

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

In re:)	Chapter 15
)	
F.T.K. Worldwide Mfg BVBA a/k/a FTK Worldwide Manufacturing BVBA,)	Case No. 17-13024 ()
)	
Debtor in a Foreign Proceeding. ¹)	
)	

**MOTION OF FOREIGN REPRESENTATIVES FOR ENTRY OF PROVISIONAL AND
FINAL ORDERS GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING
AND CERTAIN RELATED RELIEF PURSUANT TO SECTIONS 362, 1517,
1519, 1520, 1521, AND 105(a) OF THE BANKRUPTCY CODE**

Frans De Roy and Benny Goossens are the duly appointed foreign representatives (the “Foreign Representatives”) of F.T.K. Worldwide Mfg BVBA a/k/a FTK Worldwide Manufacturing BVBA (“FTK” or the “Debtor”) in connection with the pending liquidation proceeding (the “Belgian Proceeding”) filed under the Bankruptcy Act of 1997 (the “Belgian Bankruptcy Act”) in the Commercial Court of Antwerp, Antwerp Division (the “Belgian Court”) in Antwerp, Belgium (“Belgium”). The Foreign Representatives have commenced this chapter 15 case ancillary to the Belgian Proceeding by the filing of (i) the verified chapter 15 petition for recognition under chapter 15 of the Bankruptcy Code (the “Petition”), with accompanying documentation, pursuant to sections 1504 and 1515 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and rule 1007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Foreign Representatives refer the Court to the statements and arguments contained in the *Declaration of Benny Goossens in Support of Chapter 15 Proceedings for F.T.K. Worldwide Mfg BVBA a/k/a FTK Worldwide Manufacturing*

¹ The last four digits of the Debtor’s company number are 7960. The Debtor’s main corporate and mailing address is Schupstraat 9-11, P.O. Box 75, 2018 Antwerp 1.

BVBA (the “Declaration in Support”), which has been filed contemporaneously herewith, and is incorporated herein by reference, and further respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter 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 as of February 29, 2012. This case has been properly commenced pursuant to 11 U.S.C. § 1504 by the filing of a petition for recognition of the Belgian Proceeding pursuant to 11 U.S.C. § 1515 of the Bankruptcy Code.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P), 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 Foreign Representatives 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.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

BACKGROUND

4. The Debtor will provide a brief factual summary but the Court is respectfully referred to the Declaration in Support for a further description of the Belgian Proceeding and the Debtor’s activities, business, corporate organization, capital structure, and circumstances leading to the filing of the chapter 15 case.

5. FTK is a Belgian private limited liability company owned by Lior Kunstler (50%) (“Mr. Kunstler”) and Jean Paul Tolkowsky (50%) (“Mr. Tolkowsky”).

6. FTK, along with Exelco NV ("Exelco"), Exelco North America, Inc. ("Exelco NA"), Ideal Diamond Trading Limited ("Ideal Limited"), Ideal Diamond Trading USA, Inc. ("Ideal USA"), Exelco (Asia) Limited ("Exelco Asia"), and Exelco International Limited ("Exelco International"), was a debtor-in-possession in seven chapter 11 cases pending before this Court which were filed between September 26 and December 3, 2017 (each a "U.S. Proceeding," and collectively, the "U.S. Proceedings"). The U.S. Proceedings were dismissed at a hearing held on December 11, 2017 and an Order confirming the dismissals was entered as of record on December 13, 2017 (the "Dismissal Order"). Thus, at the time of this Motion, there is no pending Chapter 11 case for FTK. The displaced management of FTK, however, has attempted to improperly appeal the dismissal of some of the U.S. Proceedings, including FTK's U.S. Proceeding.

