

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Chapter 11

AMERICAN ENVIRONMENTAL  
CONTAINER CORP.,

Case No. 8:09-bk-25271-CPM

Debtor.

*Emergency Relief Requested  
Without the Necessity of a Hearing*

**DEBTOR'S EMERGENCY MOTION  
FOR ORDER DIRECTING JOINT ADMINISTRATION OF  
CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 1015(b)<sup>1</sup>**

AMERICAN ENVIRONMENTAL CONTAINER CORP. (“**American Environmental**” or the “**Debtor**”), as debtor and debtor in possession, by and through its undersigned counsel, hereby files its Emergency Motion for Order Directing Joint Administration of Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b) (the “**Motion**”) and requests that this Court enter an order directing the joint administration of the above-captioned Chapter 11 case with the Chapter 11 cases of Arizona Environmental Container Corp., Aqua Environmental Container Corp., Joki Leasing, LLC, Kito Leasing, LLC, Stki Leasing, LLC, and Toki Leasing, L.C. (collectively, the “**Related Debtors**”). In support of this Motion, the Debtor respectfully represents as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b).

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<sup>1</sup> A companion Emergency Motion for Order Directing Joint Administration of Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(b) has been simultaneously filed in the related Chapter 11 cases which are pending before this Court.

Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

2. The statutory predicate for the relief requested herein is Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

### **Background**

3. On November 2, 2009 (the “**Petition Date**”), American Environmental, along with the Related Debtors (collectively, the “**Debtors**”), filed with this Court their Voluntary Petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

4. Each of the Debtors continues to operate its business and manage its property as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in this case and no official committees have yet been appointed pursuant to §1102 of the Bankruptcy Code.

6. No previous application for the relief sought herein has been made by the Debtor to this Court or any other court.

#### **A. *Business Background.***

7. The Debtors are corporations or limited liability companies, which are owned by Kirk and Todd Sullivan. The Debtors are involved one way or another in the manufacturing of fiberglass containers. They have three manufacturing facilities located in Florida, Arizona, and Indiana. They sell their containers through a network of approximately 500 dealers located in all fifty states, several Canadian provinces, and Europe. They sell products under the “San Juan” trade name pursuant to license agreements. The “San Juan” brand of fiberglass containers is the oldest in the United States with more than fifty years of existence. The Debtors have the largest market share in the United States for fiberglass containers (approximately 20% to 25% of the

fiberglass market).

8. Specifically, the business of each of the corporate Debtors are as follows :
  - (a) American Environmental is a manufacturing company that operates out of a plant located in Lakeland, Florida;
  - (b) Toki Leasing, L.C. owns the manufacturing facility in Lakeland, Florida, which it leases to American Environmental;
  - (c) Arizona Environmental Container Corp. manufactures fiberglass containers from a plant located in Eloy, Arizona;
  - (d) Kito Leasing, LLC owns the Eloy, Arizona real estate, which it leases to Arizona Environmental Container Corp.;
  - (e) Aqua Environmental Container Corp. is a manufacturing company that operates out of a plant located in Wolcott, Indiana;
  - (f) Joki Leasing, LLC is the owner of the Indiana real estate, which it leases to Aqua Environmental Container Corp.; and
  - (g) Stki Leasing, LLC owns real property in Dunn, North Carolina.

**B. *The Debtors' Outstanding Debt.***

9. All of the Debtors are obligated in some fashion on loans to SunTrust Bank, N.A. (“SunTrust”). The Debtors’ banking relationship with SunTrust has been in existence for approximately sixteen (16) years, during which time the Debtors never missed a payment to SunTrust. Three (3) of the SunTrust loan facilities have matured, and SunTrust declined to renew the subject loans and urged the Debtors to operate under a short term forbearance agreement and to find take-out financing. The Debtors, collectively, owe SunTrust approximately \$5.8 million in secured loans. The Debtors did enter into one forbearance agreement with SunTrust, during which time they unsuccessfully pursued take-out financing while continuing to operate their businesses. The Debtors continued to make regular payments of principal and interest to SunTrust during the term of the initial forbearance agreement and, in

the absence of take-out financing, were faced with the prospect of either attempting to operate under another short-term forbearance agreement or filing these Chapter 11 Petitions in an effort to restructure their obligations on a more permanent basis.

10. While the Debtors have various accounts at SunTrust, the Debtors operated a centralized cash management system in which a single entity, American Environmental, essentially operated as the “central banker” for the other Debtors. American Environmental generally swept the accounts of the affiliated entities and used the cash to fund expenses of other Debtors.

### Relief Requested and Grounds for Relief

11. By this Motion, the Debtor requests the entry of an order pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing for procedural purposes only the joint administration of the above-captioned Chapter 11 case with the cases of the Related Debtors.

