

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , ¹	:	Case No. 15-____ (____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	

**MOTION FOR AN ORDER AUTHORIZING
THE DEBTORS TO PAY CERTAIN PREPETITION TAXES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") move the Court for the entry of interim and final orders pursuant to sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code: (i) authorizing them to pay prepetition sales and use taxes, property taxes, franchise taxes, business license fees, annual and bi-annual report taxes, environmental fees, as well as any other taxes, fees and governmental obligations for which there may be personal liability for officers and directors (collectively, the "Prepetition Taxes"); and (ii) granting certain related relief. In support of this motion, the Debtors respectfully represent as follows:

Background

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.² The

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

² This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.



Debtors are continuing in possession of their properties and are managing their business, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors are an independent energy company engaged in the exploration, development, production and acquisition of oil and natural gas properties. The Debtors are headquartered in Houston, Texas. Their primary assets and operations are focused in the Eagle Ford trend of South Texas and, to a lesser extent, the onshore and inland waters of Louisiana. For the nine months ended September 30, 2015, the Debtors generated revenue of approximately \$195.7 million from net oil and gas production of 8.8 million barrels of oil equivalents (MMBoe). Crude oil represented 47% and natural gas represented 44% of the Debtors' oil and gas revenues for the nine months ended September 30, 2015 (22% and 66% of the volumes for crude oil and natural gas, respectively), with the remaining production and revenues coming from natural gas liquids (NGLs).

3. Additional information regarding the Debtors and these cases, including the Debtors' business, corporate structure, financial condition, and the reasons for and objectives of these cases, is set forth in the Declaration of Dean E. Swick in Support of First Day Pleadings (the "First Day Declaration"), filed contemporaneously herewith and incorporated herein by reference.

Prepetition Taxes Paid by the Debtors

4. Sales and Use Taxes. The Debtors periodically remit to certain taxing authorities (collectively, the "Taxing Authorities") certain sales taxes (collectively, the "Sales Taxes") that are self-assessed by the Debtors based upon sales to the Debtors from their suppliers and vendors.³ The Debtors are also required to pay use taxes (collectively, the "Use Taxes")

³ The Debtors also pay a small amount of sales tax with respect to production in Louisiana.

when they make certain purchases of tangible personal property, such as materials and supplies necessary for operations, from an out-of-state vendor. If the vendor has no business operations within the state, it has no legal obligation to charge or remit sales taxes for sales to parties within such state. Nevertheless, under these circumstances, various state laws require the Debtors to self-assess the amount of sales taxes that would have been owed on purchases from out-of-state vendors and pay these amounts as Use Taxes to the applicable Taxing Authorities. The timing and amount of the Debtors' payments on account of Sales and Use Taxes varies by jurisdiction, but in many jurisdictions occurs on a monthly basis.⁴ The Debtors estimate that the aggregate amount of Sales and Use Taxes owing to the Taxing Authorities as of the Petition Date is approximately \$250,000.

5. Franchise Taxes. The Debtors pay franchise, capital stock and similar taxes and fees (collectively, the "Franchise Taxes") to certain of the Taxing Authorities to maintain the right to operate their business in the applicable taxing jurisdictions. Some states assess a flat Franchise Tax on all businesses, and other states assess a Franchise Tax based upon net operating income. Most jurisdictions assess Franchise Taxes on an annual basis, in arrears. Certain states refuse to qualify a debtor to do business in the state if the Franchise Taxes have not been paid. The Debtors estimate that the aggregate amount of the Franchise Taxes owing to the Taxing Authorities as of the Petition Date is approximately \$450,000.

6. Property Taxes. The Debtors pay real property and personal property taxes (collectively, the "Property Taxes") to certain Taxing Authorities on account of their business assets. In many jurisdictions, taxes on property are subject to liens on the property that

⁴ Certain payments are made based on actual collections, in arrears, while others are estimated amounts that are later reconciled.

is being taxed. The timing of the Property Taxes varies by jurisdiction, but in most jurisdictions the Property Taxes are assessed on an annual basis. The Debtors estimate that the aggregate amount of Property Taxes owing to the Taxing Authorities as of the Petition Date is approximately \$7,200,000,⁵ all of which is due on or before January 31, 2016.

