THE HONORABLE SAMUEL J. STEINER
Chapter 15
HEARING DATE: April 16, 2009
HEARING TIME: 1:30 p.m.
RESPONSE DEADLINE: At Hearing

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re DELOITTE & TOUCHE, INC. as Foreign Representative of EVERGREEN GAMING CORP., Debtor in a Foreign Proceeding.	Chapter 15 Case No. 09-13567 (SJS) EMERGENCY MOTION OF FOREIGN REPRESENTATIVE FOR INTERIM RELIEF UNDER 11 U.S.C. §§1519, 105(a) AND 362(a)

Deloitte & Touche, Inc., by and through its designated representative, Senior Vice President, Jervis Rodrigues, ("Deloitte" or the "Monitor") respectfully applies to this Court for entry of an emergency interim order pursuant to 11 U.S.C. §§ 1519, 105(a) and 362 granting interim relief applying the automatic bankruptcy stay to protect the assets of Evergreen Gaming Corp. ("Evergreen Gaming" or the "Debtor") and preserve the *status quo* for the benefit of all creditors pending entry of a final order recognizing the Monitor as a Foreign Representative in a foreign main proceeding. This Motion is filed in connection with the Application for Recognition and the Chapter 15 petition filed by the Monitor with respect to the Debtor.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

By this Motion the Monitor seeks entry of an interim emergency order pursuant to 11 U.S.C. § 1519 and §362(a) staying (i) all actions against the Debtor or property of the Debtor within the territorial limitations of the United States; (ii) all actions to create, perfect or enforce any lien against property of the Debtor; and (iii) all actions to terminate leases or other executory contracts to which the Debtor is a party pending entry of an order granting recognition (the "Recognition Order") of the CCAA Proceeding as a foreign main proceeding pursuant to §§1515 and 1517.

Pursuant to the Court's Order Shortening Time, the Monitor has attempted to give notice of this Emergency Motion for Interim Relief and the Motion for Joint Administration to (a) the principal parties in the case, including the Debtors and Fortress Credit Corp.; (b) the United States Attorney's Office; (c) the State of Washington, Bankruptcy and Collections Unit and the Washington State Gambling Commission; and (d) the Office of the U.S. Trustee.

This Emergency Motion is supported by the files and records herein, the Declaration of Jervis Rodrigues in Support of Application for Recognition of Foreign Proceeding (the "Rodrigues Declaration"), the Declaration of Cory Coyle In Support of Application for Recognition of Foreign Proceeding (the "Coyle Declaration"), the Declaration of John Sandrelli Concerning Canadian Law (the "Sandrelli Declaration"), and the exhibits attached thereto. The Monitor has submitted all documents required by 11 U.S.C. §1515.

STATEMENT OF FACTS

On April 15, 2009, the Debtor, Evergreen Gaming Corporation ("Evergreen"), and eighteen other direct and indirect subsidiary Canadian and American companies

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

(collectively, "Debtors" or the "Evergreen Group")[1] filed voluntary petitions in British Columbia, Canada under the Canadian Companies' Creditors Arrangement Act (the "CCAA"), R.S. C. 1985, c.C-36 and C-44 and the Business Corporations Act, S.B.C. 2002, c.57 (the "CCAA Proceeding"). By order entered that same day, the Supreme Court of British Columbia appointed Deloitte & Touche Inc. as Monitor for all Debtors in the CCAA Proceeding, including in the Debtor's CCAA Case. Sandrelli Declaration at ¶ 3. A certified copy of the CCAA Order is attached to the Monitor's Chapter 15 Petition in this case.

Evergreen Gaming Corp. ("Evergreen"), formerly Transec Enterprise Corp., is a Canadian corporation, organized and existing under the laws of the Province of British Columbia. Evergreen was incorporated under the Business Corporations Act, S.B.C. 2002 c. 57, in 1979, in 1979, and is a public company, listed on the Toronto TSX Venture Exchange (TSX-TNS-V). Evergreen has a registered address of 700-595 Howe Street, Vancouver BC V6C 2T5, and a primary business office at 11331 Coppersmith Way, in Richmond, B.C. Directly or indirectly, Evergreen owns 100% of the stock in all but one member of the Evergreen Group, which consists of a total of twenty (20) entities in British Columbia, Alberta and western Washington.[2] Coyle Declaration at ¶ 4.

The business of the Evergreen Group is owning and operating casinos and house-banked card rooms, and it owns related real estate and casino management and service

[1] The "Evergreen Group" consists of Evergreen Gaming Corporation, the parent company, and the following direct and indirect subsidiaries: EGC Holdings Ltd., EGC Properties Ltd., Frank Sisson's Silver Dollar Ltd., Washington Gaming, Inc., Big Nevada, Inc., Little Nevada II, Inc., Little Nevada III, Inc., Silver Dollar Mill Creek, Inc., Golden Nugget Tukwila, Inc., Shoreline Gaming, Inc., Little Nevada, Inc., Snohomish Gaming Inc., Hollydrift Gaming, Inc., Royal Casino Holdings, Inc., Gameco, Inc., Gaming Management Inc., Gaming Consultants, Inc., Shoreline Holdings Inc., and Mill Creek Gaming, Inc. With the exception of EGC Holdings Ltd., EGC Properties Ltd., and Frank Sisson's Silver Dollar Ltd., each of the entities has filed chapter 15 a petition in this Court.