7. FTK is not a subsidiary of any of the foregoing related entities.

8. On December 11, 2017, this Court granted the motion for recognition of Exelco which is a related company to FTK and, on December 12, 2017, entered a final order recognizing the same individuals, Mr. Frans De Roy and Mr. Benny Goossens as the foreign representatives of Exelco. *In re Exelco NV*, Case No. 17-12409 (KG), D.I. 27 (Bankr. D. Del. Dec. 12, 2017).

9. On December 21, 2017, after considering the request for the initiation of a bankruptcy proceeding brought by the Belgian Prosecutor, the Belgian Court granted and issued an order (i) finding FTK to be bankrupt, and (ii) appointing the Foreign Representatives as permanent trustees in bankruptcy of FTK (the "Belgian Commencement Order").²

² It should be noted that Mr. Frans De Roy is especially well-situated in serving as one of the permanent trustees in bankruptcy as Mr. De Roy has previously been involved in the recognition of a Belgian

10. On December 22, 2017, the Belgian Court confirmed the Foreign Representatives' authority to act in all matters on behalf of FTK by specifying that "the trustees in bankruptcy have full powers under the Belgian bankruptcy law in order to manage the bankruptcy of [FTK], to seize, and, take care of the realization of all assets of that company wherever they are located..." (the "Confirmation Order").

RELIEF REQUESTED

11. Pursuant to sections 362, 1517, 1519, 1520, 1521, and 105(a) of the Bankruptcy Code, the Foreign Representatives seek (a) entry of a provisional order (the "Provisional Order") (i) enforcing in the United States, on an interim basis, the Belgian Commencement Order issued on December 21, 2017 by the Belgian Court and the stay under Belgian law, by applying section 362 of the Bankruptcy Code in this chapter 15 case on an interim basis to any parties with regard to Debtor's assets pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and granting such other and further relief as the Court deems just and proper; and (b) a final order (the "Final Order"), after notice and a hearing (i) granting the chapter 15 petition in this case and recognizing the Belgian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States of America (the "U.S.") to the Belgian Commencement Order, including any and all extensions or amendments thereof authorized by the Belgian Court and extending the protections of the Belgian Commencement Order to the Debtor on a final basis, (iii) applying section 362 of the Bankruptcy Code in this chapter 15 case on a final basis to any

insolvency proceeding in the U.S. See In re ABC Containerline N.V., 96-422814-AJG, United States Bankruptcy Court for the Southern District of New York (1996), and associated cases.

parties with regard to Debtor's assets pursuant to section 1521 of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper.

12. A proposed form of order approving the relief requested herein on an interim basis is annexed hereto as **Exhibit A** (the Provisional Order) and, pending a final hearing on the Motion, on a final basis as **Exhibit B** (the Final Order).

BASIS FOR RELIEF

13. As discussed in the Declaration in Support, and similar to the protection provided to a debtor under U.S. bankruptcy law, upon commencement of the Belgian Proceeding, all of FTK's creditors were stayed from taking collection actions against FTK and its assets, wherever located pursuant to Article 16-26 of Chapter II of the Belgian Bankruptcy Act. Furthermore, in accordance with the Belgian Commencement Order and applicable Belgian law, the Foreign Representatives are the sole representatives who can act on behalf of FTK, thus displacing FTK's prior management, directors, officers, shareholders, and their representatives. Notwithstanding the worldwide application of the stay imposed by the Belgian Proceeding, there is a risk that FTK's unauthorized former officers, their designees, appointed representatives, or any other parties acting in similar capacity for FTK may continue to ignore the instructions of the Foreign Representatives and attempt to administer assets under the legal control of the Foreign Representatives. To protect against this risk, the Foreign Representatives commenced this chapter 15 case and, by this Motion, are seeking a final order (i) granting recognition of the Belgian Proceeding, (ii) giving full force and effect in the U.S. to the Belgian Commencement Order, and (iii) applying section 362 of the Bankruptcy Code to this chapter 15 case to, among other things, prohibit parties to take any actions with regard to FTK's assets. The entry of a final order granting such relief would, among other things, recognize the Foreign Representatives as

the lawful representatives of FTK and preserve any unlawful dissipation of FTK's assets as well as extend the protections of the stay to FTK's assets located in the U.S.

