

**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., *et al.*,<sup>1</sup> ) (Joint Administration Pending)  
)  
Debtors. ) Hon. Pamela S. Hollis

**DEBTORS’ MOTION FOR ORDER: PURSUANT TO SECTIONS 105(a) AND 363 OF  
THE BANKRUPTCY CODE (I) AUTHORIZING DEBTORS TO HONOR  
PREPETITION INSURANCE POLICIES AND RENEW SUCH POLICIES IN THE  
ORDINARY COURSE OF BUSINESS AND (II) GRANTING 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 honor prepetition insurance policies in the ordinary course of business or enter into new insurance arrangements, as may be required as the terms of existing arrangements expire without need for further authority or approval from the Court and (ii) authorizing the Debtors’ banks or financial institutions to honor and process checks and transfers related to such obligations. 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

<sup>1</sup> 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).



“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.

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 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 of Brian Mittman filed 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) and 363 of the Bankruptcy Code, authorizing (i) the Debtors to honor their obligations under their insurance policies in the ordinary course of business or enter into new insurance arrangements, as may be required as the terms of existing arrangements expire, without need for further authority or approval from the Court; (ii) their banks and financial institutions to honor and process checks and transfers related to funding their obligations under the insurance policies and; (iii) the Debtors to use cash collateral to make payments due under the insurance policies.

9. In the ordinary course of the Debtors' businesses, the Debtors retain and maintain numerous insurance policies providing coverage for, *inter alia*, property and casualty liability, pension bond insurance, customs bond, worker's compensation, and directors' and officers' liability (collectively, the "Insurance Policies"). A detailed listing of the Insurance Policies that are currently held by the Debtors is attached hereto as **Exhibit A**. The Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in many cases, such coverages are required by various regulations, laws, and contracts that govern the Debtors' commercial activity.

10. The Debtors do not believe that they need Court approval to maintain their existing Insurance Policies. Out of an abundance of caution, however, the Debtors, by this Motion, seek entry of an order authorizing them to pay prepetition premiums and related expenses, if any, necessary to maintain their coverage in current effect and, at their sole discretion, to revise, supplement, or change insurance coverage as needed.

11. The annual premiums for the Insurance Policies, which the Debtors maintain through a handful of different insurance carriers, total approximately \$202,000.

12. It is the Debtors' business practice to pay Insurance Premiums in a timely fashion and they do not believe that they have any unpaid Insurance Premiums as of the Petition Date. However, given the timing of the bankruptcy filing, it is possible that some of the Insurance Premiums may not have been paid as of the Petition Date. Failure to make these ongoing premium payments when due will cause harm to the Debtors' estates in several ways. First, if the Debtors fail to make their payments, the insurers may seek to terminate the Insurance Policies to recoup their losses. The Debtors would then be required to obtain replacement insurance on an expedited basis. This replacement insurance likely would require not only that the Debtors pay a lump-sum premium for the insurance policy in advance, but would involve a higher overall cost than the premium the Debtors currently pay.

13. Even if the insurers were not permitted to terminate the Insurance Policies, any interruption of payment would have a severe and adverse impact on the Debtors' ability, in the ordinary course of their businesses, to renew any Insurance Policies that expire postpetition.

14. In light of the importance of maintaining the Insurance Policies with respect to their business activities, the Debtors request authority to honor their obligations under the existing Insurance Policies. As described above, any other alternative would likely require considerable additional cash expenditures.

15. By this Motion, the Debtors request authority, pursuant to sections 105(a), 363(b)(1), and 503(b) of the Bankruptcy Code, to continue their Insurance Policy programs uninterrupted, pay associated Insurance Policy premiums, and honor their undisputed prepetition obligations thereunder, if any, to the extent that the Debtors determine in their discretion that such payment is necessary or appropriate to avoid cancellation, default, alteration, assignment,

attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies.

**BASIS FOR RELIEF**

16. This Court may authorize the Debtors to maintain the Insurance Policies and to pay prepetition premiums necessary to maintain insurance coverage pursuant to section 363(b)(1) of the Bankruptcy Code. Section 363(b) provides that “[t]he trustee, after notice and 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). Thus, under this section, a court may authorize a debtor to pay certain prepetition claims, such as prepetition premium amounts. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code). To do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” *Id.* As discussed herein, the maintenance of the Debtors’ insurance coverage is important and will inure to the benefit of the Debtors’ estates because it will avoid disruption, distraction, and unnecessary additional costs.

17. The Court may also rely on its general equitable powers to grant the relief requested in this Motion as codified in section 105(a). Section 105 empowers this 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). 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.” *Ionosphere*, 98 B.R. at 175-76 (citing *Miltenberger v. Logansport, C. & S.W. R.Co.*, 106 U.S. 286 (1882)). Section 105(a) authorizes a court to “permit pre-plan payment of a pre-petition 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).

18. Application of section 105(a) in the context of this Motion is also appropriate because the relief requested herein is consistent with the rehabilitative policy of chapter 11 of the Bankruptcy Code. A debtor-in-possession is a fiduciary with a duty to protect and preserve the estates, including the value of the business as a going concern. *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). Granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation, maximize the value of the estates’ assets, and thus benefit the estates’ creditors.

