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**PROPOSED ATTORNEYS FOR DEBTOR**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: § Chapter 11  
§  
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11  
Picture People, §  
§  
Debtor. §

**DEBTOR’S EMERGENCY MOTION FOR AN ORDER PURSUANT  
11 U.S.C. §§ 105(A) AND 363(C) AUTHORIZING THE DEBTOR  
TO (I) CONTINUE ITS INSURANCE POLICIES, AND (II) PAY  
INSURANCE PREMIUMS THEREON**

TPP Acquisition, Inc. d/b/a The Picture People (“TPP” or the “Debtor”), hereby files this *Debtor’s Emergency Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(c) Authorizing the Debtor to (I) Continue its Insurance Policies, and (II) Pay Insurance Premiums Thereon* (the “Motion”), and in support thereof respectfully represents as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.



## **Background**

2. To preserve the value of its assets and restructure its financial affairs, on September 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned case (the “Chapter 11 Case”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in this Chapter 11 Case. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

4. On September 2, 2016, in connection with the first day hearings in the Chapter 11 Case, the *Statement of Background Information and Declaration of Stuart Noyes, Chief Restructuring Officer of TPP Acquisition, Inc. d/b/a The Picture People, in Support of Debtor’s Chapter 11 Petition and First-Day Motions* (the “First Day Declaration”)<sup>1</sup> was filed with the Court.

### **A. Insurance Policies**

5. In connection with the operation of its business, the Debtor maintains various insurance policies (each an “Insurance Policy,” and collectively the “Insurance Policies”), which the Debtor has obtained through third-party insurance providers (collectively, the “Insurance Providers”) including, without limitation, coverage for commercial property, workers’ compensation, general liability, automobiles, management liability, and umbrella insurance. The following is a summary of the Insurance Policies:

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

Carrier	Policy No.	Description	Date of Coverage	Remaining Premium Charges
Liberty Mutual	YU2-Z91-456409-026	Property	03/01/2016 – 03/01/2017	Paid in full
Chubb Indemnity Insurance Company	(17)7175-49-28	Workers' Compensation	03/01/2016 – 03/01/2017	\$87,212 (to be paid in 3 monthly installments)
Chubb Group of Insurance Companies	3603-35-63 DAL	General Liability	03/01/2016 – 03/01/2017	\$17,150 (to be paid in 3 monthly installments)
Federal Insurance Company	(16) 7359-28-77	Automobile	03/01/2016 – 03/01/2017	\$717 (to be paid in 3 monthly installments)
XL Specialty Insurance Company	US00074713L16A	Umbrella	03-01/2016 – 03/01/2017	Paid in full
Starr Indemnity & Liability Company	1000055074161	Management Liability	03/14/2016 – 03/14/2017	Paid in full

6. The Debtor pays premiums to the Insurance Providers for coverage under the Insurance Policies (collectively, the “Insurance Premiums”). The Insurance Premiums are based upon a fixed rate established and billed by each Insurance Provider. The premiums for most of the Insurance Policies are determined annually and are paid at the inception of each policy. Because it is not always economically advantageous for the Debtor to pay the Insurance Premiums on all of the Insurance Policies on a lump-sum basis, in the ordinary course of the Debtor’s business, certain of the premium payments under the Insurance Policies are paid on a monthly basis to the Insurance Provider.

7. The Debtor believes it is current on all monthly premium payments on the Insurance Policies as of the Petition Date.

**Relief Requested**

8. By this Motion, the Debtor respectfully requests, pursuant to Bankruptcy Code §§ 105(a) and 363(c), the entry of an order authorizing the Debtor (i) to continue to administer the Insurance Policies in the ordinary course of business, (ii) to pay outstanding prepetition amounts due under the Insurance Policies (as permitted under any interim and final orders authorizing the Debtor to obtain debtor-in-possession financing (collectively, the “DIP Financing Orders”) and in accordance with any budget approved in connection therewith (the “Budget”), (iii) to renew or enter into new insurance policies upon the expiration of the existing Insurance Policies, and (iv) to continue to pay premiums for the Insurance Policies in the ordinary course of business to the extent they may become due and payable on a post-petition basis according to the terms of the Insurance Policies (and as permitted under any DIP Financing Orders and in accordance with the Budget).

9. To the extent that the automatic stay would affect the rights of any of the Debtor’s employees to proceed with valid workers’ compensation claims (“Workers’ Compensation Claims”) against any relevant workers compensation policies (the “Workers’ Compensation Programs”), the Debtor seeks authorization to modify the automatic stay imposed by Bankruptcy Code § 362 to permit these workers to proceed with their claims under the Workers’ Compensation Programs. Any claims relating to any of the other Insurance Programs relating to coverage of the Debtor or the Debtor’s property shall remain subject to the automatic stay.