14. In addition to the final order, FTK is seeking, on an interim basis, an order (i) applying section 362 to ensure that displaced management's actions with regard to FTK's assets are temporarily stayed; and (ii) enjoining any parties from taking any action with respect to any assets of FTK.

I. The Belgian Proceeding Is Entitled to Recognition as a Foreign Main Proceeding

15. Pursuant to this Motion, the Foreign Representatives seek, pursuant to sections 1517 and 1520 of the Bankruptcy Code, recognition and enforcement of the Belgian Commencement Order. The Belgian Proceeding is entitled to recognition as a "foreign main proceeding" under chapter 15 of the Bankruptcy Code because, among other things:

- a. the Belgian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code because the Belgian Proceeding is in a jurisdiction where the Debtor maintains the center of its main interests;
- b. the Foreign Representatives are each a "person" within the meaning of section 101(41) of the Bankruptcy Code and a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;
- c. the Petition was filed in accordance with sections 1504 and 1509 of the Bankruptcy Code; and
- d. the Petition meets the requirements of sections 1504 and 1515 of the Bankruptcy Code.

A. This Case Concerns a "Foreign Proceeding"

16. The Belgian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code, which provides, in pertinent part, that:

The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or

adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). These requirements are satisfied by the Belgian Proceeding.

17. The Belgian Proceeding is a collective judicial proceeding in Belgium related to insolvency for the purpose of “liquidation.” As set forth in the Declaration in Support, the Belgian Proceeding was commenced on the independent request of the Belgian Public Prosecutor (the “Public Prosecutor”) and the Belgian Court found that FTK stopped paying its obligations as they became due and payable and that its credit was shaken, resulting in the Belgian Court’s adjudication of FTK bankrupt. *See* Belgian Commencement Order, at 2-3. Accordingly, it cannot be seriously disputed that the Belgian Proceeding qualifies as a foreign proceeding under the definition set forth in section 101(23) of the Bankruptcy Code.

B. These Cases were Commenced by a “Foreign Representative”

18. This chapter 15 case was commenced by the duly-appointed “foreign representatives” of FTK within the meaning of section 101(24) of the Bankruptcy Code. That section defines a “foreign representative,” in pertinent part, as a “person or body... authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24). In this case, the Foreign Representatives were appointed and authorized by the Belgian Court to act as FTK’s foreign representatives in accordance with the Belgian Bankruptcy Act. *See* Belgian Commencement Order, at 2-3.

19. Given the Foreign Representatives’ appointment as the trustees-in-bankruptcy of FTK in the Belgian Commencement Order, they qualify as “foreign representatives” of the Debtor. The Court is entitled to presume that the representatives

identified in the Belgian Commencement Order are “foreign representatives” under section 1516(a) of the Bankruptcy Code. Furthermore, this Court has already recognized the same individuals, Mr. Frans De Roy and Mr. Benny Goossens, as foreign representatives in the virtually identical chapter 15 case involving a related company, Exelco NV. *In re Exelco NV*, Case No. 17-12409 (KG), D.I. 27 (Bankr. D. Del. Dec. 12, 2017). Accordingly, the Foreign Representatives are proper “foreign representatives” within the meaning of section 101(24) of the Bankruptcy Code.

C. This Case was Properly Commenced under Chapter 15

20. The Foreign Representatives duly and properly commenced the chapter 15 case, as required by sections 1504 and 1509 of the Bankruptcy Code, by filing the Petition under section 1515(a) accompanied by all documents and information required by section 1515(b) and (c). *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008) (“A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code.”). Because the Foreign Representatives have satisfied the requirements set forth in section 1515 of the Bankruptcy Code, the Foreign Representatives have properly commenced this chapter 15 case.

