

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 11
)
HARTFORD COMPUTER HARDWARE,) Case No. 11-11-49744 (PSH)
INC., *et al.*,¹) (Joint Administration Pending)
)
Debtors.) Hon. Pamela S. Hollis

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION
SHIPPING CHARGES AND (II) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this motion for entry of an order (i) authorizing the Debtors to pay, in the ordinary course of business, the prepetition claims of Shippers (as defined below); and (ii) granting certain related relief. In support of this motion, the Debtors submit the Declaration of Brian Mittman in Support of Chapter 11 Petitions and First Day Motions and Applications, sworn to on the date hereof (the “Declaration in Support of First Day Relief”), and respectfully represent as follows:

INTRODUCTION

1. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), together with various motions and applications seeking certain typical “first day” orders.

2. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).



3. No request has been made for the appointment of a trustee or examiner, and no official committee(s) has been appointed in these cases.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' chapter 11 cases and this motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

5. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Rule 1007(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

6. The Debtors are one of the leading providers of repair and installation services in North America for consumer electronics and computers. The Debtors operate in three complementary business lines: parts distribution and repair, depot repair, and onsite repair and installation. Products serviced include laptop and desktop computers, commercial computer systems, flat-screen television, consumer gaming units, printers, interactive whiteboards, peripherals, servers, POS devices, and other electronic devices.

7. A more detailed explanation of the Debtors' businesses and operations, and the events leading to the commencement of these cases, is provided in the Declaration of Brian Mittman filed in Support of First Day Relief contemporaneously herewith and which is incorporated herein by reference.

8. In the ordinary course of their business, the Debtors rely on the United Parcel Service of America, Inc. (the "Shippers") to transport products from the Debtors' customers to the Debtors' repair facilities and from the Debtors' repair facilities to the Debtors' customers. The services of the Shippers are critical to the Debtors' operations.

9. As of the Petition Date, the Debtors estimate that the total unpaid prepetition amount owed to the Shippers is approximately \$60,000. The Shippers have advised the Debtors that it will not provide any services to the Debtors unless it receives payment on account of the Debtors' prepetition obligation. The Shippers' employees are well-trained and experienced in the business of delivering products to consumers. The Debtors also have intricate IT links with the Shippers that are critical for the Debtors' shipment processing that could not be immediately replaced. The Debtors do not believe that they could replace the Shippers on an expedited basis so as to avoid disruption of the flow of products to their customers, nor do they believe it would be prudent to hire another shipping company and risk that goods will be damaged during the transporting and delivery process.

10. Unless the Debtors are able to continue processing and delivering merchandise, their business operations will be severely disrupted, the Debtors' customers will be harmed, the Debtors' ability to generate revenue will be impaired, and the Debtors' sale or reorganization efforts may be hampered.

RELIEF REQUESTED

11. By this motion, the Debtors seek entry of an order authorizing, but not directing, them to pay, in their discretion, the valid prepetition claims of the Shippers.

12. Pursuant to 11 U.S.C. § 363(b)(1): "The trustee [or debtor in possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

13. In *In re Kmart*, 359 F.3d 866 (7th Cir. 2004), the Seventh Circuit noted that § 363(b)(1) should be read and used to do the least damage possible to priorities established by

contract or the Bankruptcy Code and analyzed the following factors in determining whether the underlying critical vendor order was permitted:

- A. paying the critical vendors would enable a successful reorganization;
- B. the disfavored creditors were at least as well off as they would have been had the critical-vendors not been paid; and
- C. the favored creditors would have ceased deliveries if old debts were left unpaid while the litigation continued.

Id. at 872-73.

14. To the extent the *Kmart* decision is applicable herein, the Debtors submit that continuing their Customer Programs meets the *Kmart* standards.

15. As detailed below, the Debtors have determined that (i) payment of the Shippers Claims is critical to their efforts to sell their business assets as a going concern; (ii) payment of the Shippers Claims is necessary to facilitate the sale; and (iii) following payment of the Shippers Claims, non-Shippers will be at least as well off as they would otherwise be if the Shippers Claims are not paid.

16. Courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks”).

17. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See Ionosphere Clubs*, 98 B.R. at 176 (Bankr. S.D.N.Y. 1989). 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.” *Id.* at 175-176 (citing *Miltenberger v. Logansport, C. & S. W Ry. Co.*, 106 U.S. 286 (1882)).

18. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until its pre-

reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (Bankr. D. Del. 1999) (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

19. This flexible approach is particularly critical where a prepetition creditor, here, the Shippers, provide vital goods or services to a debtor that would be unavailable on the terms and conditions provided by the Shippers if the Debtors did not satisfy the Shippers’ prepetition obligations. In *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.” *Id.* The court explained that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code.” *Id.* at 932.

20. Paying the Shippers will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Under some state and federal laws, Shippers may have a lien on the goods in their possession that secures the charges or expenses incurred in connection with the transportation of the goods. The Shippers may be unwilling to release the goods in their possession to which they may be entitled to liens because releasing possession of the goods may convert their claims against the Debtors from unsecured to secured claims.

21. 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 or on the

proceeds thereof in its possession for charges after the date of the carrier's 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(a) (2005).

