

**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), 363, 1107(a) AND 1108 AND FED. R. BANKR. P. 6003
AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF
CERTAIN FOREIGN VENDORS AND SERVICE 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), 363, 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing, but not directing, the Debtors to pay certain prepetition obligations to foreign vendors and other suppliers of goods and services (collectively, the “Foreign Vendors”).² In support of this Motion, the Debtors rely on 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:

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 As describe below, by this Motion the Debtors also seek to pay the prepetition claims of a single domestic service provider (the “Domestic Provider”), and the term “Foreign Vendors” shall include such provider.

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 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003.

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.

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an order authorizing, but not directing, payment of prepetition claims of the Foreign Vendors with whom the Debtors continue to do business and whose good and services are essential to the Debtors' operations (the "Foreign Vendor Claims"), in an amount up to \$5.1 million.³

³ Approximately \$90,000 of this amount has been allocated to pay the prepetition claims of the Domestic Provider.

6. The Debtors propose that prior to making a payment of a Foreign Vendor Claim under this Motion, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of such Foreign Vendor for less than their face amount without further notice or hearing.

7. The Debtors also request that all banks and other financial institutions on which checks to the Foreign Vendors are drawn pursuant to authority granted by the proposed order submitted herewith be authorized and directed to receive, process, honor and pay any and all such checks, whether issued or presented prior to or after the Petition Date, upon the receipt by each such bank of notice of such authorization from the Debtors.

BASIS FOR RELIEF

8. In the ordinary course of the Debtors' businesses, the Debtors transact business with numerous Foreign Vendors in countries including, but not limited to, China, Vietnam, Taiwan and Mexico. Some of the Foreign Vendors manufacture merchandise for the Debtors, while others supply raw materials for the Debtors' products. The Debtors estimate that they may be liable for \$6.9 million in Foreign Vendor Claims.

9. The Debtors believe that many of their Foreign Vendors will continue to do business with the Debtors after commencement of these cases because doing so simply makes good business sense. In some cases, however, the Debtors anticipate that certain Foreign Vendors will: (a) refuse to deliver goods and services without payment of their prepetition claims; (b) refuse to deliver goods and services on reasonable credit terms absent payment of prepetition claims, thereby effectively refusing to do business with the Debtors; or (c) suffer significant financial hardship, such that the Debtors' non-payment of prepetition claims could have a significant negative impact on the Foreign Vendor's business and therefore its ability to

supply the Debtors with goods and services. Because many of the Foreign Vendors are not subject to the jurisdiction of this Court, efforts by the Debtors to enforce the Bankruptcy Code or obtain an order of this Court may be of little practicable value.

10. Accordingly, the Debtors request the entry of an order authorizing, but not directing, payment of Foreign Vendor Claims because payment of such claims is necessary to an effective reorganization.

11. In addition to direct payments to Foreign Creditors for outstanding prepetition invoices, the Debtors seek authority to allow such Foreign Vendors to apply postpetition payments by the Debtors to outstanding unpaid prepetition invoices. The Foreign Vendors would then be left with a paid prepetition claim and an administrative expense claim for the goods shipped after the Petition Date and invoiced to the Debtors.

12. In return for payment of the prepetition Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Debtors propose that the Foreign Vendors continue to provide goods and services to the Debtors on the most favorable terms in effect between such supplier and the Debtors in the six months prior to the Petition Date or on such other favorable terms as the Debtors and the Foreign Vendors may otherwise agree (“Customary Trade Terms”). The Debtors propose that the Customary Trade Terms apply for the remaining term of each Foreign Vendor’s agreement with the Debtors (or, if no such agreement exists, for the duration of these cases), as long as the Debtors agree to pay for such goods in accordance with such terms.

13. If any Foreign Vendor accepts payment on account of a prepetition obligation of the Debtors and thereafter does not continue to provide services to the Debtors on Customary Trade Terms, any payment made will be deemed an avoidable postpetition transfer

under section 549 of the Bankruptcy Code and, therefore, will be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the claim will be reinstated as a prepetition claim in the amount so recovered. The Debtors also seek entry of an order authorizing, but not directing, them to obtain written verification, before issuing payment to a Foreign Vendor, that such Foreign Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor's agreement with the Debtors; provided, however, that the absence of such written verification will not limit the Debtors' rights sought hereunder.