D. The Belgian Proceeding Should be Recognized as a Foreign Main Proceeding

21. The Belgian Proceeding should be recognized as a “foreign main proceeding,” as defined in sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if “it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Bankruptcy Code section 1516 establishes a rebuttable presumption that the debtor’s registered office is the debtor’s center

of main interests (“COMI”). *See* 11 U.S.C. § 1516. When considering a debtor’s COMI, courts may consider the analogous concept of an entity’s “principal place of business” or “nerve center.” *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets, among other things, to determine the foreign debtor’s COMI. *Id.* at 130. The above factors conclusively support a finding that FTK’s COMI is Belgium. FTK’s headquarters are located in Antwerp, Belgium. All corporate-level decision-making and corporate administrative functions affecting FTK are or were centralized in Antwerp, all of FTK’s principal creditors are located in Belgium, and FTK is formed under the laws of Belgium. As such, the Belgian Proceeding constitutes a foreign main proceeding.

E. The Foreign Representatives are Entitled to an Order Granting Recognition

22. As evidenced above, the Belgian Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, the Foreign Representatives applying for recognition are “foreign representatives” within the meaning of section 101(24) of the Bankruptcy Code, and the Petition meets the requirements of section 1515 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides, in pertinent part, that “[s]ubject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if - (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515.” 11 U.S.C. §1517(a); *see also* H.R. Rep. 109-31(I), 109 Cong., Sess. 2005, *reprinted in* 2005 U.S.C.C.A.N. 88, 169 at 175 (noting, in enacting chapter

15, that the “decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition”). The Foreign Representatives submit that recognizing the Belgian Proceeding as a foreign main proceeding is consistent with the purpose of chapter 15 and U.S. public policy. Accordingly, the Foreign Representatives respectfully submit that the Court should enter an Order recognizing the Belgian Proceeding as a “foreign main proceedings” pursuant to the Bankruptcy Code.

II. Additional Relief Pursuant to Section 1521 Is Warranted and Appropriate

23. In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding, the Foreign Representatives request additional relief pursuant to section 1521 of the Bankruptcy Code to protect FTK’s assets. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant a foreign representative “any appropriate relief,” including “any relief that may be available to a trustee,” subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of chapter 15 and to protect the debtor’s assets and creditors’ interests. 11 U.S.C. § 1521(a)(7). Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representatives request that the Court extend the protections afforded by section 362 of the Bankruptcy Code to FTK such that no parties can take any action with respect to FTK’s assets.

III. Provisional Relief Within the Scope of Section 1519 of the Bankruptcy Code Is Necessary and Appropriate Under the Circumstances

24. By this Motion, the Foreign Representatives seek entry of an interim order enforcing the Belgian Commencement Order by making section 362 of the Bankruptcy Code applicable in this chapter 15 case and enjoining any parties from taking any action with respect

to any assets of FTK on a provisional basis pending entry of the Final Order. As noted above, applying the protections of section 362 of the Bankruptcy Code to the Debtor is crucial to prevent irreparable injury to the value of FTK's assets. Within five (5) days of the December 21, 2017 appointment of the Foreign Representatives as trustees-in-bankruptcy of FTK, the displaced management of FTK filed an appeal of the Dismissal Order on behalf of FTK without obtaining any authorization from the Foreign Representatives who are the sole legal representatives of FTK. The displaced management of FTK continues to interfere with the right of the Foreign Representatives to conduct the affairs of FTK and Exelco. In light of the continued actions by FTK's displaced management to unlawfully control the affairs of FTK, the provisional relief is crucial to ensure the Foreign Representatives' ability to locate, take control, and protect FTK's assets.

