

Order”, together with the Proposed Interim Order, the “**Proposed Orders**”), respectively, (a) authorizing, but not directing, the Debtors to (i) pay certain prepetition claims of shippers, warehousemen, processors and lien claimants and (ii) pay certain prepetition customs duties and similar incidental prepetition import expenses, and (b) authorizing, but not directing, financial institutions to receive, process, honor and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions. In support of this Motion, the Debtors respectfully represent and set forth as follows:

Background

1. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. No committees have been appointed or designated.

2. Founded in 1880 and long one of the world’s leading material science companies, the Debtors and their non-Debtor affiliates operate an integrated global business involving a diverse collection of mature and growth businesses and an array of valuable intellectual property. In order to address a shortfall in liquidity in the United States, monetize non-strategic intellectual property, fairly resolve legacy liabilities and focus on their most valuable business lines, the Debtors commenced these chapter 11 cases.

3. Additional factual background relating to the Debtors’ businesses and the commencement of these chapter 11 cases is set forth in detail in the Declaration of Antoinette P.

McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Pleadings dated January 18, 2012 (the “**First Day Declaration**”), filed contemporaneously with this Motion and incorporated herein by reference.

Facts Specific to the Relief Requested

A. The Shippers, Warehousemen, and Processors

4. The Debtors require the delivery of raw materials on a regular basis for the production and distribution of their finished products. The Debtors’ pricing policies, marketing strategies and business operations rely on their ability to receive raw materials and distribute finished products in a timely fashion. To maintain their operations and efficiently transport raw materials and finished products, the Debtors employ an intricate distribution network that uses both domestic and foreign third-party carriers.

5. Specifically, the Debtors’ domestic distribution network depends upon the use of reputable domestic common carriers, truckers, rail carriers, barge owners and stevedores (the “**Shippers**”) to deliver raw materials to the Debtors’ production facilities and distribute finished products to the Debtors’ customers. The services provided by the Shippers are essential to the ordinary-course, day-to-day operations of the Debtors’ businesses. At any given time, there are numerous shipments of raw materials, work in process and finished products en route to or from the Debtors’ manufacturing facilities. Thus, it is a certainty that Shippers currently are in possession of the Debtors’ property, and the delivery of the raw materials, work in process and finished products that currently are held by Shippers is vital to maintaining the Debtors’ operations during this critical time of transition into chapter 11. If the Debtors do not pay prepetition ordinary course obligations owed to these Shippers, the Shippers might refuse to

deliver or release such property to the Debtors until they are paid. Such an outcome could cause significant disruptions to the operation of the Debtors' businesses.

6. In the ordinary course of their businesses, the Debtors also rely upon certain third-party contractors to store raw materials and finished products (the "**Warehousers**"). These Warehousers hold the Debtors' goods and may refuse to release them pending payment from the Debtors in satisfaction of their claims, thereby disrupting the Debtors' operations.

7. Furthermore, the Debtors rely on third-party processors to manufacture or finish goods to the Debtors' exact specifications using, in many cases, the Debtors' (a) proprietary technology, (b) trade secrets and other intellectual property and (c) production equipment (the "**Processors**," and, together with the Shippers and Warehousers, the "**Possessory Lien Holders**"). The Processors include certain parties with whom the Debtors have entered into "toll" agreements to process and finish products produced by the Debtors. At any given time, in the ordinary course of business, the Processors may be performing services on, and therefore have possession of, the Debtors' supplies, raw materials, work in progress and finished goods.

8. The Debtors estimate that as of January 9, 2012, the Debtors owe the Possessory Lien Holders approximately \$20 million in the aggregate (the "**Shipping Charges**"). In virtually all cases the value of goods that the Debtors will receive upon payment of the Shipping Charges exceeds the Shipping Charges.

B. The Statutory Lien Claimants

9. The Debtors' machinery, tools and equipment used at and outside their facilities, as well as the Debtors' facilities themselves, require a significant amount of ongoing maintenance and repair. The Debtors rely on, and routinely contract with, a number of third

parties for such maintenance and repair. Under applicable state law, under certain circumstances, many parties maintaining and repairing the Debtors' real and personal property have a right to assert and perfect construction, materialman's, mechanics' or other similar statutory liens, which attach to the Debtors' real and personal property (the "**Statutory Lien Claimants**"). The Statutory Lien Claimants will be entitled to assert and perfect liens against the Debtors' property during these chapter 11 cases with respect to their prepetition claims against the Debtors (such claims, to the extent of a valid statutory lien right under applicable state law, the "**Statutory Lien Claims**").

10. As of the commencement of these chapter 11 cases, the Debtors have ongoing repair and maintenance projects at several of their facilities, and a substantial number of Statutory Lien Claimants may not have been paid for certain prepetition goods and services provided in connection therewith. The Debtors estimate that as of January 9, 2012, the Statutory Lien Claims were approximately \$6 million in the aggregate. In virtually all cases the value of the Debtors' real and personal property that the Debtors will secure upon payment of the Statutory Lien Claims exceeds the Statutory Lien Claims.

C. The Customs Duties

11. In the ordinary course of the Debtors' businesses, the Debtors purchase from overseas certain of the raw materials, parts, components, finished goods, tooling, machinery, and equipment that they use in the operation of their businesses, and then import such goods into the United States (the "**Imported Goods**"). The Debtors' purchase of the Imported Goods is vital to the operation of their businesses. Without the continued and uninterrupted purchase and delivery of the Imported Goods, the Debtors could not continue

business in the ordinary course with their suppliers and maintain the continued and uninterrupted distribution of their finished products to their customers.

12. If these Customs Duties² are not timely paid, the United States Customs and Border Protection Agency (the “**U.S. Customs Service**”) and other similar authorities may demand liquidated damages, assess interest, impose sanctions or take other precipitous actions on account of the unpaid Customs Duties. Even if the Debtors are able to contest or otherwise stay any such measures, doing so would necessarily require a significant expenditure of time, energy and resources, and would needlessly distract the Debtors’ management from the Debtors’ transition into chapter 11 and the restructuring process. Furthermore, absent payment, the Debtors’ customs brokers and the U.S. Customs Service may, in some instances, assert liens against the Imported Goods, and other customs authorities may seek to assert liens or take other action against the Debtors in their respective jurisdictions.

13. The Debtors estimate that as of January 9, 2012, the Debtors owed approximately \$400,000 in Customs Duties. In virtually all cases the value of the Imported Goods that the Debtors will receive upon payment of the Customs Duties exceeds the Customs Duties.

Jurisdiction

14. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363, 1107(a) and 1108 of the Bankruptcy Code, rule 6003 of the

² Customs Duties shall be defined as customs duties and similar incidental import expenses, including, without limitation, any prepetition amounts owed to the Debtors’ customs brokers, even if the Debtors incurred the relevant liability prior to the Petition Date.

Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”).

Relief Requested

15. By this Motion, the Debtors request entry of the Proposed Orders (a) authorizing, but not directing, the Debtors to pay the Shipping Charges, Statutory Lien Claims and Customs Duties to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is critical to ensure the continued operation of the Debtors’ businesses on a postpetition basis; *provided, however*, that within 21 days after the Petition Date, the Debtors only will pay the Shipping Charges, Statutory Lien Claims and Customs Duties to the extent that the Debtors determine, in the exercise of their business judgment, that such payment is necessary to avoid immediate and irreparable harm to the Debtors; *provided further*, that in no event shall the Debtors pay any Shipping Charges, Statutory Lien Claims or Customs Duties before such amounts are due and payable.³ The Debtors also request that the Court authorize and direct financial institutions to receive, process, honor and pay all related checks and electronic payment requests.

16. The estimates set forth herein are based on the Debtors’ prepetition accounts payable estimates as of January 9, 2012. As a result, certain adjustments and reconciliations will be necessary to account for those invoices that have been issued by

³ Contemporaneously with this Motion, the Debtors are also filing a motion to pay certain prepetition obligations due to certain parties who supply the Debtors with goods and services, without which the Debtors’ business, market share and going-concern viability would be immediately and irreparably harmed, as well as a motion to pay certain prepetition obligations due to certain of the Debtors’ essential foreign vendors who are critical to the Debtors’ business operations. The Debtors have analyzed various vendors in an attempt to categorize them most logically among these motions, but submit that the claims proposed to be paid pursuant to this Motion might also be entitled to payments pursuant to other of the first day motions based on the rationales set forth therein.

Possessory Lien Holders and Statutory Lien Claimants, but not yet received by the Debtors at the time of filing this Motion. Accordingly, the Debtors reserve their right, on appropriate notice, to request authority to pay Shipping Charges, Statutory Lien Claims and Customs Duties in excess of those identified in this Motion.

Basis for Relief

A. Applicable Authority Supports Preplan Payment of the Shipping Charges, Statutory Lien Claims and Customs Duties.

17. In order to protect against diminution in the value of a debtor's estate and going-concern enterprise, bankruptcy courts in the Southern District of New York (and elsewhere) commonly authorize the payment of prepetition obligations in advance of a confirmed chapter 11 plan ("**Preplan Payments**") in large complex chapter 11 cases. *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (Preplan Payment of prepetition wages authorized); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983) (Preplan Payment of suppliers' claims authorized). In reaching a determination that Preplan Payments are both necessary and appropriate, courts traditionally have relied on legal theories premised on sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code.

18. It is well established that a debtor in possession is a fiduciary for the bankruptcy estate, and as such, is duty-bound to maximize recoveries for its creditors, and if justified by the facts and circumstances of its case, holders of its equity interests. *CoServ, L.L.C.*, 273 B.R. at 497. In light of this duty, in situations where a debtor can demonstrate a sound business justification for Preplan Payments, courts have authorized such payments pursuant to section 363(b) of the Bankruptcy Code. *Ionosphere Clubs*, 98 B.R. at 175 (courts

have “broad flexibility” under section 363(b) of the Bankruptcy Code to permit a debtor to expend funds outside the ordinary course so long as the debtor articulates a business justification to do so, including making Preplan Payments).

19. Section 363(b) of the Bankruptcy Code provides that a 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.” 11 U.S.C. § 363(b)(1). A court must find that a “good business reason” exists prior to authorizing a debtor’s use of estate property other than in the ordinary course. *See, e.g., Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). In circumstances “where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The Debtors respectfully submit that under the circumstances presented herein, there are numerous good business justifications for granting the requested relief.

20. In addition to the authority granted under section 363 of the Bankruptcy Code, bankruptcy courts have granted relief consistent with the Debtor’s request herein under the longstanding “doctrine of necessity” – first articulated in *Miltenberger v. Longansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Modern application of the doctrine of necessity is derived from the inherent equitable powers granted to the bankruptcy court under section 105(a) of the Bankruptcy Code, which empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). *See Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.)*, 352 F.3d 671, 680 (2d

Cir. 2003) (“it is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process’”) (quoting *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994)).

21. In situations where Preplan Payments are important to a debtor’s reorganization efforts, bankruptcy courts in this district have permitted such payments under the doctrine of necessity. *In re Ionosphere Clubs*, 98 B.R. at 175-767 (Bankr. S.D.N.Y. 1989) (stating that the authorization of Preplan Payments is not a novel concept for facilitating a debtor’s rehabilitation efforts). Moreover, some courts have recognized that there are situations that *require* “the preplan satisfaction of a prepetition claim” in order for the debtor to satisfy its duty to the estate. *CoServ, L.L.C.*, 273 B.R. at 497 (on such occasions “it is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”).

22. It is the Debtors’ business judgment that payment of the Shipping Charges, Statutory Lien Claims and Customs Duties will result in enhanced creditor recoveries through the preservation of their going-concern value. Furthermore, permitting the Debtors to make Preplan Payments in the amount and manner described herein satisfies “two recognized policies” of chapter 11, namely, maximizing recoveries for a debtor’s creditors and preserving the going-concern value of the debtor’s enterprise. *See Bank of Am. Nat’l Trust & Sav. Assoc. v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999).

23. As stated herein, Preplan Payment of the Shipping Charges, Statutory Lien Claims and Customs Duties will benefit the estates by permitting the Debtors’ business operations to continue without interruption, because, in the absence of such payments, it is extremely likely that the Debtors will incur crippling delays with respect to both the supply of

raw materials, and the outflow of finished products. Accordingly, the Debtors submit that they have shown a sound business justification for the Preplan Payment of the Shipping Charges, Statutory Lien Claims and Customs Duties.

24. Courts in this district historically have granted relief consistent with the Debtors' request on the basis that payment of Shipping Charges, Statutory Lien Claims and Customs Duties is essential to maximizing recoveries for creditors and preserving the debtor's estate. *See, e.g., In re AMR Corporation*, Case No. 11-15463 (Bankr. S.D.N.Y. Dec. 22, 2011); *In re Borders Group, Inc.*, No. 11-10614 (Bankr. S.D.N.Y. Mar. 15, 2011); *In re The Great Atlantic & Pacific Tea Company, Inc.*, No. 10-24549 (Bankr. S.D.N.Y. Dec. 12, 2010); *In re Blockbuster Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Oct. 20, 2010); *In re Tronox Inc.*, No. 09-10156 (Bankr. S.D.N.Y. Jan. 13, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 13, 2009). The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

B. Preplan Payment of the Shipping Charges and Statutory Lien Claims Will Help Preserve the Going-Concern Value of the Debtors.

25. Under the laws of most states,⁴ the Possessory Lien Holders are entitled under certain circumstances to possessory or statutory liens on the goods in their possession, which liens secure the charges or expenses incurred in connection with the transportation or storage of the goods. The liens may attach simply by virtue of the lien claimants commencing work, while other states have more stringent notice and perfection requirements. In any event,

⁴ 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). Sections 7-209(1) and 7-307 of New York's Uniform Commercial Code provide for a similar lien for carriers and warehousemen, respectively.

pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers are "subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . ." 11 U.S.C. § 546(b)(1)(A). Therefore, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, the Statutory Lien Claimants will be entitled to assert and perfect liens against the Debtors' property during these chapter 11 cases with respect to their Statutory Lien Claims.

26. Similarly, vendors which are Statutory Lien Claimants may hold and perfect liens on estate property for which goods or services were provided prepetition.⁵ If the Statutory Lien Claimants possess lien rights or have the ability to exercise "self-help" remedies to secure payment of their claims, any failure to satisfy the Statutory Lien Claims could have a material adverse impact on, and significantly impede the operation of, the Debtors' businesses, to the detriment of the Debtors' creditors.

⁵ See, e.g., Cal. Civil Code § 3110 (2011) (stating that "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances or leased equipment for the value of such labor done or materials furnished and for the value of the use of such appliances, equipment, teams, or power whether done or furnished at the instance of the owner or of any person acting by his authority or under him as contractor or otherwise"); N.Y. Lien Law § 3 (2011) (stating that "[a] contractor, subcontractor, laborer, [or] materialman, who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof . . . shall have a lien for the principal and interest, of the value, or the agreed price, of such labor, including benefits and wage supplements due or payable for the benefit of any laborer, or materials upon the real property improved or to be improved and upon such improvement, from the time of filing a notice of such lien"); *id.* at § 180 (stating that "[a] person who makes, alters, repairs or performs work or services of any nature and description upon, or in any way enhances the value of an article of personal property, at the request or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done and materials furnished, and may retain possession thereof until such charges are paid").

27. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Possessory Lien Holders and Statutory Lien Claimants may be entitled to adequate protection of a valid possessory lien to the extent that the Debtors use or sell the estate property against which a lien claim is asserted.

28. Given that the value of such property will generally exceed the value of the related lien claims, creditors will not be harmed—and, in fact, will be benefited—by the Preplan Payment of certain of the Shipping Charges and Statutory Lien Claims because such payment will facilitate the use and/or sale of estate property against which liens may otherwise be asserted and will help preserve the going-concern value of the Debtors.

C. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

29. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing. The Debtors have experienced extraordinary liquidity constraints during the pre-filing period. In order to stabilize the Debtors' operations, and to smoothly transition into chapter 11, it is imperative that the Debtors normalize their global supply relationships. Failure to do so would result in extremely adverse business effects given the current pressure on the Debtors' already strained supply chain. The Debtors anticipate that their proposed debtor-in-possession financing (the "**DIP Financing**"), along with the relief sought herein and in their other first day pleadings, will be instrumental in helping to stabilize the Debtors' business operations by restoring much-needed liquidity. The Debtors expect that cash flows from operations and borrowings under the proposed DIP Financing will be sufficient to pay postpetition obligations related to the Shipping Charges, Statutory Lien Claims and Customs

Duties. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment made on account of the Shipping Charges, Statutory Lien Claims and Customs Duties.

Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, but not directed, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Shipping Charges, Statutory Lien Claims and Customs Duties, to the extent the Debtors have sufficient funds standing to their credit with such financial institutions, and without any duty of further inquiry and without any liability for relying on such representation or following the Debtors' instructions.

Bankruptcy Rule 6003 Is Satisfied

30. In order for a debtor to obtain relief to make Preplan Payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003 – namely, the relief requested is necessary to avoid “immediate and irreparable harm”. If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize).

31. Immediate and irreparable harm would result if the relief requested herein is not granted. As described above, Preplan Payment of the Shipping Charges, Statutory Lien Claims and Customs Duties is integral to the Debtors’ operations. Failure to satisfy prepetition

obligations on account of the Shipping Charges, Statutory Lien Claims and Customs Duties in the ordinary course of business during the first 21 days of these chapter 11 cases will jeopardize both the Debtors' supply of raw materials and the outflow of their finished products.

Accordingly, the Debtors respectfully submit that they have satisfied Bankruptcy Rule 6003 as it relates to the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

32. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a), and (b) the 14-day stay under Bankruptcy Rule 6004(h).

Debtors' Reservation of Rights

33. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the Shipping Charges, Statutory Lien Claims and Customs Duties under applicable non-bankruptcy law. Likewise, if this 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 subsequently.

Notice

34. Notice of this Motion has been provided to: (a) the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims; (c) the agent under the prepetition

revolving credit facility; (d) the indenture trustee for the prepetition 9.2% Senior Notes due June 1, 2021; (e) the indenture trustee for the prepetition 10.625% Senior Secured Notes due March 15, 2019; (f) the indenture trustee for the prepetition 9.95% Senior Notes due July 1, 2018; (g) the indenture trustee for the prepetition 9.75% Senior Secured Notes due March 1, 2018; (h) the indenture trustee for the prepetition 7.00% Convertible Senior Notes due April 1, 2017; (i) the Securities and Exchange Commission; (j) the United States Attorney for the Southern District of New York; (k) the Internal Revenue Service; (l) the Environmental Protection Agency; (m) the Pension Benefit Guaranty Corporation; (n) counsel to KPP Trustees Limited, the trustee of the Kodak Pension Plan; (o) counsel to the Ad Hoc Committee of Holders of Senior Secured Notes; and (p) counsel to the agent under the proposed Debtor-In-Possession Credit Agreement. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that further notice of this Motion is neither required nor necessary.

No Prior Request

35. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (a) enter the Proposed Interim Order granting the relief requested in the Motion and such other and further relief as may be just and proper and (b) schedule a final hearing on the Motion within 30 days of the Petition Date or as soon as is otherwise practicable thereafter.