**Basis for Relief Requested**

10. Bankruptcy Code § 105(a) provides that the Court may “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). In addition, pursuant to § 363(b) of the Bankruptcy Code, a debtor may, in

the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b).

11. Bankruptcy Code § 363(c) further provides that:

If the business of the debtor is authorized to be operated under section...1108... of this title [title 11] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c).

**A. Continuation of Insurance Programs and Payment of Insurance Obligations**

12. It is essential to the Debtor’s continued operation and reorganization efforts that the Debtor maintain the Insurance Policies on an ongoing and uninterrupted basis. The Insurance Policies provide a comprehensive range of coverage for the Debtor and its properties. Allowing the Insurance Policies to lapse would expose the Debtor to substantial liability for any damages resulting to persons or property of the Debtor and others, and the Debtor would have to bear the costs and expenses of defense litigation.

13. The Debtor believes that most of its obligations under the Insurance Policies will constitute postpetition obligations of the Debtor’s estate. However, the Debtor believes that certain of its obligations under the Insurance Policies constitute prepetition claims.

14. It is well-established that, under certain circumstances, a debtor may pay certain prepetition claims in the performance of the debtor’s fiduciary duty to preserve the estate and the business’s going-concern value. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of . . . [crucial] business relations”); *In re CoServ*, 273 B.R. at 497 (noting that “it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of a prepetition claim in aid of preservation or enhancement of the estate”). Bankruptcy Code

§ 1107(a) provides that a debtor-in-possession shall perform all the functions and duties as a trustee under the Bankruptcy Code. “Implicit in the duties of a Chapter 11 trustee or a debtor in possession as set out in Sections 1106 and 704 of the Bankruptcy Code is the duty to protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ*, 273 B.R. at 497. Courts have developed the “Doctrine of Necessity” (also known as the “Necessity of Payment Rule”) for use in determining whether such payment of prepetition obligations is permissible. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825-26 (D. Del. 1999) (developing and discussing the doctrine); *In re CoServ*, 273 B.R. at 491-93 (discussing the doctrine). The “fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984).

15. In *CoServ*, the Bankruptcy Court for the Northern District of Texas held that a debtor must demonstrate the following three elements in order to meet the “necessity” requirement: (1) it must be critical that the debtor deal with the claimant; (2) unless the debtor deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim; (3) there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *Id.* at 498.

16. Here, each of the *CoServe* factors are met. The Debtor is a retail business and its stores host hundreds of customers each day. Sound business practices include maintaining insurance coverage incident to the operations of the Debtor’s business. The nature of the Debtor’s business and the extent of its operations make it essential for the Debtor to maintain its Insurance Policies on an ongoing and uninterrupted basis. The nonpayment of any premiums or related fees under any of the Insurance Policies could result in one or more of the Insurance

Providers terminating their existing policies, declining to renew their insurance policies or refusing to enter into new insurance agreements with the Debtor in the future. Such action could expose the Debtor and its estate to risks for which there is no insurance coverage. The Debtor lacks a legal mechanism to require its insurers to continue providing coverage that the insurer would not be obligated to provide absent payment of premiums by the Debtor.

17. In addition, pursuant to the guidelines (the “U.S. Trustee Guidelines”) established by the United States Trustee for the Northern District of Texas (the “U.S. Trustee”), the Debtor is obligated to remain current with respect to certain of its primary Insurance Programs. Should any insurance policy expire or lapse during the pendency of the Debtor’s chapter 11 case, the U.S. Trustee Guidelines mandate that the Debtor forward proof of renewal of that policy to the U.S. Trustee. Therefore, the continuation and renewal of the Insurance Programs, on an uninterrupted basis, and the payment of all prepetition and postpetition Insurance Obligations arising under the Insurance Programs, is not only essential to preserve the Debtor’s business and the value of the Debtor’s estate for all creditors, but also compulsory pursuant to the U.S. Trustee Guidelines.

18. Many Texas bankruptcy courts have granted similar relief in other large chapter 11 cases. *See, e.g., In re TransCoastal Corporation*, Case No. 15-34956 (HDH) (Bankr. N.D. Tex. Dec. 11, 2015); *In re Spectrum Jungle Labs Corporation*, Case No. 09-50455 (RBK) (Bankr. W.D. Tex. Feb. 5, 2009); *In re Renaissance Hosp. Grand Prairie, Inc.*, Case No. 08-43775 (DML) (Bankr. N.D. Tex. Sept. 4, 2008); *In re Superior Offshore Int’l, Inc.*, Case No. 08-32590 (WWS) (Bankr. S.D. Tex. June 16, 2008); *In re Home Interiors & Gifts, Inc.*, Case No. 08-31961 (BJH) (Bankr. N.D. Tex. June 6, 2008); *In re Bombay Co.*, Case No. 07-44084 (DML) (Bankr. N.D. Tex. Sept. 20, 2007).

