

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

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

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS
TO (A) HONOR CERTAIN PREPETITION OBLIGATIONS TO CUSTOMERS AND (B)
CONTINUE THEIR CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY
COURSE OF BUSINESS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this motion for entry of an order authorizing the Debtors to honor certain prepetition obligations to customers and continue their customer programs and practices in the ordinary course of business. 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.

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. 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.

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), 362(a)(7), 363, 553, 1107(a) and 1108 of the Bankruptcy Code.

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 in Support of First Day Relief contemporaneously herewith and which is incorporated herein by reference.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order pursuant to sections 105(a), 363, 1107(a), and 1108 of the Bankruptcy Code, authorizing, but not directing, the Debtors, in their business judgment, to: (a) perform their prepetition obligations related to their customer programs under the terms and conditions contained herein, and (b) continue, renew, replace,

implement new, and/or terminate their customer programs, in the ordinary course of business, without further application to the Court.

BASIS FOR RELIEF REQUESTED

9. As mentioned above and in further detail in the Declaration in Support of First Day Relief the Debtors are one of the leading providers of repair and installation services in North America for consumer electronics and computers. They mainly operate in three complementary business lines: parts distribution and repair, depot repair, and onsite repair and installation. The Debtors service laptop and desktop computers, commercial computer systems, flat-screen televisions, consumer gaming units, printers, interactive whiteboards, peripherals, servers, POS devices, and other electronic devices. The Debtors' customers include leading national retailers and hardware distributors, OEMs, IT service companies, third-party administrators of extended warranty programs, and commercial companies (collectively with their related companies, the "Customers").

10. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors engaged in certain practices to develop and sustain positive reputations in the marketplace for their products and services, including the provision of warranties and rebates pursuant to contracts with each of its customers (collectively, the "Customer Programs").

11. The Debtors provide warranties to all of their Customers for parts they provide to their Customers and/or the labor required to perform services for their Customers. The labor and parts warranties vary in length, type and agreement. However, the Debtors' parts warranties typically last anywhere from 30 to 365 days after the provision of the parts. The Debtors' labor warranties typically last up until a year after the labor was initially performed for the Customer.

12. The Debtors provide a rebate program to Best Buy, one of their Customers. The Debtors provide services and products to Best Buy. In some cases the Debtors are the exclusive provider of services and products to Best Buy and in other cases Best Buy has several providers, including the Debtors, of the services and products it uses (in which case the Debtors are a “Non-Exclusive Provider”). The Debtors’ provide Best Buy a rebate of two percent of the overall revenue the Debtors receive from Best Buy (after any returns of the products provided) as a Non-Exclusive Provider.

13. The Debtors desire to continue, during the postpetition period, those cost-effective Customer Programs that were beneficial to their businesses during the prepetition period.

14. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. 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.”

15. 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.

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

17. Permitting the Debtors to continue to honor their Customer Programs will enable a successful sale of their business assets as a going concern. The Debtors have determined that (i) continuation of their Customer Programs is critical to their efforts to sell their business assets as a going concern; (ii) payment of any claims related to their Customer Programs is necessary to facilitate the sale; and (iii) permitting the Debtors to honor their Customer Programs will leave the Debtors at least as well off as they would otherwise be if the Customer Programs were not honored.

18. The Debtors seek to continue their Customer Programs as they have proven to be successful business strategies in the past and responsible for generating valuable goodwill, repeat business, and net revenue increases. The Debtors believe that continuing these benefits throughout these chapter 11 cases is essential to maintaining the value of the Debtors' estates as they attempt to sell the assets as a going concern.

19. Moreover, any creditors not receiving the benefit of the continued Customer Programs will be at least as well off as they would have been had the Customer Programs not been continued. Maintaining the Customer Programs is vital to the Debtors' continuing business operations and the success of these chapter 11 cases. In addition, the Debtors have conducted an extensive analysis and review of the Debtors' immediate trade needs and supplier base and has concluded that there is a significant risk that the Customers will cease doing business with the Debtors unless the Customer Programs are honored. Should any Customer with the benefit of a Customer Program stop purchasing services and/or goods from the Debtors, their businesses would be adversely affected as a result of, among other things, an adverse impact on the Debtors' ability to continue operating toward a sale. Any interruption of the Debtors' operations could cost the Debtors' estates millions of dollars in lost revenues and furthermore, could cause the

Debtors to lose a significant amount of Customers and value of their sale. Accordingly, the harm that would stem from the failure to uphold any Customer Programs is disproportionate to the cost of continuing such programs.