Dated: January 19, 2012
New York, New York

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Proposed Counsel to the Debtors
and Debtors in Possession

EXHIBIT A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-_____ (_____)
)	
Debtors.)	(Jointly Administered)
)	

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO
PAY (I) PREPETITION CLAIMS OF SHIPPERS, WAREHOUSERS, PROCESSORS
AND LIEN CLAIMANTS AND (II) CERTAIN CUSTOMS DUTIES
AND SIMILAR INCIDENTAL PREPETITION IMPORT EXPENSES
AND (B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS
TO HONOR ALL RELATED PAYMENT REQUESTS**

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) pay certain prepetition claims of Shippers, Warehouse, Processors and Lien Claimants and (ii) pay certain prepetition Customs Duties and similar incidental prepetition import expenses, and (b) authorizing, but not directing, financial institutions to receive, process, honor and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Final Hearing shall be held on February [•], 2012 at _____:_____ a.m./p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before February [•], 2012 at 4:00 p.m. and served on parties in interest as required by the Local Rules.
3. The Debtors are authorized, but not directed, to pay such Shipping Charges, Statutory Lien Claims and Customs Duties, as the Debtors determine, in the exercise of their business judgment, may be necessary or appropriate to obtain the release of related goods or liens against real or personal property of the Debtors; *provided, however*, that within the 21-day period following the Petition Date, the Debtors shall only honor those Shipping Charges, Statutory Lien Claims and Customs Duties to the extent that the Debtors determine, in the exercise of their business judgment, that honoring such Shipping Charges, Statutory Lien Claims and Customs Duties is necessary to avoid immediate and irreparable harm to the Debtors; *provided further*, that in no event shall the Debtors pay any Shipping Charges, Statutory Lien Claims or Customs Duties before such amounts are due and payable.

4. Neither the Debtors nor any other party in interest concedes that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Order are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

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

6. In accordance with this Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, and shall have no duty of further inquiry nor any liability for relying on such representations or following the Debtors' instructions.

7. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

8. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease

pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

9. The requirements set forth in Local Rule 9013-1(b) are satisfied.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

11. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

12. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

13. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: January [•], 2012
New York, New York

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Case No. 12-_____ (_____)
)	
Debtors.)	(Jointly Administered)
)	

**FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY
(I) PREPETITION CLAIMS OF SHIPPERS, WAREHOUSERS, PROCESSORS
AND LIEN CLAIMANTS AND (II) CERTAIN CUSTOMS DUTIES
AND SIMILAR INCIDENTAL PREPETITION IMPORT EXPENSES
AND (B) AUTHORIZING, BUT NOT DIRECTING, ALL FINANCIAL INSTITUTIONS
TO HONOR ALL RELATED PAYMENT REQUESTS**

Upon the motion (the “**Motion**”)² of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of interim and final orders (a) authorizing, but not directing, the Debtors to (i) pay certain prepetition claims of Shippers, Warehouse, Processors and Lien Claimants and (ii) pay certain prepetition Customs Duties and similar incidental prepetition import expenses, and (b) authorizing, but not directing, financial institutions to receive, process, honor and pay all related checks and electronic payment requests, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institutions; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to pay such Shipping Charges, Statutory Lien Claims and Customs Duties, as the Debtors determine, in the exercise of their business judgment, may be necessary or appropriate to obtain the release of related goods or liens against real or personal property of the Debtors; *provided, however*, that in no event shall the Debtors pay any Shipping Charges, Statutory Lien Claims and Customs Duties before such amounts are due and payable.
3. Neither the Debtors nor any other party in interest concedes that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Order are valid, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.
4. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. In accordance with this Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the

obligations described in the Motion is authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, and shall have no duty of further inquiry nor any liability for relying on such representations or following the Debtors' instructions.

6. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

7. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Order.

8. The requirements set forth in Local Rule 9013-1(b) are satisfied.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

10. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

11. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

12. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: February [•], 2012
New York, New York

United States Bankruptcy Judge