APPLICABLE AUTHORITY

14. The relief requested in this Motion is supported by several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations under certain circumstances. Courts have recognized each of these statutory provisions as valid authority for such payments.

A. The Court May Authorize Payment Of The Foreign Vendor Claims Under Section 363(b) Of The Bankruptcy Code.

15. Section 363(b) of the Bankruptcy Code provides, in relevant part, 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, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); see, e.g., FV Steel and Wire Co., Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing payment of essential trade creditors under sections 363 and 364 of the Bankruptcy Code). To do so, “the debtor must articulate some business justification, other than mere

appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175; In re NVR L.P., 147 B.R. 126, 128 (Bankr. E.D. Va. 1992).

16. Through payments to Foreign Vendors who agree to provide goods and services on Customary Trade Terms, the Debtors will preserve and protect their businesses for the benefit of all creditors. Without payment to the Foreign Vendors, the Debtors would be unable to provide the products customers have to come expect from the Debtors. This alone provides a sufficient business justification to make payments to Foreign Vendors. See id. at 175. Accordingly, this Court should grant the requested relief under section 363 of the Bankruptcy Code.

B. The Court May Authorize Payment Of The Foreign Vendor Claims Under Sections 1107(a) And 1108 Of The Bankruptcy Code.

17. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” Id.

18. At least one Court has noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate,” id. at 479, and also when the payment was to “sole suppliers of a given product,” id. at 498. The court provided a three-pronged test for

determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

19. Payment of the Foreign Vendor Claims meets each element of the CoServ court's standard. First, the Debtors have narrowly tailored the Foreign Vendor Claims to encompass only those suppliers that are the sole source of a particular good without which the Debtors' operations would be severely impacted, or those suppliers or service providers who are critical because the time and expense that would be involved in transitioning to a new supplier would be prohibitive and would significantly disrupt the Debtors' business.

20. Second, because of the essential nature of the goods and services provided by the Foreign Vendors and the difficulty associated with finding alternate sources of those goods and services, the potential harm and economic disadvantage that would stem from the failure of any of the Foreign Vendors to perform is grossly disproportionate to the amount of any prepetition claim that may be paid.

21. Finally, with respect to each Foreign Vendor, the Debtors have examined other options short of payment of Foreign Vendor Claims and have determined that to avoid significant disruption of the Debtors' operations there exists no practical or legal alternative to payment of the Foreign Vendor Claims.

22. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Foreign Vendor Claims.

C. The Court Also May Rely On Its General Equitable Powers And The Doctrine Of Necessity To Authorize Payment Of The Foreign Vendor Claims.

23. The Debtors' proposed payment of Foreign Vendors and Foreign Vendor Claims may be authorized pursuant to the Court's general equitable powers, as codified in section 105 of the Bankruptcy Code, and under the "doctrine of necessity."

24. Section 105 of the Bankruptcy Code authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. See 11 U.S.C. § 105. A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition 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. 174, 175 (Bankr. S.D.N.Y. 1989); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources."). Under section 105(a) of the Bankruptcy Code, a 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).

25. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses in order to effect a successful reorganization, through, among other things, obtaining certain critical goods and services from the Foreign Vendors, thereby preserving core operations and maintaining customer confidence at this critical early stage of their bankruptcy cases, payment of the Foreign Vendor Claims as requested herein is proper in accordance with section 105 of the Bankruptcy Code.

26. Payment of the Foreign Vendor Claims is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. See In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); see also In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor[,]” and must show a “substantial necessity.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

27. The doctrine of necessity is a widely accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit); In re Synteen Techs., Inc., Case No. 00-02203-W, 2000 WL 33709667, at *2-3 (Bankr. D. S.C. Apr. 14, 2000) (unreported) (approving payment of prepetition debt to key supplier); In re NVR L.P., 147 B.R. at 127 (“[T]he ‘necessity of payment’ rule is a narrow exception well-established in bankruptcy common law.”).

28. For the reasons discussed herein, the Debtors submit that payment of the Foreign Vendor Claims is necessary to the Debtors' effective reorganization. In particular, without payment of Foreign Vendor Claims, Foreign Vendors may refuse to continue to ship merchandise or supply services to the Debtors. This would cause of a significant decrease in the amount of merchandise available from the Debtors and, consequently, would have a dramatic impact on the ability of the Debtors to continue operations. In turn, the maintenance of the Debtors' businesses during these chapter 11 cases is crucial to the Debtors' ability to pursue restructuring alternatives and preserve going concern value for the benefit of all of the Debtors' stakeholders. Hence, this Court should exercise its equitable powers to grant the relief requested in this Motion.

