

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

In re:

Axios Logistics Solutions Inc., et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 17-10438 (BLS)

Joint Administration Requested

**MOTION FOR ORDER (I) SCHEDULING HEARING ON VERIFIED
PETITION UNDER CHAPTER 15 OF THE BANKRUPTCY CODE FOR
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND FOR ADDITIONAL
RELIEF AND ASSISTANCE UNDER 11 U.S.C. §§105(a), 1507, AND 1521 AND (II)
SPECIFYING FORM AND MANNER OF SERVICE OF NOTICE OF HEARING**

A. Farber & Partners Inc. (the “Receiver”) is the court-appointed receiver and duly authorized foreign representative for Axios Logistics Solutions Inc., Axios Mobile Assets Inc., Axios Mobile Assets, Inc., and Axios Mobile Assets Corp. (collectively, the “Debtors”) in Canadian insolvency proceedings pending in Toronto, Ontario, Canada (the “Canadian Proceeding”).² The Receiver, by and through its undersigned counsel, files this motion (the “Motion”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Notice Order”), (i) approving the notice substantially in the form annexed hereto as Exhibit B (the “Notice”) of the filing of the Petition for Recognition (as defined herein) and providing notice of Receiver’s intent to rely on foreign law; (ii) setting a hearing on the relief sought in the Verified Petition (the “Recognition Hearing”), and (iii) specifying the form and

¹ The last four digits of the Employer Identification Number for each debtor follow in parentheses: Axios Logistics Solutions Inc. (0963); Axios Mobile Assets Corp. (n/a); Axios Mobile Assets Inc. (n/a), and Axios Mobile Assets, Inc. (2778). The Debtors’ headquarters are located at 30 Topflight Drive, Unit 7, Mississauga, Ontario, L5S 0A8, Canada.

² The Canadian Proceeding includes proceedings under both Canadian federal and provincial law. A. Farber & Partners Inc. was appointed as receiver pursuant to Section 243(1) of the Bankruptcy and Insolvency Act (Canada) (the “BIA”) and as receiver pursuant to Section 101 of the Ontario’s Courts of Justice Act (the “CJA”) with respect to Axios Mobile Assets Inc. and the CJA with respect to the remaining above-captioned Debtors.

manner of service of the Notice. In support of the Motion, the Receiver respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these bankruptcy cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper under 28 U.S.C. §§ 1410(1) and (3).

3. The statutory bases for the relief requested herein are sections 105, 1514, and 1515 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”). Relief is also warranted pursuant to Rules 1007, 1011, 2002 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. On the date hereof (the “Petition Date”), the Receiver on behalf of each of the Debtors filed their respective voluntary petitions under Chapter 15 of the Bankruptcy Code (the “Chapter 15 Cases”) and Motion for Provisional and Final Orders Granting Recognition of Foreign Main Proceeding and Certain Related Relief (the “Petition for Recognition”) pursuant to section 1515 of the Bankruptcy Code seeking (i) entry of an Order recognizing the Canadian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code and (ii) relief under sections 1520 and 1521 of the Bankruptcy Code.

5. The detailed factual background relating to the Debtors, the Receiver, and the commencement of the Chapter 15 Cases is set forth in the Declaration of Peter Crawley in Support of Petition for Recognition (the “Crawley Declaration”), filed substantially contemporaneously herewith.

RELIEF REQUESTED

6. By the Motion, the Receiver requests entry of the Proposed Notice Order:

(i) approving the Notice of the filing of the Petition for Recognition and providing notice of the Receiver's intent to rely on foreign law; (ii) setting the Recognition Hearing, and (iii) specifying the form the manner of service of the Notice.

A. Form and Manner of Notice

7. Bankruptcy Rule 2002(q)(1) provides that:

The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

Fed. R. Bankr. P. 2002(q)(1).