25. Pursuant to section 1517, an order recognizing a foreign proceeding may only be entered after notice and a hearing. 11 U.S.C. § 1517(a). Pursuant to Bankruptcy Rule 2002(q), the notice period must be at least 21 days. Fed. R. Bankr. P. 2002(q). Upon recognition of a proceeding as a foreign main proceeding, among other things, section 362 (the automatic stay) applies. 11 U.S.C. § 1520(a)(1). Absent provisional relief, there is no stay applicable in the U.S. during the period between filing the chapter 15 petition and entry of the recognition order. Therefore, interim relief is necessary to protect FTK and its assets from diminution in value caused by collection or enforcement efforts of creditors or affiliated entities' efforts prior to the disposition of the Petition. This includes (i) staying the commencement or continuation of actions against FTK and its assets under section 362; and (ii) enjoining any parties from taking any action with respect to any assets of FTK. Accordingly, certain provisional relief is necessary.

A. Provisional Relief Is Available

26. Section 1519(a)(3) of the Bankruptcy Code authorizes the Court to grant, on a provisional basis, any relief available pursuant to section 1521(a)(7). 11 U.S.C. § 1519(a)(3). As noted above, section 1521(a)(7) provides that the Court may grant a foreign representative any relief available to a trustee, subject to certain exceptions not relevant here. 11 U.S.C. § 1521(a)(7). The automatic stay of section 362 is an essential feature of the Bankruptcy Code that clearly falls within this provision. Moreover, the relief authorized by the Belgian Commencement Order and under Belgian law is substantially similar to the relief available to a trustee under the Bankruptcy Code. In addition, section 105(a) of the Bankruptcy Code further allows the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Furthermore, preserving the status quo of FTK and its affiliated entities until the Court has an opportunity to conduct a hearing on the Petition ensures that there will not be any dissipation of FTK’s assets.

27. Courts within this jurisdiction frequently grant provisional relief similar to that which is sought herein, including recognition and enforcement of an order entered in the foreign proceeding and application of section 362 of the Bankruptcy Code. *See, e.g., Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of sections 362, 364(e) and 365(e)); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of section 362); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012) (order granting provisional relief, including application of sections 362 and 365(e)); *In re Arctic Glacier Int’l Inc.*, Case No. 12-10605 (KG), D.I. 28

(Bankr. D. Del. Feb. 23, 2012) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of sections 362, 364(e) and 365(e)); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012) (order granting provisional relief, including application of section 362); *In re Cinram Int'l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, protections provided by section 364(e) and application of sections 362 and 365(e)); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011) (order granting provisional relief, including application of sections 362 and 365(e)); *In re MAAX Corp.*, Case No. 08-11443 (CSS), D.I. 22 (Bankr. D. Del. July 14, 2008) (order granting provisional relief, including section 365(e)).

B. Provisional Relief Is Necessary to Prevent Irreparable Harm and Is Consistent with Public Interest

28. Relief pursuant to section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the standard for injunctive relief. 11 U.S.C. § 1519(e); *In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025088, at *3 (Bankr. D.N.J. Mar. 25, 2009). In the Third Circuit, the factors considered for injunctive relief include (i) the moving party has a likelihood of success on the merits; (ii) the moving party will suffer irreparable harm if the requested injunction is denied; (iii) granting preliminary relief will not result in greater harm to the nonmoving party; and (iv) the public interest favors such relief. *U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1477 n.2 (3d Cir. 1996)); *see also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted). The Foreign Representatives submit that this standard is satisfied here and, therefore,

FTK is entitled to the requested provisional relief pursuant to section 1519 of the Bankruptcy Code, including entry of the Provisional Order.