D. Failure to Pay the Foreign Vendor Claims Within Twenty Days of the Petition Date Would Cause Immediate and Irreparable Harm.

29. Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003.

30. No court within the Third Circuit has interpreted the "immediate and irreparable harm" language in the context of Bankruptcy Rule 6003 in any reported decision.⁴ However, the Third Circuit Court of Appeals has interpreted the same language in the context of

⁴ Although there is not direct authority concerning Bankruptcy Rule 6003 in the Third Circuit, at least one bankruptcy court, applying Bankruptcy Rule 6003, concluded that first-day relief in a similar context was warranted because such relief was necessary to avoid irreparable harm. See In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, 235 Fed. Appx. 907, 910; 2007 U.S. App. LEXIS 13291, at *6 (3d Cir. June 7, 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.2d 645, 653-55 (3d Cir. 1994).

31. Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors' customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of "immediate and irreparable harm" generally. Cf. Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to "irreparable harm to the estate") (emphasis added). Indeed, as discussed above, the "irreparable harm" standard is analogous to the traditional standards governing injunctive relief. See 9 Alan N. Resnick & Henry J. Sommer Collier on Bankruptcy ¶ 4001.06[3] (15th ed. rev. 2008) (discussing source of "irreparable harm" standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. See, e.g., Capital Ventures Int'l v. Argentina, 443 F.3d 214, 223 n.7 (2d Cir. 2006); see also Linnemeir v. Bd. of Trs. of Purdue Univ., 260 F.3d 757, 761 (7th Cir. 2001).

32. To the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm as defined by the Third Circuit Court of Appeals. Accordingly, the Court should allow the payment of the Foreign Vendor Claims as requested herein.

NOTICE

33. 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), 363, 1107(a) AND 1108 AND
FED. R. BANKR. P. 6003 AUTHORIZING DEBTORS TO PAY PREPETITION
CLAIMS OF CERTAIN FOREIGN VENDORS AND SERVICE PROVIDERS**

Upon consideration of the Motion² of the Debtors for entry of an order pursuant to sections 105 (a) , 363, 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003 authorizing, but not directing, the Debtors to pay certain prepetition obligations to Foreign Vendors; 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 under the circumstances; and it appearing that no other or further notice need be provided; 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 not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are authorized, but not directed, in their sole discretion, to pay in the ordinary course the Foreign Vendor Claims in an amount up to \$5.1 million.

3. Prior to paying a Foreign Vendor Claim, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of such Foreign Vendor for less than their face account without further notice or hearing.

4. In return for payment of the Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Foreign Vendors are hereby required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such supplier and the Debtors in the six months prior to the Petition Date or on such other favorable terms as the Debtors and the Foreign Creditor may otherwise agree ("Customary Trade Terms"). The Customary Trade Terms shall apply for the remaining term of the Foreign Vendor's agreement with the Debtors (or, if no such agreement exists, for the duration of these cases), as long as the Debtors agree to pay for such goods in accordance with such terms.

5. If any Foreign Vendor accepts payment on account of a prepetition obligation of the Debtors and thereafter does not continue to provide services to the Debtors on Customary Trade Terms, any payments made shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the claim shall be reinstated as a prepetition claim in the amount so recovered.

6. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign vendor, that such Foreign Vendor will, if relevant, continue to provide goods and services to the Debtors on Customary Trade Terms for

the remaining term of the Foreign Vendor's agreement with the Debtors (or, if no such agreement exists, for the duration of these cases); provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

7. The authority granted hereby to pay Foreign Vendor Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Foreign Vendor Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Foreign Vendor Claim, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Foreign Vendor Claims to the extent they are not paid.

8. No claimant who receives payment on account of a Foreign Vendor Claim is permitted to file or perfect a Lien on account of such claim, and any such claimant shall take all necessary action to remove any existing lien relating to such claim, even if the Lien is against property of a non-Debtor.

9. 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.

10. The Debtors are authorized to issue postpetition checks as necessary to replace any prepetition checks that were issued with respect to the Foreign Vendor Claims and

may be dishonored and such reissued checks shall reduce the payment cap imposed by this Order.

11. 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.

12. 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.

13. 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.

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

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

16. 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