[2] 50% of the stock in Shoreline Gaming, Inc., dba Golden Nugget Casino is owned by Michael McCarthy, a resident of Washington.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

businesses in Alberta, Canada and the United States. Evergreen's primary assets are the stock in its subsidiaries, each of which either operates a casino or provides related services. Evergreen's largest single asset is Silver Dollar Casino, a 100,000 square foot casino and entertainment complex in Calgary, Alberta, featuring slot machines, gaming tables, lottery terminals, a 38-lane bowling alley, a 1,200 seat live entertainment facility and numerous related food and beverage service outlets. Through its subsidiaries, Evergreen operates ten casinos in King and Snohomish Counties, Washington. Coyle Declaration, ¶ 7.

On October 2, 2007, Evergreen and Fortress Credit Corp. ("Fortress"), as agent for the Lenders and as a Lender itself, entered into a Credit Agreement pursuant to which the Lenders extended to Evergreen approximately US$29 million in credit (the "Secured Debt"). The total Secured Debt now alleged to be due, including principal, interest, fees and costs, is approximately $30.1 million. The Secured Debt is guaranteed by the each member of the Evergreen Group, and is secured in part by a lien on substantially all of the Debtors' assets, including all deposit accounts held with any bank or financial institution. Fortress and the Washington State subsidiaries are also party to a Deposit Account Control Agreement with Banner Bank, the Debtors' Washington depository bank, under which Fortress has the right to seize control over all of the Debtors' bank accounts, including main accounts, payroll accounts and ATM accounts. Coyle Declaration at ¶ 9.

On April 1, 2009, Fortress served a Notice of Default and Acceleration on Evergreen and simultaneously served a Notice of Demand under Guaranty (the "Demand") on the Debtor, threatening to foreclose on its collateral if the Demand is not satisfied. Coyle Declaration at ¶ 10, Exhibit A.

Although the Debtor is current on its trade debt and tax obligations, the employees have been and continue to be paid regularly, and the Washington subsidiaries are in

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

compliance with all fiscal and accounting requirements of the Washington State Gambling Commission, Debtor is unable to satisfy its guarantee of the Secured debt. If Fortress were to begin foreclosure proceedings or take other action to collect or realize on its collateral, Debtor would be forced out of business, employees would be laid off and other creditors would be placed at a substantial disadvantage. Indeed, execution by Fortress could destroy all going concern value of the Debtor's business, as well as the business of the other affiliates in Washington, since it could also trigger suspension or revocation of the Debtor's gaming license issued by the Washington State Gambling Commission. Id.

The Debtors are also party to nine lessees of real property in Washington State where they operate their businesses.[3] Each of these leases is believed to contain an "*ipso facto*" clause permitting the lessor to terminate the lease upon a bankruptcy filing or insolvency of the lessee. Having filed the CCAA Proceeding in Canada, those Debtors who are party to such leases of real property are at risk of the leases being terminated if the Court does not grant the relief requested herein and make such relief permanent in the Recognition Order.

Finally, one of the Debtors, Gaming Consultants, Inc., is also party to several financing leases for gaming equipment used in the day-to-day business operations of the other casinos, and for which the lessor claims a security interest in the equipment until paid in full under the leases. Although these leases may not contain "*ipso facto*" clauses that would permit their immediate termination due to the filing of the CCAA Proceeding, there is risk that the lessors would deem themselves insecure under the provisions of UCC Article 9 and move to terminate the leases and recover their "collateral." To avoid the risk of these

[3] The Washington Debtors party to leases of real property are Big Nevada, Inc.; Little Nevada, Inc.; Little Nevada II, Inc.; Little Nevada III, Inc., Golden Nugget Tukwila, Inc., Silver Dollar Mill Creek, Inc., Hollydrift Gaming, Inc.; Royal Casino Holdings, Inc., and Gaming Consultants, Inc.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

leases being terminated or the equipment being seized, the Debtor needs the protection of the emergency interim relief requested herein.

Maintaining the status quo as to all of the Evergreen Group's assets in the United States is in the best interests of Debtor, Evergreen, the other members of the Evergreen Group, and all their creditors because it preserves the going concern value of the enterprise. If the Debtors' assets were to be seized or their licenses were to be revoked, the Debtors would lose essential assets which will be required for an effective reorganization. On the other hand, granting the interim relief requested provides for fair and efficient administration of the assets, orderly and equitable treatment of all creditors and it will protect and maximize the value of the Debtors' estate. The relief requested is also consistent with the purposes of Chapter 15 in that applying the automatic stay in this instance will further the goal of "provid[ing] an effective mechanism for dealing with cases of cross border insolvency. 11 U.S.C. §1501.