12. Rule 1015(b) of the Federal Rules of Bankruptcy Procedure provides, in pertinent part:

(b) **Cases involving two or more related debtors.** If a joint petition or two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates.

Section 101(2) of the Bankruptcy Code defines "affiliate" as:

(A) [an] entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor...

(B) [a] corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with

power to vote, 20 percent or more of the outstanding voting securities of the debtor....

13. The Debtors are related entities and affiliates within the meaning of Section 101(2) of the Bankruptcy Code and Rule 1015(b) of the Federal Rules of Bankruptcy Procedure because, as stated above, the Debtors are corporations or liability companies of which one hundred percent (100%) of the equity interests are owned by Kirk and Todd Sullivan. Therefore, this Court may order the joint administration of the estates.

14. The Debtor requests that all pleadings in the Chapter 11 cases bear the following joint administration caption:

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**In re:**

**Chapter 11**

**STKI LEASING, LLC,**

**Case No. 8:09-bk-25264-CPM  
Jointly Administered**

**Debtors.**

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The Debtor further requests that all pleadings in the Debtors' Chapter 11 cases be filed and maintained under Stki Leasing, LLC's case number.

15. The Debtor submits that unnecessary and expensive duplication can be avoided by jointly administering the Debtors' Chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure for the following reasons:

- a. To expedite the administration of their Chapter 11 cases, the Debtors will be filing other "first day" pleadings affecting all of the Debtors. Absent joint administration, the Debtors will need to immediately file several other motions regarding operational issues and several accompanying notices, orders, and other pleadings. Joint administration will avoid the unnecessary and expensive duplication of effort caused by preparing,

filing, and serving the same pleadings with different captions, thereby saving the Debtors considerable time and expense, as well as conserving judicial and court resources in scheduling and maintaining the separate pleadings.

- b. Joint administration will avoid unnecessary and expensive duplication of efforts caused by serving multiple sets of differently captioned but otherwise identical pleadings during these cases. By jointly administering the estates, creditors will receive notice of all proceedings involving the Debtors, thereby ensuring that they are fully informed of all matters potentially affecting their claims. Joint administration will also simplify the Office of the United States Trustee's supervision of all aspects of these cases.
- c. Joint administration may avoid or reduce expenses associated with multiple separate Section 341(a) meetings of creditors and may permit the Debtors' management to appear at one joint meeting of creditors.

According to the notes of the Advisory Committee on the Bankruptcy Rules, joint administration may include combining the Debtors' estates by using a single docket for the matters occurring in the administration, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters "that may aid in expediting the cases and rendering the process less costly." Furthermore, it will advance the Court's interest in economy by eliminating the need for duplicate orders and files and will simplify the United States Trustee's supervision of the administration of the Debtors' Chapter 11 cases. In addition, it would be an unnecessary burden on this Court and the Clerk's Office to maintain separate dockets for each Debtor.

16. The Debtors' respective creditors will not be adversely affected by the joint administration of these cases, since joint administration of these cases is for procedural purposes only and will not effect a substantive consolidation of the Debtors' estates. In fact, the rights of all creditors will be enhanced by the reduced costs that will result from the joint administration of these cases. Moreover, each creditor may still file its claim against a particular estate.

17. The Debtor does not believe that any of the relief herein requested would create a conflict of interest between creditors of the different estates.

**Notice**

18. Notice of this Motion has been given by electronic transmission to the Office of the United States Trustee for the Middle District of Florida, and by United States first class mail to creditors of each of the Debtors (as listed on Exhibit A attached hereto). The Debtor submits that, given the administrative nature of the relief requested herein, no other or further notice need be given.

**Basis for Emergency Relief**

19. If these cases are not jointly administered from the outset, the unnecessary and expensive duplication will be burdensome and oppressive to the Debtors, their creditors, counsel, and the Court. Certainly, the relief sought would be of considerably greater value if granted immediately.

20. The Debtors will file shortly various motions requesting emergency relief (the “**First Day Motions**”) including (i) a motion to pay pre-petition wages; (ii) a motion to extend the utility stay; (iii) motion to use cash collateral; and (iv) an application to employ Stichter, Riedel, Blain, and Prosser, P.A. as bankruptcy counsel. The Debtor requests authority to file the First Day Motions under the style identified in this Motion for the jointly administered cases, and to file the First Day Motions in the lead case only.

WHEREFORE, the Debtor respectfully requests the entry of an order granting this Motion, directing for procedural purposes only the joint administration of the above-captioned Chapter 11 case with the cases of the Related Debtors, and providing for such other and further relief as the Court deems just and proper.

Dated: November 3, 2009.