1. There Is a Substantial Likelihood of Recognition of the Belgian Proceeding as a Foreign Main Proceeding and Application of Requested Additional Bankruptcy Code Provisions

29. There is a compelling case for recognition of the Belgian Proceeding as a foreign main proceeding. It is clear that the Belgian Proceeding is a “foreign main proceeding” and Mr. Frans De Roy and Mr. Benny Goossens are “foreign representatives” as those terms are defined in the Bankruptcy Code. Furthermore, this Court has previously recognized these same individuals as the duly-appointed foreign representatives of a related entity Exelco NV. [Case No. 17-12409-KG, D.I. 27]. In addition, the chapter 15 case was duly and properly commenced by filing the verified chapter 15 petition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules. Upon recognition of the Belgian Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in this chapter 15 case pursuant to section 1520(a)(1) of the Bankruptcy Code. 11 U.S.C. § 1520(a)(1). Accordingly, it is likely that FTK will receive final approval of all of the relief requested on an interim basis.

2. FTK Will Suffer Irreparable Harm Absent Provisional Relief

30. Application of provisional relief requested herein is critical to the prevention of irreparable damage to FTK’s assets. This chapter 15 case was commenced for the purpose of obtaining the assistance of this Court in respect to the Belgian Proceeding to give effect in the U.S. to the Belgian Commencement Order, and other orders of the Belgian Court until the Petition is heard. Although the Belgian Commencement Order implements a stay preventing parties from taking actions against FTK and its assets wherever located, FTK may

have assets in the U.S. that may be removed or sold by parties such as FTK's purported representatives who may not believe they are bound by the Belgian Commencement Order.³ *See In re Daebo Int'l Shipping Co.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015). Furthermore, as evidenced by FTK's displaced management's most recent appeal of the Dismissal Order, without obtaining the Foreign Representatives' consent to same, it is clear that FTK's displaced management is interfering with the Foreign Representatives' duties to take control over FTK.

31. As noted in the Declaration in Support, FTK is believed to have some assets located in the U.S. Unless the Provisional Order is granted and all parties are enjoined from taking any action with respect to FTK's assets, FTK faces the risk that parties, including but not limited to, FTK's displaced management, may take adverse actions against FTK's assets which could diminish the value of FTK's assets and cause significant delay and disruption to FTK's liquidation process commenced by the Belgian Proceeding. Indeed, FTK's displaced management has already taken actions which are adverse to the Foreign Representatives' duties and the Belgian Proceeding, by filing an appeal of the Dismissal Order with respect to FTK within five (5) days after the appointment of the Foreign Representatives as trustees-in-bankruptcy of FTK. The relief requested herein is necessary to protect against these risks. The purpose of chapter 15 is to provide such protection by, among other things, ensuring that all of a debtor's creditors are enjoined from taking action against the debtor's assets, thereby preventing some creditors or other parties in interest from getting an unfair advantage over others. *See* 11 U.S.C. § 1501.

³ The Foreign Representatives reserve all rights and remedies with respect to any party that takes action against FTK or its assets inconsistent with the Belgian Commencement Order and Belgian law.

32. Courts regularly recognize the need to provide provisional relief in order to ensure the orderly distribution of a debtor's assets in a single proceeding, and prevent piecemeal enforcement against a debtor's assets across multiple jurisdictions. *See, e.g., Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015); *In re Daebo Int'l Shipping Co.*, Case No. 15-10616 (MEW), D.I. 21 (Bankr. S.D.N.Y. Mar. 19, 2015); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013); *In re STX Pan Ocean Co., Ltd.*, Case No. 13-12046 (SCC), D.I. 30 (Bankr. S.D.N.Y. July 10, 2013); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG), D.I. 28 (Bankr. D. Del. Feb. 23, 2012); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012); *In re Cinram Int'l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011); *In re Daewoo Logistics Corp.*, Case No. 09-15558 (CGM), D.I. 15 (Bankr. S.D.N.Y. Sept. 24, 2009); *In re MAAX Corp.*, Case No. 08-11443, D.I. 22 (CSS) (Bankr. D. Del. July 14, 2008). The provisional relief requested herein is necessary on an immediate basis to protect against potential destruction of asset value, and interference with the Belgian Proceeding liquidation efforts by FTK's displaced management pending entry of the Final Order. Absent this relief, FTK and its creditors may suffer irreparable harm.