19. To the extent the Insurance Policies are executory contracts within the meaning of 11 U.S.C. § 365, the Debtor does not at this time seek authority to assume the contracts. The Debtor requests only authorization to continue the Insurance Policies and make such payments as are necessary to keep the Insurance Policies in force.

**B. Waiver of the Automatic Stay for Workers Compensation Claims**

20. Bankruptcy Code § 362 permits a debtor or other parties-in-interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

21. To the extent the Debtor’s employees hold valid Workers’ Compensation Claims, the Debtor seeks authorization, under § 362(d) of the Bankruptcy Code, to permit these workers to proceed with their claims in the appropriate judicial or administrative forum. The Debtor believes cause exists to modify the automatic stay because prohibiting the Debtor’s employees from proceeding with their claims could have a detrimental effect on the financial well-being and morale of such workers and lead to their departure. As discussed above, such departures could severely disrupt the Debtor’s business to the detriment of all parties-in-interest.

22. To this end, and solely with respect to Workers’ Compensation Claims covered under the Workers’ Compensation Programs, the Debtor seeks to modify the automatic stay as it relates to the Workers’ Compensation Claims provided that such claims are pursued in accordance with the Workers’ Compensation Programs and recoveries, if any, and are limited to the proceeds from the applicable Workers’ Compensation Program. All other claims, including any relating to matters covered by other Insurance Programs, will remain subject to the automatic stay. To effectuate the aforementioned modification of the automatic stay, the Debtor requests that the Court waive the stay of a judgment under Bankruptcy Rule 7062 and the requirements under Bankruptcy Rule 9014 relating to contested matters with respect to claims



under the Workers' Compensation Programs.

23. Pursuant to this Motion, the Debtor does not seek a waiver, termination, or modification of the automatic stay with respect to any other claims or matters, and nothing in this motion should be construed as such a request.

**Request for Waiver of Stay**

24. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, the Debtor requests that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtor to be able to continue to operate its business and preserve the value of the estates.

**Notice**

25. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor's secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for and the members of any official committees appointed by this Court; (vi) the 20 largest unsecured creditors of the Debtor; and (vii) all governmental agencies having a regulatory or statutory interest in this case. No other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

**HAYNES AND BOONE, LLP**

By: /s/ Robert D. Albergotti

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**ORDER PURSUANT 11 U.S.C. §§ 105(A) AND 363(C) AUTHORIZING  
THE DEBTOR TO (I) CONTINUE ITS INSURANCE POLICIES, AND  
(II) PAY INSURANCE PREMIUMS THEREON**

On \_\_\_\_\_, 2016, the Court conducted a hearing to consider the *Debtor's* *Emergency Motion for an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(c) Authorizing the Debtor to (I) Continue its Insurance Policies, and (II) Pay Insurance Premiums Thereon* (the "Motion"), filed by the above-captioned debtor (the "Debtor"). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is

in the best interests of the Debtor, its estate, and its creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtor is authorized to maintain all of its existing Insurance Policies.<sup>1</sup>
3. The Debtor may pay outstanding prepetition amounts due under the Insurance Policies, subject to the limitations in this Order, any DIP Financing Orders, and the Budget.
4. The Debtor may, in its reasonable business judgment, pay premiums under the Insurance Policies and continue, renew or obtain new Insurance Policies in the ordinary course of business to the extent they may become due and payable, subject to the limitations in this Order, any DIP Financing Orders, and the Budget.
5. Debtor's banks and other financial institutions shall be and hereby are authorized and directed to receive, process, honor and pay all prepetition and postpetition checks and fund transfers on account of the prepetition insurance obligations, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. In doing so, the Debtor's banks and other financial institutions are authorized to rely on the representations of the Debtor as to which checks and fund transfers are issued or authorized to be paid pursuant to this Order.
6. The automatic stay is hereby modified solely as it relates to Workers' Compensation Claims provided that such claims are pursued in accordance with the Workers' Compensation Programs and recoveries, if any, and are limited to the proceeds from the

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

applicable Workers' Compensation Program. All other claims, including any relating to matters covered by other Insurance Programs, will remain subject to the automatic stay. To effectuate the aforementioned modification of the automatic stay, the stay of a judgment under Bankruptcy Rule 7062 and the requirements under Bankruptcy Rule 9014 relating to contested matters with respect to claims under the Workers' Compensation Programs are hereby waived to the extent necessary to permit Workers Compensation Claims to be pursued as otherwise provided in this paragraph.

7. Neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code § 365; or (e) otherwise affecting the Debtor's rights under Bankruptcy Code § 365 to assume or reject any executory contract with any party subject to this Order.

8. Notwithstanding the relief granted in this Order, any payment to be made or authorization obtained hereunder shall be subject to the requirements imposed on the Debtor under and DIP Financing Order and the Budget.

9. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

### END OF ORDER ###

**Submitted by:**

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