

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

In re:)
) Chapter 11
)
LANG HOLDINGS, INC.,) Case No. 09- 12543 (____)
a Delaware corporation, et al.,¹)
) (Joint Administration Pending)
Debtors.)
)
_____)

**DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a)
AND 363 AUTHORIZING SATISFACTION OF PREPETITION CLAIMS
OF SHIPPERS, WAREHOUSEMEN AND LOGISTICS PROVIDERS**

Lang Holdings, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain prepetition claims of shippers, warehousemen and logistics providers in the ordinary course of business. In support of the Motion, the Debtors rely upon the Declaration of Laurie Gilner in Support of Chapter 11 Petitions and First Day Relief (the “Gilner Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over these chapter 11 cases and 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). Venue of these chapter 11 cases and this Motion is proper in this Court pursuant to

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code.

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As of the date hereof, no request for appointment of a chapter 11 trustee or examiner has been made, and no official committee has been appointed.

4. Information regarding the Debtors' history and business operations, their capital structure and primary secured indebtedness, and the events leading up to the commencement of these chapter 11 cases can be found in the Gilner Declaration, which is incorporated herein by reference.

THE SUPPLY CHAIN AND FREIGHT CLAIMANTS

5. The Debtors' supply and delivery system depends upon the use of a network of third-party warehousemen, distributors and shippers who store goods in transit on behalf of the Debtors (the "Warehousemen"). In addition, the Debtors utilize the services of customs agents, brokers, import/export specialists and other entities to facilitate the shipment of goods into, out of and throughout the United States (the "Logistics Providers" and, together with the Warehousemen, the "Freight Claimants").

6. The Debtors business model consists, primarily, of purchasing finished products at wholesale prices and reselling those finished products in a retail environment. The Debtors' ability to satisfy their customer obligations depends on the frequent, and often daily, receipt of goods by the Debtors. The Debtors employ numerous third parties, including the

Freight Claimants, to ensure that their supply-chain system runs smoothly. The Debtors engage shippers to transport, store and deliver goods to the Debtors' customers. The Debtors contract with Warehousemen to store goods after purchase from the Debtors' suppliers as well as before delivery to their customers. The Logistics Providers assist the Debtors with the transport of these goods.

7. As a result, in the ordinary course of business, the Freight Claimants regularly have possession of goods and supplies being provided to the Debtors as well as goods intended for delivery to their customers. As of the Petition Date, certain of the Freight Claimants have outstanding invoices for and are in possession of goods that were delivered on behalf of the Debtors and the Debtors' customers prior to the Petition Date. Under state laws, the Freight Claimant may have a lien² on the goods in its possession, which lien secures the charges or expenses incurred in connection with the transportation or storage of such goods.³ Additionally, pursuant to section 363(e) of the Bankruptcy Code, the Freight Claimants, as bailees, may be entitled to adequate protection in the form of a possessory lien. As a result, certain Freight Claimants may refuse to deliver or release goods in their possession or control, as applicable, before the prepetition amounts owed to them by the Debtors (collectively, the "Freight Claims") have been satisfied and any applicable liens redeemed.

8. The Debtors' business and their customers rely on the timely delivery and receipt of finished goods. Any disruption in this system would have deleterious effects on the

² By this Motion, the Debtors do not concede that any liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity and perfection of all such liens, and/or to seek avoidance thereof.

³ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." See U.C.C. § 7-307(1) (2003).

Debtors' business. The Debtors believe that the value of the goods and materials in the possession of the Freight Claimants, and the potential injury to the Debtors if they are not timely released, is likely to substantially exceed the amount of Freight Claims asserted by such parties. Indeed, even if the Freight Claimants did not have valid liens under applicable state law, their control, possession and retention of the Debtors' products would severely disrupt the flow of goods between the Debtors' suppliers and the end-users of the Debtors' products. For these reasons, the Debtors believe that it is necessary and essential to their chapter 11 efforts and the enhancement and preservation of the value of their estates that they be permitted to make payments on account of certain Freight Claims, in the Debtors' sole discretion.

9. If the Debtors are unable to immediately pay the Freight Claims on account of their prepetition claims, the Debtors' will be unable to regain possession of their property, which are goods intended for sale to the Debtors' customers that are crucial to the Debtors' business. The potential disruption if the Freight Claimants exercise their statutory rights could result in costs for the Debtors that would exceed the face amount of the Freight Claimants' claims because of the likely strain on customer relations.