3. Provisional Relief Will Benefit Creditors

33. In contrast to the hardships described above, preservation of the status quo through imposition of the automatic stay while the Foreign Representatives and FTK undertake the liquidation process in the Belgian Proceeding will not prejudice creditors. Indeed, creditors as a whole will benefit from such relief. The relief requested in this Motion is intended to be temporary, extending only through the disposition of the Petition and ensures that FTK's assets

stay in place until a Final Order is entered. As such, granting the request for provisional relief will benefit FTK's creditors as it will ensure the value of FTK's assets is preserved, protected, and maximized for the benefit of and fair distribution to all creditors.

4. Public Interest Favors Granting Provisional Relief

34. As noted above, the requested interim relief is consistent with the policies underlying the Bankruptcy Code, including the provision of a preservation of Debtor's assets and the equitable treatment of all creditors. Additionally, granting the requested relief is in the public interest because it will facilitate FTK's efforts to continue with its Belgian Proceeding for the benefit of its creditors and other stakeholders (including those in the U.S.). *See Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *Am. Film Techs, Inc. v. Taritero (In re Am. Film Techs., Inc.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) ("It is 'one of the paramount interests' of this court to assist the Debtor in its reorganization efforts.") (*quoting Gathering Rest., Inc. v. First Nat'l Bank of Valparaiso (In re Gathering Rest., Inc.)*, 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986)). Moreover, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a).

35. For the reasons set forth herein, the Foreign Representatives respectfully request that, pending the hearing on the Final Order, the Provisional Order be approved in all respects and that the terms and provisions of the Provisional Order be implemented and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provision of the Final Order be implemented. As noted above, this Court and others have frequently granted requests for similar provisional relief in chapter 15 cases. *See, e.g., Essar Steel Algoma*

Inc., Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015); *In re Daebo Int'l Shipping Co.*, Case No. 15-10616 (MEW), D.I. 21 (Bankr. S.D.N.Y. Mar. 19, 2015); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013); *In re STX Pan Ocean Co., Ltd.*, Case No. 13-12046 (SCC), D.I. 30 (Bankr. S.D.N.Y. July 10, 2013); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG), D.I. 28 (Bankr. D. Del. Feb. 23, 2012); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012); *In re Cinram Int'l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011); *In re Daewoo Logistics Corp.*, Case No. 09-15558 (CGM), D.I. 15 (Bankr. S.D.N.Y. Sept. 24, 2009); *In re MAAX Corp.*, Case No. 08-11443, D.I. 22 (CSS) (Bankr. D. Del. July 14, 2008).

CONCLUSION

36. The Foreign Representatives respectfully submit that the Belgian Proceeding should be recognized as a foreign main proceeding, it is appropriate to apply section 362 in this chapter 15 case, and the provisional relief requested herein is necessary to prevent harm to FTK and its assets and, therefore, should be approved.

NOTICE

37. The Foreign Representatives shall provide notice of the Motion to the following parties, or their counsel, if known: (i) all entities against whom provisional relief is being sought pursuant to section 1519 of the Bankruptcy Code, including, but not limited to, FTK's displaced management and any of its representatives, agents, and employees, as well as all known creditors of FTK in the United States; (ii) all parties to litigation pending in the United States to which FTK is a party at the time of the filing of the Petition; (iii) the Office of the

United States Trustee for the District of Delaware and; (iv) all other parties which have requested notice in this case as of the date of such service. In light of the nature of the relief requested, the Foreign Representatives submit that no further notice is required.

WHEREFORE, the Foreign Representatives respectfully request that the Court: (a) enter the Provisional Order, substantially in the form attached hereto as **Exhibit A**; (b) enter the Final Order, upon notice and a hearing, substantially in the form attached hereto as **Exhibit B**; and (c) grant such other and further relief as it deems just and proper.

Dated: Wilmington, Delaware
December 29, 2017

/s/ J. William Boone
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