20. As such, the Debtors submit that the cost of continuing the Customer Programs pales in comparison to the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted. In light of the foregoing, the Debtors submit that continuing to honor the Customer Programs is plainly in the best interests of its estate and creditors.

21. The Debtors further believe that their Customers participating in the Customer Programs will not continue doing business with the Debtors without the benefit of the Customer Programs.

22. Section 105(a) of the Bankruptcy Code also authorizes a court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is to ensure a bankruptcy court's power to take whatever action "is appropriate or necessary in aid of the exercise of its jurisdiction." 2 COLLIER ON BANKRUPTCY § 105.01 at 105-2 (15th ed. 1993). The Debtors submit that the relief requested in this Motion is critical to the Debtors and is justified under section 105(a) of the Bankruptcy Code.

23. To the extent any of the Customer Programs are outside the ordinary course of their business, the Court has the authority to grant the relief requested herein pursuant to 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). A debtor's decision to enter into a transaction outside of the ordinary course of business is governed by the business judgment standard." *See Fulton State*

Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) is whether the debtor has “an articulated business justification”). When applying the “business judgment” rule, courts show great deference to the debtor’s decision making. *See, e.g., In re Castre*, 312 B.R. 426, 430 (Bankr. D. Colo. 2004); *In re Murphy*, 288 B.R. 1, 5 (D. Me. 2002); *In re Bakalis*, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998); *In re First Wellington Canyon Assoc.*, 1998 WL 165028*1 (N.D. Ill. 1998); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981). The Debtors believe that their major customers are an integral part of their businesses, and without customer goodwill and support, the Debtors’ reorganization will not succeed. As a result, continuing the Debtors’ Customer Programs is necessary to maintain the value of the Debtors’ estates for the benefit of creditors.

24. Where retaining loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this district have granted relief similar to that requested here. *See In re Gas City Ltd.*, Case No. 10-47879 (Bankr. N.D. Ill. Oct. 27, 2010); *In re Hartmarx Corp.*, Case No. 09-02046 (Bankr. N.D. Ill. Jan. 26, 2009); *In re Kimball Hill, Inc.*, Case No. 08-10095 (Bankr. N.D. Ill. May 13, 2008); *In re Select Snacks, Inc.*, Case No. 07-18769 (Bankr. N.D. Ill. Oct. 23, 2007); *In re Wickes, Inc.*, Case No. 04-02221 (Bankr. N.D. Ill. Jan. 21, 2004); *In re Eagle Food Ctrs.*, Case No. 03-15299 (Bankr. N.D. Ill. Apr. 7, 2003); *In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002); and *In re Nat’l Steel Corp.*, Case No. 02-08699 (Bankr. N.D. Ill. Mar. 6, 2002).

25. Indeed, the Debtors’ creditors also will benefit from the relief sought herein. If the Debtors are prohibited from honoring and maintaining the Customer Programs consistently with their past business practices, then Customers’ lost confidence will damage the Debtors’

businesses to an extent that far exceeds the cost associated with honoring and continuing such practices. The relief requested herein will protect the Debtors' goodwill and help maintain the value of their estates during this critical time.

26. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to: (a) perform such of their obligations under the Customer Programs as they deem appropriate, and (b) continue, renew, replace, implement, and/or terminate such of their Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court.

27. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and as will be further demonstrated at the hearing held to consider same, the requirements of Bankruptcy Rule 6003 have been satisfied.

NOTICE

28. 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

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

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

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**ORDER AUTHORIZING THE DEBTORS TO (A) HONOR CERTAIN PREPETITION
OBLIGATIONS TO CUSTOMERS AND (B) CONTINUE THEIR CUSTOMER
PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS**

This matter coming before the Court on the Motion of the Debtors for entry of an order authorizing the Debtors to (a) honor certain prepetition obligations to customers and sales agents and (b) continue their customer programs and practices in the ordinary course of business (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.

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.

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.

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

4. The Debtors are authorized, but not directed, to continue to perform under the Customer Programs.

5. Nothing herein shall be deemed to convert any prepetition claim into an administrative expense claim against the Debtors or their estates.

6. The Debtors are authorized, but not directed, to continue, renew, replace, implement new, and/or terminate their Customer Programs, in the ordinary course of business, without further application to the Court.

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

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

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

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

Dated: _____, 2011

UNITED STATES BANKRUPTCY JUDGE