/s/ Harley E. Riedel  
Harley E. Riedel (Fla. Bar No. 183628)  
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B. Michael Bachman, Jr. (Fla. Bar No. 0014139)  
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STICHTER, RIEDEL, BLAIN  
& PROSSER, P.A.  
110 Madison Street, Suite 200  
Tampa, Florida 33602  
PH (813) 229-0144  
FAX (813) 229-1811  
ATTORNEYS FOR DEBTORS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing *Motion for Order Directing Joint Administration of Chapter 11 Cases Pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure* has been furnished on this 3rd day of November, 2009, by the Court's CM/ECF electronic mail system to the Office of the U.S. Trustee and by U.S. MAIL on the following:

All parties listed on attached Exhibit A

All parties receiving notices via CM/ECF

/s/ Harley E. Riedel  
Harley E. Riedel (Fla. Bar No. 183628)

**EXHIBIT A**

Label Matrix for local noticing 113A-8 Case 8:09-bk-25271-CPM Middle District of Florida Tampa Tue Nov 3 14:03:51 EST 2009	Aim P.O. Box 536491 Atlanta, GA 30353-6491	American Environmental Container Corp. 3202 Lasso Lane Lakeland, FL 33801
Atlas Copco Compressors, Inc. 161 Lower Westfield Road Harrison, ME 04040	Boring Business Systems P.O. Box 743 Lakeland, FL 33802-0743	Ccp Industries P.O.Box 73627 Cleveland, OH 44193-0002
Central Fire & Safety Equipment Inc 2901 SE HWY 31 Arcadis, FL 34266-7920	Composites One LLC P.O. Box 409328 Atlanta, GA 30384-9328	Crowe Horwath P. O. Box 145415 Cincinnati, OH 45250-5415
Department of Labor and Security Hartman Building Suite 307 2012 Capital Circle Southeast Tallahassee FL 32399 0648	Department of Revenue PO Box 6668 Tallahassee FL 32314-6668	Fastenal Company P.O. Box 1286 Winona, MN 55987-7286
Florida Department of Revenue 5050 W. Tennessee St. Tallahassee, FL 32399-0100	G&K 3735 Corporex Park Drive Tampa, FL 33619-1162	Greater Bay Bank, N.A. 100 Tri-State International Suite 140 Lincolnshire, IL 60069-4404
Hexion Specialty Chemicals P.O. BOX 409676 Atlanta, GA 30384-9676	Hillsborough County Tax Collector P.O. Box 172920 Tampa, FL 33672-0920	(p)INTERNAL REVENUE SERVICE CENTRALIZED INSOLVENCY OPERATIONS PO BOX 21126 PHILADELPHIA PA 19114-0326
Interstate Chemical 3903 Progress Drive Lakeland, FL 33811-1260	Joe G. Tedder, Tax Collector PO Box 1189 Bartow, FL 33831-1189	Catherine Peek McEwen Tampa
New Jersey Division of Taxation P.O. BOX 222 Tyrenton, NJ 08646-0222	Office of US Attorney Attn Civil Process Clerk 400 North Tampa St Suite 3200 Tampa FL 33602-4774	PA Department of Revenue Bureau of Corp Taxes Dept. 280422 Harrisburg, PA 17128-0422
Pennsylvania Department Of Revenue P.O. Box 280403 Harrisburg, PA 17128-0403	Qualcomm, Inc. File No 54210 Los Angeles, CA 90074-4210	Harley E. Riedel Stichter, Riedel, Blain & Prosser 110 East Madison St., #200 Tampa, FL 33602-4718
Safas Corporation 2 Ackerman Avenue Clifton, NJ 07011-1502	State Of New Jersey - CBT P.O. Box 193 Trenton, NJ 08646-0193	SunTrust Bank 211 Perimeter Center Parkway Suite 100 Atlanta, GA 30346-1305

SunTrust Bank  
7455 Chancellor Drive  
Orlando, FL 32809-6213

SunTrust Bank  
c/o Andrew W. Lennox  
Hill Ward Henderson  
101 E. Kennedy Blvd., Ste. 3700  
Tampa, FL 33602-5156

Suntrust  
P.O.Box 79079  
Baltimore, MD 21279-0079

The Compliance Center  
Dept. 381  
P.O. Box 8000  
Buffalo, NY 14267-0002

United States Trustee - TPA  
Timberlake Annex, Suite 1200  
501 E Polk Street  
Tampa, FL 33602-3949

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 21126  
Philadelphia, PA 19114

(d)Internal Revenue Service  
P.O. Box 21126  
Philadelphia, PA 19114

End of Label Matrix	
Mailable recipients	34
Bypassed recipients	0
Total	34