RELIEF REQUESTED

10. By this Motion, the Debtors seek authority to pay certain prepetition claims held by Freight Claimants in amounts the Debtors determine necessary or appropriate to (i) obtain releases of critical or valuable goods that may be subject to liens, (ii) maintain a reliable, efficient and smooth distribution system, and (iii) induce the Freight Claimants to continue to carry goods and make timely deliveries thereof. The Debtors propose to pay such claims when, in the Debtors' discretion and business judgment, a creditor's exercise of its rights under applicable state law would unduly disrupt the Debtors' business operations. The Debtors

hereby seek immediate authority to pay and discharge, on a case-by-case basis and in their discretion, the Freight Claims, as of the Petition Date, in an amount not to exceed \$475,000.

11. The Debtors submit that they will, in their discretion, attempt to condition any payment on account of a Freight Claim on the acknowledgement from the applicable Freight Claimant that it will continue to provide its services to the Debtors on trade terms that, at a minimum, such Freight Claimant provided to the Debtors six months prior to the Petition Date, or such other trade terms that are at least as favorable to the Debtors as those in effect prior to the Petition Date. Furthermore, the Debtors reserve the right to negotiate more favorable trade terms with any Freight Claimant as a condition to payment of any such prepetition claim.

12. The Debtors will only pay the Freight Claims that the Debtors believe, in their business judgment, to be necessary and appropriate. In determining whether such payments are necessary and appropriate, the Debtors will consider, among other things, (i) whether the benefits to the Debtors' estates and creditors that would result from such payments would exceed (a) the costs that the Debtors would incur by bringing actions to compel the turnover of goods, and (b) the delays associated with such actions; and (ii) whether the additional expenses the Debtors would incur (in the form of higher costs for the services or goods provided) to replace the Freight Claimants would exceed the amount of unpaid prepetition claims.

13. The Debtors believe that the total amount to be paid to the Freight Claimants on account of their prepetition claims is necessary and appropriate in light of the importance and necessity of the Freight Claimants to the Debtors' and their customers' business operations, and the direct and indirect losses that the Debtors would suffer as a consequence of a Freight Claimant's refusal to release or deliver goods to the Debtors or their customers. Moreover, the Debtors do not believe that, in most instances, there are viable and timely alternatives to the Freight Claimants that the Debtors have used prior to the Petition Date.

14. It is essential for the Debtors' business operations and reorganization efforts that the Debtors maintain a reliable and efficient supply and distribution network. Because the Debtors primarily rely on third parties to provide finished products for them to sell and deliver finished products to their customers, it is essential that their bankruptcy cases not be a reason or excuse for any such party to cease timely performing services or to retain goods in their possession on account of unpaid prepetition claims. If the customers are unable to receive deliveries on a timely and uninterrupted basis, the Debtors likely will suffer, at a minimum, a significant loss of customer goodwill as well as revenue, thereby causing substantial and potentially irreparable harm to their businesses and reorganization efforts.

15. This Motion further seeks authorization for the applicable banks asked to process, honor and pay any and all checks on account of claims with respect to the Freight Claimants to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

BASIS FOR RELIEF

16. The Court may authorize the Debtors to pay the Freight Claims under section 363(b) of the Bankruptcy Code. That section provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition claims where the debtors articulate "some business justification, other than the mere appeasement of major creditors"); See also In re James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a

contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

17. As discussed above, the Debtors' request to pay the prepetition claims of the Freight Claimants easily meets this standard because the failure to satisfy the Freight Claims could have a material adverse effect on the Debtors' day-to-day business operations and relationships with their customers, as well as on the Debtors' reorganization efforts.

18. In addition, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. at 175. Under section 105(a), the Court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); See also In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

19. Finally, the "necessity of payment" doctrine further supports the relief requested in this Motion. The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." In re Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of chapter 11, *i.e.*, "facilitating the continued operation and rehabilitation of the debtor". In re Ionosphere Clubs, 98 B.R. at 176; See also In re Just for Feet, Inc., 242 B.R. at 826 ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor's reorganization").

20. Under the necessity of payment doctrine, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the prepetition claims of creditors whose services are essential to the debtor's reorganization efforts. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that "[i]f payment of a prepetition claim 'is essential to the continued operation of [the debtor], payment may be authorized'").

21. The Debtors strongly believe that (i) continuation of their positive relationships with the Freight Claimants is imperative to their continued business operations and reorganization efforts, and (ii) the payment of the Freight Claims is essential to preserve and enhance the value of the Debtors' estates. Therefore, the Court should exercise its equitable powers under section 105(a) to grant the relief requested in this Motion.

22. Indeed, it is not uncommon for courts in this District to authorize the payment of prepetition claims of shippers and warehousemen. See, e.g., In re Tribune Company, Case No. 08-13141 (KJC) (Bankr. D. Del. Dec. 8, 2008); In re Buffets Holdings, Inc., Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008); In re Holliston Mills, Inc., Case No. 07-10687 (MFW) (Bankr. D. Del. May 23, 2007); In re Adva-Lite, Inc., Case No. 07-10264 (KJC) (Bankr. D. Del. March 2, 2007). The Debtors respectfully submit that similar relief is warranted in these chapter 11 cases.

23. Pursuant to the recent revisions to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 20 days after the Petition Date only if such relief is necessary to avoid immediate and irreparable harm. As described above, it is vital to the Debtors' reorganization efforts that they be authorized to pay the Freight Claims in order to maintain the Debtors' operations and the confidence and goodwill of their customers. Failure to satisfy such claims in the first 20 days of these cases could lead to a disruption of the Debtors' operations and interruption of the Debtors' supply chain. Put simply, maintaining the timely

receipt of raw materials and finished products through the Debtors' supply chain and manufacturing process is necessary in order for their businesses to survive in the preliminary stages of these cases. For the foregoing reasons, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and should be authorized, at their discretion, to immediately pay the Freight Claims.

24. For all the reasons discussed herein, the Debtors submit that paying the Freight Claims is critical to the Debtors' reorganization efforts and in the best interests of their estates, and therefore should be approved.

25. To the extent Fed. R. Bankr. P. 6004(h) is applicable to this Motion, the Debtors also seek a waiver of the ten-day stay under Fed. R. Bankr. P. 6004(h).

NOTICE

26. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) the Debtors' prepetition secured lenders; and (iv) the Debtors' banks. Notice of this Motion and any order entered with respect thereto will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the Motion and such other and further relief as is just and proper.

Dated: Wilmington, Delaware
July 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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

In re:)
) Chapter 11
)
LANG HOLDINGS, INC.,) Case No. 09- 12543 ()
a Delaware corporation, et al.,¹)
) (Joint Administration Pending)
Debtors.)
)
_____)

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363
AUTHORIZING SATISFACTION OF PREPETITION CLAIMS
OF SHIPPERS, WAREHOUSEMEN AND LOGISTICS PROVIDERS**

Upon consideration of the Motion² of the above-captioned Debtors for entry of an order pursuant to sections 105(a) and 363 of the Bankruptcy Code authorizing the Debtors, in their discretion, to pay certain prepetition claims of shippers and warehousemen in the ordinary course of business; and upon consideration of the Gilner Declaration and the entire record of these chapter 11 cases; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

² Capitalized terms used but not defined herein have the meanings assigned to such terms in the Motion.

2. The Debtors are authorized, in their discretion and in the ordinary course of business, to pay the Freight Claims in an aggregate amount not to exceed \$475,000, without further order of the Court.

3. The Debtors, in their discretion, shall undertake appropriate efforts to cause the Freight Claimants to acknowledge that payment of their prepetition claims is conditioned upon the applicable Freight Claimants continuing to supply services to the Debtors on trade terms that, at a minimum, such Freight Claimants provided to the Debtors within the six months prior to the Petition Date, or such other trade terms that are at least as favorable to the Debtors as those in effect prior to the Petition Date, and the Debtors reserve the right to negotiate more favorable trade terms with any Freight Claimants as a condition to payment of any such prepetition claim. If any Freight Claimant does not continue to provide services on such terms, then (a) any payment on account of a prepetition claim received by such Freight Claimant shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; and (b) upon recovery by the Debtors, any prepetition claim of such Freight Claimant shall be reinstated as if the payment had not been made. To the extent there exists an outstanding postpetition balance due from the Debtors to such Freight Claimant, the Debtors may elect to recharacterize and apply any payments made pursuant to this Order to such outstanding postpetition balance, and the Freight Claimant shall repay immediately in cash to the Debtors such paid amounts that exceed the postpetition obligations then outstanding and without any claim right of setoff or recoupment against the Debtors resulting thereby.

4. Nothing herein shall impair or prejudice the Debtors' ability to contest the extent, perfection, priority, validity or amounts of any claims held by the Freight Claimants. The

Debtors do not concede that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity or perfection or seek the avoidance of all such liens.

5. All applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor and pay any and all checks evidencing amounts paid by the Debtors pursuant to the Motion, whether issued or presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. All banks and financial institutions are authorized and directed to rely on the representations of the Debtors as to which checks and wire transfers are issued or authorized to be paid pursuant to this Order.

6. The Debtors are authorized to issue postpetition checks as necessary to replace any prepetition checks that were issued with respect to the Freight Claims and may be dishonored and such reissued checks shall reduce the payment cap imposed by this Order.

7. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Order, (i) shall be deemed an assumption or adoption of any policy, program, practice, contract or agreement, or shall otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease; or (ii) shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation on any ground that applicable law permits.

8. Notwithstanding anything to the contrary herein, payments made pursuant to this Order shall be subject to (i) any requirements imposed on the Debtors under any order

entered by the Court approving postpetition financing and/or the use of cash collateral and (ii) any budget approved in connection therewith.

9. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
July __, 2009

United States Bankruptcy Judge