7. Business and Environmental Fees. Many municipal and county governments require businesses to obtain business licenses and pay corresponding business license fees, and certain state governments also require the Debtors to pay annual or bi-annual report taxes and other corporate fees in order to be in good standing for purposes of conducting business within that state (collectively, the "Business Fees"). The Debtors also pay a variety of fees related to environmental and conservation laws and regulations, permitting, and participation in state regulatory agencies and boards (collectively with the Business Fees, the "Business and Environmental Fees"). The Debtors estimate that the aggregate amount of prepetition Business and Environmental Fees owing to the applicable Taxing Authorities as of the Petition Date is approximately \$15,000.

8. Other Taxes. Many federal, state and local Taxing Authorities impose personal liability on directors and/or responsible officers of entities responsible for collecting or paying certain taxes or fees in the event that such taxes or fees are not remitted. Thus, if any such taxes or fees remain unpaid, the Debtors' directors and responsible officers may be subject to lawsuits or even criminal prosecution on account of such nonpayment during the pendency of these chapter 11 cases. Such lawsuits or proceedings would constitute a significant distraction

⁵ This amount ignores lien and assessment dates under state law and results from a calculation of the amount owed by prorating the time period to which the applicable taxes relate. Determining whether Property Taxes are prepetition or postpetition in nature can be difficult due to the intricacies of state law, and the Debtors are taking no position on those issues in this motion.

for the Debtors' directors and responsible officers at a time when they should be focused on the Debtors' efforts to successfully reorganize.

9. Although the Debtors believe that all taxes and fees for which the Debtors' directors and/or responsible officers may be personally liable are described herein, it is possible that other prepetition obligations, which carry similar liability, may be uncovered by the Debtors subsequent to the filing of this motion. To the extent that such prepetition obligations exist, the Debtors seek authority to treat them as "Prepetition Taxes" as that term is defined and used herein and pay them as they are discovered or arise.

10. Based on their books and records, the Debtors believe that their accrued but unpaid Prepetition Taxes incurred in the ordinary course of business approximate \$7,915,000 in total as of the Petition Date.⁶

Basis for Relief Requested

11. The Debtors submit that an order authorizing them to pay, in their sole discretion, the Prepetition Taxes as they may become due in the ordinary course is appropriate in these cases. The Debtors respectfully submit that the Court should authorize the payment of the Prepetition Taxes because: (a) certain of the Prepetition Taxes do not constitute property of the Debtors' chapter 11 estates; (b) certain of the Prepetition Taxes may be entitled to secured or priority status; and (c) failure to pay the Prepetition Taxes may disrupt the Debtors' operations and reorganization efforts by, among other things, impacting the Debtors' ability to conduct

⁶ Certain of the Taxing Authorities are conducting or may conduct audits with respect to the Prepetition Taxes. Accordingly, additional tax liability could be found to be owing, and the estimated tax amounts may prove inaccurate. To the extent that an audit results in the imposition of additional tax liability, the Debtors intend to treat such amounts as "Prepetition Taxes" and seek authority to pay any such taxes.

business in certain jurisdictions and potentially exposing the Debtors' directors and officers to personal liability.⁷

Funds Held in Trust Are Not Available for General Distribution to Creditors

12. The prepetition Sales and Use Taxes and certain of the other taxes identified above are likely "trust fund taxes" that, by definition, are held by the Debtors in trust for the benefit of those third parties to whom payment is owed or on behalf of whom such payment is being made. Section 541(d) of the Bankruptcy Code excludes "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest." 11 U.S.C. § 541(d). It is well established under section 541(d) of the Bankruptcy Code that taxes collected on behalf of taxing authorities are not property of the estate. See Begier v. IRS, 496 U.S. 53, 59 (1990) (holding that taxes such as excise taxes, FICA taxes and withholding taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.), 41 F.3d 92, 98-103 (3d Cir. 1994) (finding that funds withheld from employees' paychecks may be subject to a trust, and are thus not property of a debtor's estate, even where such funds were commingled with the debtor's other property); In re Am. Int'l Airways, Inc., 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (funds held in trust for federal excise taxes are not property of a debtor's estate and, therefore, are not available for distribution to creditors). Because the Prepetition Taxes that are trust fund taxes do not constitute property of the Debtors' estates, these

⁷ Concurrently with the filing of this motion, the Debtors have also filed a motion seeking authority to satisfy certain obligations relating to prepetition employee wages and benefits, including authority to remit to the applicable taxing authorities prepetition trust fund taxes withheld from employee paychecks and authority to pay the employer portion of payroll taxes as well as certain fees incurred by the Debtors to facilitate payment of such taxes. In addition, the Debtors have also filed a motion to pay certain royalty interests, working interests and related payments, including severance taxes.

amounts will not otherwise be available for distribution to the Debtors' creditors. Thus, the payment of these Prepetition Taxes will not adversely affect the Debtors' estates.