19. Paying outstanding prepetition premium amounts will benefit the estates and their creditors by allowing the Debtors’ business operations to continue without interruption. As discussed herein, the maintenance of the Insurance Policies is critical to the preservation of the value of the Debtors’ estates. Certain of the Debtors’ Insurance Policies, such as Workers’ Compensation, are required by state law, and their cancellation would result in the need for immediate replacement, lest the Debtors lose their ability to operate. In addition, payment of any unpaid prepetition amounts is necessary to keep their Insurance Policies in effect and to ensure that there are not inadvertent lapses in coverage. It would also be inefficient and extremely expensive for the Debtors to find comparable replacement insurance. Accordingly, the Debtors believe it is in the best interest of their creditors to authorize the Debtors to maintain the Insurance Policies and that the estates would suffer immediate and irreparable harm if the insurance coverage lapsed. *See Communications Workers of Am., District 1, AFL-CIO v.*

*NYNEX Corp.*, 898 F.2d 887, 891 (2d Cir. 1990) (termination of insurance coverage constitutes irreparable harm); *Whelan v. Colgan*, 602 F.2d 1060, 1062 (2d Cir. 1979) (same).

20. Furthermore, courts routinely grant the relief requested herein. *See, e.g., In re Gas City, Ltd., et al.*, Case No. 10-47879 (ERW) (Bankr. N.D. Ill. Oct. 27, 2010); *In re Sentinel Mgmt. Group, Inc.*, Case No. 07-14987 (JHS) (Bankr. N.D. Ill. Aug. 30, 2007); *In re Kimball Hill, Inc.*, Case No. 08-10095 (SPS) (Bankr. N.D. Ill. May 13, 2008); *In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Feb. 25, 2008); *In re DJK Residential LLC*, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. Feb. 5, 2008); *In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. Jan. 4, 2006) (authorizing the debtors to maintain their insurance policies and to pay any outstanding prepetition amounts); *In re The Boyds Collection, Ltd.*, Case No. 05-43793 (Bankr. D. Md. Nov. 2, 2005) (authorizing the debtors to pay any unpaid prepetition insurance premiums and enter into post-petition insurance financing agreements); *Official Comm. of Unsecured Creditors v. Med. Mut. of Ohio (In re Primary Health Sys., Inc.)*, 275 B.R. 709 (Bankr. D. Del. 2002) (clarifying that the debtors were authorized to pay insurance premium amounts in connection with prepetition disability, medical, and workers' compensation insurance plans).

21. Nothing herein is intended to or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or appropriate party-in-interest's rights to dispute any claim or (c) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim.

**REQUEST FOR AUTHORITY FOR BANKS TO HONOR AND PAY CHECKS ISSUED AND ELECTRONIC FUNDS TRANSFERRED TO PAY PREMIUM OBLIGATIONS**

22. The Debtors further request that the Court authorize and direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to fulfill premium obligations under the Insurance Policies or any future premium obligations, whether such checks were presented prior to or after the Petition Date. The Debtors also seek authority to issue new post-petition checks, or effect new electronic fund transfers, on account of any premium obligations to replace any prepetition checks or electronic fund transfers that may be dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases. The Debtors submit that they have sufficient cash reserves to pay such amounts as they become due in the ordinary course of the Debtors' businesses.

23. Bankruptcy Rule 6003 provides that a bankruptcy court may approve a motion "to pay all or part of a claim that arose before the filing of a petition" prior to twenty-one (21) days after the petition date to the extent relief is necessary to avoid immediate and irreparable harm. As described herein, the Debtors' business operations rely heavily on the Insurance Policies. The relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and the Debtors submit that Bankruptcy Rule 6003 has been satisfied.

24. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day (14) stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

25. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.



**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.

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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*Proposed Counsel to the Debtors and  
Debtors in Possession*

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INC., *et al.*,<sup>1</sup> ) (Joint Administration Pending)  
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Debtors. ) Hon. Pamela S. Hollis

**ORDER PURSUANT TO SECTIONS 105(A) AND 363 OF THE BANKRUPTCY CODE  
(I) AUTHORIZING DEBTORS TO HONOR PREPETITION INSURANCE POLICIES  
AND RENEW SUCH POLICIES IN THE ORDINARY COURSE OF BUSINESS  
AND (II) GRANTING RELATED RELIEF**

This matter coming before the Court on the Motion of the Debtors for an order authorizing the Debtors to (i) honor prepetition insurance policies in the ordinary course of business or enter into new insurance arrangements, as may be required as the terms of existing arrangements expire without need for further authority or approval from the Court; and (ii) the Debtors' banks or financial institutions to honor and process checks and transfers related to such insurance policies and the obligations thereunder (the "Motion")<sup>2</sup>; 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:

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<sup>1</sup> 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).

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

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.
3. Notice of the Motion was proper, timely, adequate and sufficient under the particular circumstances.
4. The Debtors are authorized, but not required, to honor the terms of the Insurance Policies and to renew the Insurance Policies in the ordinary course of business as set forth in the Motion; provided, however, that such payments are made in accordance with the court approved debtor-in-possession financing/cash collateral order and corresponding budget.
5. Nothing in this order nor any action taken by the Debtors in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.
6. Nothing in this order shall impair the ability of the Debtors or appropriate party-in-interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto.
7. All applicable banks or financial institutions are authorized, when requested by the Debtors, in the Debtors' sole discretion, to receive, process, honor and pay all checks drawn on or direct deposit and funds transfer instructions relating to the Debtors' accounts and any other transfers that are related to the premium obligations and the costs and expenses related thereto; provided, that sufficient funds are available in the accounts to make such payments; provided further, that any such bank or financial institution may rely on the representations of the Debtors regarding which checks that were drawn or instructions that were issued by the

Debtors before the Petition Date should be honored post-petition pursuant to an order of this Court and that any such bank or financial institution shall not have any liability to any party for relying on the representations of the Debtors as provided herein.

8. Bankruptcy Rule 6004(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

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

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UNITED STATES BANKRUPTCY JUDGE