A. LEGAL ARGUMENT

1. §362 is Appropriate as a Form of Provisional Relief under 11 U.S.C. §1519

Section 1519 of the Code provides that, at the request of a foreign representative, a court may grant provisional relief under Chapter 15 during the "gap period" between the filing of a petition for recognition of foreign proceedings and the court's ruling on the recognition. Imposition of the automatic stay pursuant to 11 U.S.C. §362 is one of the available forms of relief under §1519. In re Pro-Fit Holdings Ltd., 391 B.R. 850, 866 (Bankr. C.D. Cal. 2008) (§1519 does not specifically refer to the automatic stay, but relief under §362 is an available form of relief during the pre-recognition period). The court in Pro-Fit concluded that §1519 lists only some of the forms provisional relief available, and that "a number of other provisions of the bankruptcy code may be applied provisionally

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

under §1519 while an application for recognition is pending." 391 B.R. at 866. After an in-depth analysis of the issues, the court held that the automatic stay may be imposed as to all of the debtor's property in the United States pending a ruling on recognition. Id. at 867.

Moreover, incorporating §362 by reference has the effect of importing both the statutory language and the case law arising from that statutory provision: "The imposition of the §362 automatic stay as provisional relief under §1519 is not injunctive relief that is subject to the §1519(e) requirement imposing the standards for an injunction." Id. at 866. Section 1519(e) and the rules governing injunctive relief therefore do not apply to requests for interim protection by application of the automatic stay. Id. at 861. For this reason, this Motion need not discuss the standards for obtaining a preliminary injunction in context of Section 1519 relief. Id. The only relevant criterion in considering a motion for protection during the pre-recognition period is whether "relief is urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a).[4]

2. The Relief Requested is Necessary to Maintain the *Status Quo,* Prevent Preferential Treatment for Select Creditors, Preserve Going Concern Value and Reassure the Holders of Evergreen's Publicly Traded Securities.

Fortress and the Lenders claim a senior secured position with respect to substantially all of the Evergreen Group's assets, but each Debtor has employees, taxing agencies, landlords, trade vendors and other creditors and parties in interest, including Evergreen shareholders, who also have a right to be heard. If Fortress were to be permitted to foreclose on the Debtor's assets in this country, all of the other creditor constituencies, both in the

[4] As with any provisional relief, the court's preliminary order lasts only until the court enters an order on recognition. If the court ultimately grants recognition pursuant to Section 1517, "a main administrative order may then replace the interim order pursuant to § 1521(a), which authorizes the court to grant 'any appropriate relief' after the recognition of a foreign proceeding as either a main or nonmain proceeding." Pro-Fit, 866 B.R. at 859.

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

U.S. and in Canada, would be prejudiced and any remaining shareholder value would be wiped out. Moreover, if the actions of Fortress, unintentionally or otherwise, were to trigger suspension or revocation of the Debtor's gaming licenses, all going concern value would be lost as to the entire enterprise.

The Debtors need immediate protection to ensure that no one creditor or group of creditors is allowed to plunder the evergreen Group's assets to the detriment of all other creditors. Debtor's business is operational, its employees, taxes and trade vendors are being paid in the ordinary course and the value of Fortress' collateral is stable. Imposing the automatic stay provisions of §362 is the best way to maintain the *status quo* and to ensure that all creditors are treated fairly and equitably. It will also reassure holders of Evergreen's publicly traded shares that the company's reorganization effort will be equitable and orderly.

CONCLUSION

The CCAA Proceeding initiated by the Evergreen Group is the functional equivalent of our Chapter 11 bankruptcy proceedings, and the goal of the CCAA Proceeding is reorganization. However, if the Evergreen Group is to have any chance to accomplish that goal, the going concern value of this Debtor's businesses must be preserved. It makes no difference on which side of the border the Debtors' businesses operate, if the businesses close, if the employees are laid off, if the gaming licenses are suspended or revoked, then the going concern value will be destroyed and the CCAA reorganization effort will fail. Imposing the protections of the automatic stay will not only prevent irreparable harm and untimely and potentially inequitable seizure of assets, it will also impart order to the process and instill confidence in creditors and in the shareholders of Evergreen. For these reasons,

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

the Court is asked to immediately grant interim automatic stay relief to protect the assets of the Debtor pending a final determination on the Monitor's Application for Recognition.

DATED: April 15, 2009

PERKINS COIE LLP

By: /s/Bruce G. MacIntyre
Bruce G. MacIntyre, WSBA No. 18984
BMacIntyre@perkinscoie.com

By: /s/ Alan D. Smith
Alan D. Smith, WSBA No. 24964
ADSmith@perkinscoie.com

By: /s/ John S. Kaplan
John S. Kaplan, WSBA No. 23788
JKaplan@perkinscoie.com

By: /s/ Brian A. Jennings
Brian A. Jennings, WSBA No. 32509
BJennings@perkinscoie.com

1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorney for Foreign Representative Deloitte & Touche, Inc.