8. Although Bankruptcy Rule 2002(q) provides that the parties identified therein must receive at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding, it fails to specify the form and manner in which such notice must be given. Therefore, pursuant to Bankruptcy Rules 2002(m) and 9007, this Court may specify such form and manner of notice.³

9. Consistent with the requirements of Bankruptcy Rule 2002(q)(1), the Receiver proposes serving the Notice, Petition for Recognition and all filings in these Chapter 15 Cases by United

³ Bankruptcy Rules 2002(m) and 9007 provide, among other things, that when notice is to be given under the Bankruptcy Rules, the court shall designate the form and manner in which such notice shall be given (provided the Bankruptcy Rules do not otherwise specify the appropriate form and manner of such notice). See *id.* 2002(m) and 9007.

States first-class mail on the following (collectively, the “Core Notice Parties”)⁴: (i) counsel to Export Development Canada (the prepetition senior secured lender to Axios Canada); (ii) Oleg Belittchenko (the prepetition subordinated secured lender to Axios Corp); (iii) the Canadian Department of Justice; (iv) the United States Internal Revenue Service; (v) counsel to the Debtors in the Canadian Proceeding on behalf of the Debtors; (vi) the Office of the United States Trustee for the District of Delaware; (vii) the Ministry of Finance for the Province of Ontario; (viii) the Office of the United States Attorney for the District of Delaware; (ix) the Delaware Secretary of State; (x) the United States Securities and Exchange Commission; (xi) the Delaware State Treasury; and (xii) any party that files a notice of appearance in the Chapter 15 Cases. Such service upon the Core Notice Parties (the “Core Party Service”) will be completed within three (3) business day of entry of the Proposed Notice Order.

10. Further, the Receiver respectfully proposes serving the Notice via United States first-class mail on the following (collectively, the “Notice Parties”): (i) all persons or bodies authorized to administer foreign proceedings of the Debtors; (ii) all entities against whom provisional relief is being sought under Bankruptcy Code section 1519; and (iii) all parties to litigation pending in the United States in which the Debtors are a party as of the Petition Date.

11. The Receiver respectfully submits that service as set forth above, by United States mail, first-class postage pre-paid, upon the Core Notice Parties and the Notice Parties in accordance with Bankruptcy Rule 2002(k) and (q), constitutes adequate and sufficient notice of the Chapter 15 Cases, the relief sought in the Verified Petition, the time fixed for filing objections to the relief sought in the Verified Petition, and the time, date, and place of the Recognition Hearing.

⁴ Capitalized parties included in the Core Notice Parties shall have the meanings ascribed to them in the Petition for Recognition.

B. Scheduling Recognition Hearing

12. Bankruptcy Code section 1517(c) provides that a petition for recognition shall be decided “at the earliest possible time.” 11 U.S.C. § 1517(c). Moreover, Bankruptcy Rule 1011(b) provides that a party objecting to a petition filed to commence an ancillary proceeding under Chapter 15 of the Bankruptcy Code has twenty-one (21) days from service to respond thereto. See Fed. R. Bankr. P. 1011(b). Similarly, Bankruptcy Rule 2002(q)(1) provides that parties are to be given twenty-one (21) days’ notice of a hearing on a chapter 15 petition. See id. 2002(q)(1).

13. In light of the foregoing requirements, the Receiver respectfully requests that this Court: (i) schedule the Recognition Hearing Date approximately twenty-one (21) days after service of the Petition for Recognition and Notice and (ii) set an appropriate objection deadline in connection therewith. The Receiver further requests that this Court require that all objections or response, if any, to the Petition for Recognition must be made in writing (describing the basis for any objection) and pursuant to the Bankruptcy Code, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and the Bankruptcy Rules, including, without limitation, Bankruptcy Rule 1011, which objection or response must be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon undersigned counsel to the Receiver.

WHEREFORE, the Receiver respectfully requests entry of an order in the form of the Proposed Notice Order attached hereto (a) setting a hearing date for the Recognition Hearing and (b) approving the form of Notice and the manner of service of the Notice and the Verified Petition.

Dated: February 28, 2017
Wilmington, Delaware

/s/ Morgan L. Patterson
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