign Proceedings and speak and sign pleadings and documents in the name of, and binding upon, the Debtors;

c. serve as this Court's emissaries to the courts in which Relevant Foreign Proceedings are proceeding, in order to convey to such courts the orders entered by this Court and any requests that this Court may wish to direct to such courts;

d. seek and promote wherever possible the coordination and harmonization of the within chapter 11 proceedings with Relevant Foreign Proceedings involving the Debtors' core businesses with the objective of

preserving and continuing the relevant members of the Singer Group as going concerns in order to maximize their value for the benefit of all stakeholders wherever located;

e. seek and promote wherever possible the coordination of the within chapter 11 proceedings with Relevant Foreign Proceedings involving the Debtors' non-continuing businesses with the objective of maximizing their disposal or liquidation value for the benefit of all stakeholders wherever located;

f. canvas, determine and identify the issues and impediments that must be resolved internationally in order to facilitate reorganization of the core businesses within the Singer Group;

g. work with the representatives and other office holders appointed in Relevant Foreign Proceedings in respect of the foregoing matters; and

h. act as a facilitators in respect of all of the foregoing matters.

i. The duties of the Foreign Representatives in their capacity as such should be limited as set forth above, provided that the Foreign Representatives should have such additional functions as the Court may hereafter direct after notice and a hearing. The duties of the Foreign

Representatives should not be interpreted or construed to limit or diminish in any manner the role and responsibilities of Skadden as the Debtors' lead counsel, both domestically and internationally. The duties of the Foreign Representative should be intended to serve as specific aspects of, and not to be inconsistent with, the duties of the Foreign Representative and Bingham in their capacity as special international co-counsel to the Debtors. As part of the foregoing, the fees and expenses of the Foreign Representative would be included in the fee applications to be submitted by Bingham from time to time.

Need for Emergency Relief

28. While the Debtors hope that this will not be the case, there is a material risk that the commencement of the within chapter 11 cases may result in the opening or commencement of foreign insolvency proceedings with respect to some members of the Singer Group. Such proceedings could be commenced involuntarily by concerned local creditors, or commenced voluntarily by concerned local boards of directors, as was the case with Pfaff. In such circumstances, the Debtors' estates may need to move very quickly to seek cooperation and coordination with such foreign proceedings if value is to be preserved and maximized. Having the Foreign Representatives already appointed and familiar with the situation will greatly facilitate prompt action where needed.

29. As noted above, it is quite likely that Singer do Brasil will be commencing concordata proceedings as early as September 13, 1999, which underscores the urgency to appoint the Foreign Representatives as quickly as possible.

30. Accordingly, the Debtors submit that an emergency situation exists such that this Court should consider the relief requested herein as soon as promptly practicable.

Notice

31. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. Notice of this Application has been given to the U.S. Trustee. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (i) appointing Evan D. Flaschen and Richard A. Gitlin as Joint Foreign Representatives pursuant to Bankruptcy Code § 105, and (ii) granting such other and further relief as the Court may deem proper.

Dated: New York, New York
September 13, 1999

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By: /s/ John Wm. Butler, Jr.
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