22. Therefore, unless the Court authorizes the Debtors to pay the Shippers, it is unlikely the Debtors will continue to obtain the goods currently in transit. If the Shippers possess lien rights or have the ability to exercise "self-help" remedies to secure payment of their claims, failure to satisfy the Shippers' claims could have a material adverse effect that may ultimately devastate the operations of the Debtors' business to the detriment of the Debtors' creditors.

23. Pursuant to section 363(e) of the Bankruptcy Code, the Shippers, as bailees, may be entitled to adequate protection of a valid possessory lien. Given that the value of the goods in the possession of the Shippers generally will far exceed the value of their respective claims, the satisfaction of prepetition claims of such parties will not harm creditors and, in fact, will benefit them because such payments will help preserve the going-concern value of the Debtors' business. Additionally, to the extent that a portion of the Shippers' claims are related to the payment of custom duties, such claims may be entitled to priority under section 507(a)(8)(F) of the Bankruptcy Code.

24. Courts in this jurisdiction and others have approved relief similar to the relief requested in this motion for debtors seeking the authority and the discretion to pay prepetition claims of potential lien claimants. *See, e.g., In re Select Snacks, Inc.*, Case No. 07-18769 (PLH) (Bankr. N.D. Ill. Oct. 18, 2007); *In re Local Insight Media Holdings, Inc.*, Case No. 10-13677 (KG) (Bankr. D. Del. Nov. 19, 2010); *In re US. Concrete, Inc.*, Case No. 10-11407 (PJW)

(Bankr. D. Del. Apr. 30, 2010); *In re Visteon Corp.*, Case No. 09-11786 (CSS) (Bankr. D. Del. June 19, 2009); *In re Flying J Inc.*, Case No. 08-13384 (MFW) (Bankr. D. Del. Feb. 4, 2009); *In re Hines Horticulture, Inc.*, Case No. 08-11922 (KJC) (Bankr. D. Del. Aug. 22, 2008); *In re ACG Holdings, Inc.*, Case No. 08-11467 (CSS) (Bankr. D. Del. July 16, 2008); *In re Tropicana Entm 't, LLC*, Case No. 08-10856 (KJC) (Bankr. D. Del. May 30, 2008).

25. Accordingly, the Debtors submit that similar relief is warranted in these chapter 11 cases. Authorization to pay the prepetition claims described herein will not be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code. The Debtors reserve all of their rights under the Bankruptcy Code with respect to any such agreements. Moreover, authorization to pay any prepetition claims herein does not affect the Debtors' right to contest the amount or validity of any such charges, in whole or in part.

NOTICE

26. The Debtors will provide notice of this Motion to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Debtors' secured lenders; (c) the creditors holding the thirty (30) largest unsecured claims on a consolidated basis; and (d) all known taxing authorities that have claims against the Debtors. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

NO PRIOR REQUEST

27. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein, and such other and further relief as the Court deems just and proper.

Dated: December 12, 2011

Respectfully submitted,

By: /s/ John P. Sieger

John P. Sieger (ARDC No. 6240033)
Peter J. Siddiqui (ARDC No. 6278445)
Paige E. Barr (ARDC No. 6282474)
KATTEN MUCHIN ROSENMAN LLP
525 West Monroe Street
Chicago, Illinois 60661-3693
Telephone: (312) 902-5200
Facsimile: (312) 902-1061
John.Sieger@kattenlaw.com
Peter.Siddiqui@kattenlaw.com
Paige.Barr@kattenlaw.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:) Chapter 11
)
HARTFORD COMPUTER HARDWARE,) Case No. 11-49744
INC., *et al.*,¹) (Joint Administration Pending)
)
Debtors.) Hon. Pamela S. Hollis

ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION SHIPPING CHARGES AND (II) GRANTING CERTAIN RELATED RELIEF

This matter coming before the Court on the Motion of the Debtors for entry of an order (I) Authorizing the Payment of Certain Pre-Petition Shipping Charges and (II) Granting Certain Related Relief (the "Motion")²; the Court having reviewed the Motion and the Declaration in Support of First Day Relief; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion having been sufficient under the circumstances; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED.
2. All objections to the Motion or the relief requested therein that have not been made, withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.

¹ The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc (FEIN 20-0845960).

² Capitalized terms not defined herein shall have the meaning given to them in the Motion.

3. Notice of the Motion was proper, timely, adequate and sufficient under the particular circumstances.

4. The Debtors are authorized in their sole discretion, to pay the prepetition claims of the Shippers.

5. The Debtors' banks are authorized and directed to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors pursuant to this order, regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date; provided, however, that (a) funds are available in the Debtors' accounts to cover such checks and fund transfer requests and (b) the Debtors' banks are authorized to rely on the Debtors' designation of any particular check or fund transfer as approved by this Order.

6. Nothing in this order, nor the Debtors' payment of claims pursuant to this order, shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim by the Shippers on any ground; (c) a promise to pay any claim; or (d) a request or authorization to assume any agreement or contract pursuant to section 365 of the Bankruptcy Code or otherwise.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

8. The terms and conditions of this order shall be immediately effective and enforceable upon its entry.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

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Dated: _____, 2011

UNITED STATES BANKRUPTCY JUDGE