Nonpayment of Certain of the Taxes and Fees May Give Rise to Secured or Priority Claims

13. In addition, claims for certain of the Prepetition Taxes may be secured or priority claims entitled to payment before unsecured claims. For example, a failure to pay Property Taxes often times gives rise to a lien on or security interest in the taxed property. Such liens typically arise on or relate back to a date prior to the due date of the tax bill (e.g., the assessment date or tax status date). Under section 506(b) of the Bankruptcy Code, secured tax claims may accrue interest and penalties up to the value of the underlying collateral. See, e.g., United States v. Ron Pair Enters, Inc., 489 U.S. 235, 242-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code). Further, under section 511 of the Bankruptcy Code, interest on a secured tax claim will accrue at the applicable rate under non-bankruptcy law. In re Bernbaum, 404 B.R. 39, 43 (Bankr. D. Mass. 2009) ("The plain meaning of § 511 is unambiguous: the bankruptcy court must refer to state law and may no longer use its equitable powers to alter the interest rate on a tax claim from the rate set forth under the applicable state law." (citation omitted)).

14. Additionally, certain of the Prepetition Taxes may be entitled to priority treatment under the Bankruptcy Code. See 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Priority claims under section 507(a)(8) of the Bankruptcy Code may also include fees, interest and penalties. See 11 U.S.C. § 507(a)(8)(G). Priority claims under section 507(a)(8) of the Bankruptcy Code must be paid in full before the Debtors may obtain confirmation of a chapter 11 plan or make distributions to unsecured nonpriority creditors. See 11 U.S.C. § 1129(a)(9)(C).

15. Accordingly, the Debtors submit that it is appropriate to pay the Prepetition Taxes, including Property Taxes, (a) to avoid the potential accrual of interest and imposition of penalties that could result from a failure to pay such taxes and (b) because the payment of such Prepetition Taxes will only affect the timing of payment of such claims and will not prejudice the rights of general unsecured nonpriority creditors.

A Failure to Pay the Prepetition Taxes May Interfere with the Debtors' Operations and Reorganization Efforts

16. The Debtors are required to pay Franchise Taxes and, in some instances, other Prepetition Taxes to maintain their good standing to operate in the jurisdictions in which they do business. Thus, if such taxes are not paid, state and local Taxing Authorities may refuse to issue good standing certificates, which are often required in securities and financing transactions, and may refuse to take other actions requested of them by the Debtors during their chapter 11 cases. The inability to obtain these documents may disrupt the Debtors' ability to operate and pursue a successful reorganization.

17. In addition, the Debtors believe that some of these state and local Taxing Authorities may initiate audits if the Debtors fail to pay the Prepetition Taxes promptly. Such audits would divert attention and resources from the process of administering these chapter 11 cases. Moreover, as described above, the Debtors' directors and officers may be subject to personal liability in the event the Prepetition Taxes are not remitted or paid to the appropriate Taxing Authorities, which at a minimum would cause distractions and undermine the Debtors' reorganization efforts.

The Doctrine of Necessity Provides a Further Basis for Granting the Requested Relief

18. Section 363(b)(1) of the Bankruptcy Code provides: "The 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). Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a).

19. Courts have repeatedly recognized "the existence of the judicial power to authorize a debtor . . . to pay prepetition claims where such payment is essential to the continued operations of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is "essential to the continued operation of the business" (citations omitted)). The United States Supreme Court first articulated the equitable common law principle commonly referred to as the "doctrine of necessity" over 125 years ago in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286 (1882). "The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11." In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

20. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Columbia Gas Sys.,

Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing In re Lehigh & New England Ry Co., 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a prepetition claim 'is essential to the continued operation of [the debtor], payment may be authorized'")).

21. The bankruptcy court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out specific statutory provisions of chapter 11, specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor in possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business. Indeed, a debtor in possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. See In re CoServ, LLC, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim.").

