



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
PC **LANDING** CORP., et al.,<sup>1</sup> ) Case No. 02-12086 (P JW)  
Debtors. ) (Jointly Administered)

**MOTION OF DEBTORS FOR ENTRY OF ORDER PURSUANT  
TO 11 U.S.C. §§ 363 AND 105 AUTHORIZING EMPLOYMENT AND  
RETENTION OF CXO. L.L.C. AS CRISIS MANAGER TO DEBTORS**

The captioned debtors and debtors in possession (the “Debtors”) hereby move this Court (the “Motion”), pursuant to sections 363 and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order authorizing them to retain and employ **CXO, L.L.C.** (“CXO”) as their crisis manager. In further support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. The Court has jurisdiction **over this** Motion pursuant to **28 U.S.C.** §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. **Venue of** this proceeding and **this** Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 363 and 105(a) of the Bankruptcy Code.

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<sup>1</sup> The Debtors are the following entities: PC Landing Corp., a Delaware corporation, Pacific Crossing, Ltd., a Bermuda company, Pacific Crossing UK, Ltd., a United Kingdom company, PCL Japan, Ltd., a Japan company, and SCS Bermuda, Ltd., a Bermuda company.

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8. Through the efforts of Existing Management and the efforts of the Debtors' financial ~~advisors~~, investment bankers and other professionals, the Debtors have received several non-binding bids for the sale of substantially all of their assets (the "Sale Process").

9. As is set forth more fully below, following October **31, 2002**, the Debtors will have no formal or informal agreement for management services from AGC, no employees, and no officers.

10. **The** Debtors have been operating their business since August **23,2002**, pursuant to the terms of a short term cash collateral stipulation (the "Cash Collateral Stipulation") with the Debtors' prepetition secured lenders (the "~~Bank~~ Group"). The Debtors' use of cash collateral terminates on October **31,2002** pursuant to the terms of the Cash Collateral Stipulation. The Debtors have made a motion for further use of cash collateral and that motion is scheduled to be heard on November **15,2002**. To ~~the~~ extent that payments are necessary in advance of November **15,2002**, the Debtors are optimistic that they can obtain the consent of the ~~Bank~~ Group and are also negotiating with the ~~Bank~~ Group for a further extension of the Cash Collateral Stipulation.

11. ACG provided management services, overhead and other support for the Debtors during the term of the Cash Collateral Stipulation, although it has not received any postpetition cash payments?

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<sup>2</sup> AGC reserved its right to assert an administrative claim for such services and all parties reserved their rights to object to any such claim

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12. Subsequent to the entry of the Cash Collateral Stipulation, **AGC** advised both the Debtors and the Bank **Group** that it would not provide management services to **PCL** without payment following October 31, 2002. Moreover, from and after October 31, 2002, none of the individuals that previously provided services to the Debtors will be employed by **AGC**.

13. Inasmuch as there is no agreement for **AGC** to provide management services to **PCL** after October 31, 2002, the Debtors consulted with the *Bank* Group regarding various alternatives. The *Bank* Group indicated that, under the circumstances, it believed that it was in the best interest of these estates to replace Existing Management with professional management to **see** the Debtors **through** the Sale Process and the remainder of the Chapter 11 Cases.

14. In light of all of the relevant facts and circumstances including the contentious relationship between the Bank Group on the one hand and Existing Management and certain affiliates of the Debtors on the other, the Debtors agreed that engaging professional management was in the best interest of their estates as it would allow the Sale Process to continue as seamlessly as possible.

#### **Relief Requested**

15. **As** the Debtors' directors and officers have tendered their resignation effective upon **Court** approval of the retention of CXO as contemplated herein, it is imperative that **the** Debtors retain interim senior management and obtain related consulting services. **As** there is no creditors committee appointed in these cases, the Debtors consulted with the Bank Group regarding **this** decision and gave deference to the Bank Groups' recommendation that the

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Debtors engage crisis managers. Thus, after considering all **of** the alternatives in light **of** the present circumstances, **the** Debtors determined that employment of a crisis manager **was** in the best interest of these estates.

16. Accordingly, by this Motion the Debtors seek to retain and employ CXO as their crisis manager during these Chapter 11 Cases pursuant to sections **363 and 105(a)** of the Bankruptcy Code. Subject to Court approval, the Debtors board of directors has approved the retention of CXO in **this** engagement.

17. CXO has substantial experience in providing turnaround management consulting services, including serving companies in reorganization proceedings and chapter 11 cases on behalf **of** debtors and creditors throughout the United States with a specific focus on technology and telecommunications companies. Such services include: financial, operational and strategic assistance to senior management of distressed businesses; serving as interim manager in crisis situations; advising on capital restructuring and financing alternatives; assisting with the development, negotiation and implementation of merger and acquisition transactions in financially distressed situations; and assisting with the development and negotiation of plans of reorganization. CXO principals recently have assisted or advised debtors, creditors and other parties-in-interest in a number of chapter 11 cases, including, among others, those of Intira Corporation, OpTel, Inc., and CTC Communications Group, Inc. In these cases, the services **of** CXO principals enabled or are enabling the debtors to maximize the value of their estates.

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18. The Debtors believe that CXO is qualified to represent the Debtors in the Chapter 11 ~~Cases~~ as their crisis manager. CXO has indicated a willingness to act on the Debtors' behalf and to subject itself to the jurisdiction and supervision of this ~~Court~~.

No Actual Conflict or Adverse Interest

19. To the best of the Debtors' and CXO's knowledge, and as disclosed in the affidavit of Mark Steadman attached hereto as Exhibit A hereto (the "Affidavit"), CXO has no actual conflict or materially adverse interest to the Debtors and their estates in connection with the matters for which CXO is to be employed. CXO has no connection to the Debtors, their creditors or their related parties herein with respect to these matters except as disclosed in the Affidavit and herein.

20. CXO will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or relationships are disclosed, CXO will supplement its disclosure to this ~~Court~~.

21. CXO did not provide any services to the Debtors prior to the Petition Date, and, as such, CXO has no prepetition claim or any other claim against the Debtors.

Terms of Retention

22. Subject to the approval of this ~~Court~~, the Debtors and CXO have entered into an agreement dated October 28, 2002 (the "Agreement", a copy of which is annexed as Exhibit B), whereby CXO has agreed to serve as crisis manager for the Debtors and provide other advisory services pursuant to the terms set forth in the Agreement.

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23. **CXO** will provide such crisis management services, including, but not limited to, **the** following:

a. At least one of the following: Brian Kushner, Michael E. Katzenstein, or Mark Steadman, will **serve** in executive officer positions for the Debtors, without further compensation, and all three of **CXO**'s representatives can be elected to the Debtors' board;

b. Provide day-to-day management of the Debtors and direct oversight of any employees and officers;

c. Assistance and oversight over all regulatory and permitting matters;

d. Assistance with operating, administrative and maintenance and billing agreements;

e. Manage the sales and customer care processes and the pending Sale Process;

f. Communicate and report to ~~the~~ Bank Group and other creditor constituents (**as** appropriate) and their respective professionals on matters related to financial reporting, contract compliance and asset dispositions; and

g. Render such other interim management or consulting services **as** are necessary and appropriate.

24. The Agreement provides that **an** advance for fees and expenses in the amount of \$300,000 shall be paid upon Court approval of this Motion, the unused portion of

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which shall be repaid to the Debtors upon termination of the Agreement and the payment of all amounts due CXO thereunder; provided that in the event that the Agreement is terminated prior to the 90\* day following the commencement of the engagement, then, under circumstances identified in Exhibit B, **\$75,000** of the advance shall be non-refundable. The Agreement further provides that CXO may submit invoices for fees and expenses **as** frequently as weekly, which shall be paid by wire transfer within **3** business days of receipt.

**25.** CXO will staff the engagement with professionals at various levels, **as** tasks require, at the following rates:

Principal	\$500 per hour, \$4,000 per day maximum
Director	\$320 per hour, \$2,500 per day maximum
Associate	\$160 per hour, \$1,500 per day maximum

**26.** The hourly and daily rates **set** forth above *are* subject to periodic adjustments to reflect economic and other conditions.

**27.** Subject to any orders of this Court, the Debtors propose to pay CXO its customary hourly and/or daily rates, **as** appropriate, for services rendered, and to reimburse **CXO** for certain charges and expenses, at the rates in effect from time to time, pursuant to the terms of the Agreement in the ordinary course of business as prescribed by section **363** of the Bankruptcy Code. The Debtors submit that such rates are reasonable and should be approved by this Court at this time.

**28.** In connection therewith, CXO shall file with this Court, and provide notice to the U.S. Trustee, the **Bank** Group, any official committees appointed in these cases, and all parties requesting such notice pursuant to Bankruptcy Rule **2002**, reports of compensation and



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expenses earned and paid, in the **ordinary** course of business, on a quarterly basis (a “Compensation Report”). Such reports shall summarize the services provided, identify the compensation earned by each CXO professional or paraprofessional, and list major categories of all expenses incurred. All compensation paid to CXO shall be subject to review by this Court in the event of an objection to any Compensation **Report.**

29. The Agreement provides that CXO shall negotiate in good faith with the Bank Group for a fee for successful completion of one or more components of **the** services. The value of such fee shall be subject to an agreement with the Bank Group and the metric **determined** during the first month after the commencement of the engagement and will be subject to Court approval by supplemental motion to this Court.

30. The Debtors also request that the indemnification provisions and provisions regarding directors’ and officers’ liability insurance contained in the Agreement be approved. The Debtors submit that **such** indemnification provisions are consistent with the indemnification provisions that were negotiated with the U.S. Trustee and approved by the Court in In re Ameriserve Food Distribution, Inc. Case No. 00-0358 (PJW) (Bankr. D. Del. 2000); In re Planet Hollywood International, Inc., Case No. 99-3612 (JJF) (Bank. D. Del. **1999**); and In re Trans World Airlines, Inc., et al., Case No. 01-00056 (PJW) (Bankr. D. Del. 2001).

#### **Notice**

31. Notice of this Motion has been given to (i) the United States Trustee, (ii) the Debtors’ top 20 unsecured creditors, (iii) counsel to the Bank Group, and (iv) those parties

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requesting special notice pursuant to Bankruptcy Rule 2002. In light of the nature of *the* relief requested, the Debtors submit that no further notice is required.

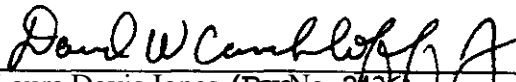
**No Prior Request**

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

WHEREFORE, the Debtors request entry of an Order, substantially in the form attached hereto, authorizing the Debtors to employ and retain CXO as crisis manager pursuant to the terms of the Agreement and granting such other and further relief as is just and proper.

Dated: November 4, 2002

PACHULSKI, STANG, ~~ZIEHL~~, YOUNG & JONES P.C.

  
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