22. This motion satisfies the foregoing criteria, as payment of the Prepetition Taxes will reduce the risk of disruptions and distractions that could significantly impair the smooth operation of the Debtors' business and their restructuring efforts. Similar relief has been routinely granted by courts in this district. See, e.g., In re Samson Res. Corp., Case No. 15-11934 (CSS) (Bankr. D. Del. Oct. 14, 2015); In re Hercules Offshore, Inc., Case No. 15-11685 (KJC) (Bankr. D. Del. Aug. 14, 2015); In re Milagro Holdings, LLC., Case No. 15-11520 (KG) (Bankr. D. Del. July 17, 2015); In re Molycorp, Inc., Case No. 15-11357 (CSS) (Bankr. D. Del. June 26, 2015); In re Cal Dive Int'l, Inc., Case No. 15-10458 (Bankr. D. Del. Mar. 27, 2015).

Request for Authority for Banks to Honor and Pay Checks Issued and Funds Transfers with Respect to the Prepetition Taxes

23. In addition, by this motion, the Debtors request that all applicable banks and other financial institutions (collectively, the "Banks") be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, Prepetition Taxes, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on specific disbursement accounts and can be readily identified as relating directly to the authorized payment of Prepetition Taxes. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

24. Nothing contained herein is intended or should 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 on any grounds; (c) a promise to pay any claim; or (d) an implication or admission that any particular claim against the Debtors would constitute a claim for Prepetition Taxes.

Requests for Immediate Relief and Waiver of Stay

25. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to pay all or part of a claim that arose

before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

26. As set forth above, the payment of the Prepetition Taxes is necessary to prevent immediate and irreparable damage to the Debtors' operations, going concern value and ability to reorganize. The Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein and (b) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

Consent to Jurisdiction

27. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

28. Notice of this motion will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) Kirkland & Ellis LLP, as counsel to the ad hoc committee of a majority of holders of the Debtors' prepetition unsecured notes; (d) counsel to JP Morgan Chase Bank, N.A., in its capacity as administrative agent for the senior secured lenders; (e) counsel to the indenture trustee under the respective prepetition

indentures governing the unsecured notes; (f) counsel to Cantor Fitzgerald Securities LLC in its capacity as administrative agent under the proposed debtor in possession financing; and (g) all parties entitled to notice pursuant to Local Rule 9013-1(m). As this motion is seeking "first day" relief, notice of this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this motion is necessary.

No Prior Request

29. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court an interim order substantially in the form attached hereto as Exhibit A, and a final order, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: December 31, 2015
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro
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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, et al., ¹	:	Case No. 15-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	

INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY PREPETITION TAXES

This matter coming before the Court on the Motion for an Order Authorizing the Debtors to Pay Certain Prepetition Taxes (the "Motion");² the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion and the Hearing was sufficient under the circumstances and (v) there is good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; after due deliberation the Court having determined that the relief requested in the Motion is (i) in the best interest of the Debtors, their estates and their creditors and (ii) necessary to prevent immediate and irreparable harm to the Debtors, their estates and their directors and responsible officers; and good and sufficient cause having been shown;

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. On _____, 2016, at _____ .m. (ET),

a hearing will be held before this Court to consider the relief sought in the Motion on a final basis. All objections, if any, to the Motion shall be in writing and filed with this Court and served on counsel for the Debtors, any duly appointed committee, and the United States Trustee, so as to be received on or before _____, 2016 at 4:00 p.m. (ET).

3. The Debtors are authorized, in the Debtors' sole discretion, to pay the Prepetition Taxes incurred in the ordinary course of business in an interim aggregate amount not to exceed \$7,915,000.

4. The Banks are authorized, when requested by the Debtors, to receive, process, honor and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, Prepetition Taxes, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this interim order.

5. Nothing in the Motion or this interim order, nor the Debtors' payment of claims pursuant to this interim order, shall be deemed or 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 on any grounds; (c) a promise to pay any claim; or (d) an implication or admission that any particular claim is a claim for Prepetition Taxes.

6. Notwithstanding anything to the contrary contained herein, the relief granted in this Order and any payment to be made hereunder shall be subject to the terms of any orders authorizing debtor-in-possession financing and/or granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms of such financing and/or cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such financing and/or cash collateral orders shall control.

7. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this interim order.

8. This interim order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this interim order.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE