

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
In re : Chapter 11
 :
Telogy, LLC., et al.,¹ : Case No. 10-10206 (____)
 :
Debtors. : Joint Administration Pending
-----X

**DEBTORS' MOTION FOR ORDER AUTHORIZING
PAYMENT OF PREPETITION OBLIGATIONS TO COMMON CARRIERS**

The debtors and debtors in possession in the above-captioned cases (together, the “**Debtors**” or the “**Company**”) hereby move for entry of an order, pursuant to sections 105(a), 363(b), 506(b), 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), as supplemented by Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtors to pay certain prepetition obligations to common carriers (the “**Motion**”). In support of the Motion, the Debtors rely upon and incorporate by reference the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the “**Phillips Affidavit**”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their proposed undersigned co-counsel, respectfully represent:

BACKGROUND

1. On January 24, 2010 (the “**Petition Date**”), Telogy, LLC and e-Cycle, LLC filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the possession of their respective properties and the management of their

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes. As of the date hereof, no official committee of unsecured creditors has been appointed.

2. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Phillips Affidavit.

JURISDICTION

3. This Court has jurisdiction to consider 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 of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 506(b), 1107(a) and 1108 of the Bankruptcy Code.

COMMON CARRIERS

4. The Debtors' core business is selling, leasing and renting test equipment to corporate customers. The Debtors' supply and delivery systems depend, in large part, upon the use of reputable freight, air and parcel carriers operated by third parties (collectively, the "**Common Carriers**") to transport equipment to the Debtors and their customers. The Debtors' business model is therefore dependent on the Common Carriers to ensure that their supply-chain runs smoothly. As a result, the Common Carriers regularly have possession of certain of the Debtors' goods and equipment in the ordinary course of their businesses. As of the Petition Date, the Common Carriers held approximately \$400,000 worth of the Debtors' goods and equipment. On average, the Debtors pay on a monthly basis approximately \$25,000 to their Common Carriers.

5. It is essential to the maintenance of the Debtors' going concern value and the success of their chapter 11 efforts that they maintain relationships with the Common Carriers. The Common Carriers are not only reliable and efficient, but are also capable of shipping the Debtors' equipment on an expedited delivery schedule and handling such equipment, which is generally fragile, with care. The Debtors' customers tend to require equipment from the Debtors immediately; accordingly, the Debtors' customers frequently request next-day or two-day shipping. Even a minor delay in the delivery of goods by the Common Carriers could seriously undermine the Debtors' ability to meet delivery schedules or fulfill their customers' continuing needs. Not surprisingly, the Debtors' customers choose to do business with the Debtors in order to receive their rented or purchased equipment in a timely and efficient manner. In this regard, the Debtors' business is not based solely on the equipment they provide, but also on the reliable manner with which they provide them — a convenience that would be nonexistent without the continued, uninterrupted services provided by the Common Carriers.

6. The disruption that would result if Common Carriers ceased delivery of the Debtors' goods and equipment due to nonpayment would be severely detrimental to the Debtors' business, earnings, reputation and, most significantly, their customers, which rely on the Debtors to meet their continuing business needs. As a result, the Debtors' customer relationships would be immediately jeopardized. This is particularly so given that the Debtors' customers may already be tempted to source their business needs elsewhere due to the Debtors' bankruptcy filings.

7. For the foregoing reasons, the Debtors believe that it is necessary and essential to their chapter 11 efforts, and the enhancement and preservation of the value of their

estates, that they be permitted to make payments on account of certain prepetition amounts due and owing to their Common Carriers.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 363(b), 506(b), 1107(a) and 1108 of the Bankruptcy Code, to pay, in the Debtors' sole discretion, the prepetition claims of certain common carriers that are critical to the Debtors' business operations. As of the Petition Date, many of the Common Carriers had claims on account of transportation and related services previously provided to the Debtors (collectively, the "**Carrier Claims**"). The Debtors hereby respectfully seek authority, but not direction, to pay, in their discretion, any Carrier Claims that were outstanding as of the Petition Date. The Debtors estimate that the aggregate amount of the Carrier Claims is approximately \$4,000.

9. Also, by this Motion, the Debtors seek authorization for the applicable banks asked to process, honor and pay any and all checks on account of claims with respect to the Common Carriers to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

BASIS FOR RELIEF

A. **The Debtors Are Authorized to Pay the Carrier Claims Pursuant to Section 363(b) of the Bankruptcy Code**

10. Section 363(b) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, [may use, sell or lease, other than in the ordinary course of business, property of the estate.] 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). See, e.g., FV Steel and Wire Co., Case No. 04-22421 (Bankr.

E.D. Wis. 2004); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. 2002). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175. As discussed above, the Debtors believe, in their informed business judgment, that the failure to pay the Carrier Claims could have a material adverse impact on ultimate success of their chapter 11 efforts.

11. As described in the Phillips Affidavit, on the Petition Date, Telogy filed a motion seeking this Court’s approval of a stalking horse purchase agreement for the sale of substantially all of its assets (the “APA”), and the establishment of procedures for the submission of competing bids for such assets. Under the APA, Telogy is obligated to continue operating its business as a going concern and to use reasonable best efforts to preserve the goodwill of customers during the period prior to closing of the sale. The Debtors must be permitted to pay the Carrier Claims in order to ensure that Telogy is able to satisfy its obligations under the APA and conduct a sale process that maximizes the value of their estates.

B. The Debtors Should Be Authorized to Pay the Carrier Claims in Accordance with Their Fiduciary Duties under Sections 1107(a) and 1108 of the Bankruptcy Code

12. The Debtors, operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” Id.

13. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid

exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" and also when the payment was to "sole suppliers of a given product." Id. at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it 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. Third, 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.

14. Payment of the Carrier Claims meets each element of the CoServ court's standard. Sufficient alternative providers would be difficult, and in certain instances nearly impossible, to find. The Debtors believe that disruption to the Debtors' supply and delivery system would significantly impair their relationships with customers, to the detriment of the Debtors' business operations. Accordingly, the harm and economic disadvantage that would stem from the failure of any of the Common Carriers to continue to provide such services is disproportionate to the amount of the prepetition claims that the Debtors seek to pay pursuant to this Motion. Finally, the Debtors have examined other options short of paying the Carrier Claims, and have determined that to avoid significant disruption of their business operations there exists no practical or legal alternative to payment of the Carrier Claims. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Carrier Claims.

C. Failure to Pay the Carrier Claims May Result in Possessory Liens

15. In addition, the Debtors believe that their failure to pay certain of the Carrier Claims may result in the assertion of possessory liens by the respective claimants under applicable state law with respect to any goods in their possession (collectively, the “**Liens**”). Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Liens, to the extent consistent with section 546(b) of the Bankruptcy Code,² is expressly excluded from the automatic stay otherwise imposed by section 362(a) of the Bankruptcy Code. Moreover, to protect their asserted lien rights, the Common Carriers may refuse to release goods in their possession unless and until their prepetition claims for services have been satisfied. Therefore, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, many of these parties may be entitled to assert and perfect Liens against the Debtors’ property, which would entitle them to payment ahead of other general unsecured creditors in any event, and may hold the property subject to the asserted Liens pending payment, to the direct detriment of the Debtors, their estates and creditors.

16. As previously set forth herein, the amount of Carrier Claims is substantially less than the value of the property held by the Common Carriers that may secure such claims. Accordingly, any Common Carrier holding lien rights arguably is a fully secured creditor. In general, pursuant to section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive: (a) payment in full of their prepetition claims pursuant to any confirmed plan or plans in these chapter 11 cases; and (b) the postpetition interest accruing on such claims to the extent such claims are oversecured. Consequently, payment of the Carrier Claims will

² 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).

give the Common Carriers no more than that to which they otherwise would be entitled under a chapter 11 plan, and save the Debtors and their estates the interest costs that otherwise may accrue on the Carrier Claims during these cases.

D. Payment of the Carrier Claims Is Appropriate in Accordance with the Doctrine of Necessity and Section 105(a) of the Bankruptcy Code

17. This Court can also authorize the Debtors to pay the Carrier Claims under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may 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).

18. Numerous courts have used their section 105(a) powers to authorize payment of a debtor in possession’s prepetition obligations under the “doctrine of necessity” or “necessity of payment” rule first recognized by the Supreme Court more than 120 years ago in Miltenberger v. Logansport, C. & S. Ry. Co., 106 U.S. 286 (1882). There the court held that “[m]any circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay pre-existing debts . . . out of the earnings of the [debtor] . . . under the order of the court” Id. at 311-12. “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). “The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11—a successful reorganization.” Id. at 825-26.

19. This doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re UNR Industries, Inc., 143 B.R. 506, 519-20 (Bankr.

N.D. Ill 1992), rev'd on other grounds, 173 B.R. 149, 158-59 (N.D. Ill. 1994); see also In re Lehigh & N.E. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors' claims authorized under "necessity of payment" doctrine); In re C.A.F. Bindery, Inc., 199 B.R. 828 (Bankr. S.D.N.Y. 1996) (payment of pre-petition claims warranted when critical to debtor's reorganization); In re Ionosphere Clubs, Inc., 98 B.R. at 176. This doctrine is consistent with the paramount goal of chapter 11—"facilitating the continued operation and rehabilitation of the debtor." In re Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) ("Let [a hotel] once be shut down, and it will lose much of its value Some priority [to prepetition suppliers] may be essential to the preservation of the business").

20. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. at 175 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a) of the Bankruptcy Code, a court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992). For example, in In re Structurelite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the court embraced "the principle that a bankruptcy court may exercise its equity powers under section 105(a) of the Bankruptcy Code to authorize payment of pre-petition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" The Structurelite court stated that "a *per se* rule proscribing the payment of prepetition

indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

21. Courts in this district have routinely authorized the payment of prepetition amounts due to common carriers in other chapter 11 cases. See In re CCS Medical, Inc., Case No. 09-12390 (CSS) (Bankr. D. Del. July 9, 2009); In re Building Materials Holding Corporation, Case No. 09-12074 (KJC) (Bankr. D. Del. June 17, 2009); In re Aventine Renewable Energy Holdings, Inc., Case No. 09-11214 (KG) (Bankr. D. Del. Apr. 9, 2009); In re Pliant Corporation, Case No. 09-10443 (MFW) (Bankr. D. Del. Feb. 12, 2009); In re Smurfit-Stone Container Corporation, Case No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009); In Merisant Worldwide, Inc., Case No. 09-10059 (PJW) (Bankr. D. Del. Jan. 13, 2009).

22. Moreover, Bankruptcy Rule 6003 clarifies the doctrine of necessity by empowering bankruptcy courts to grant relief regarding “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” to the extent that relief is necessary to avoid “immediate and irreparable harm.”

23. The Debtors believe that without the requested relief, the stability of their business operations will be significantly undermined, and otherwise loyal customers may explore alternative sources for purchasing, leasing and renting test equipment. The damage that would result from such an outcome significantly outweighs any detriment to the Debtors’ creditors or their estates that would result from the Debtors’ satisfaction of such obligations. The Debtors believe that the relief requested herein is therefore necessary in order for their supply and delivery system to continue to operate in a timely and efficient manner in the crucial period prior

to closing of the sale of Telogy's assets. As a result, the Debtors must be permitted, in their sole discretion, to continue honoring or paying all Carrier Claims, including any such obligations incurred prior to the Petition Date.

24. Furthermore, the relief requested herein is supported by the Debtors' prepetition secured lenders and their agent.

25. For all of the foregoing reasons, the Debtors seek authority, pursuant to sections 105(a), 363(b), 506(b), 1107(a) and 1108 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003, to pay, in the Debtors' sole discretion, the undisputed amounts owed by the Debtors on account of outstanding Carrier Claims, and discharge any Liens asserted against the Debtors' property.

26. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

27. To successfully implement the foregoing, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a).

28. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[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." For the reasons set forth above, the relief requested in this Motion is essential to prevent damage to the Debtors' value.

Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

29. Nothing contained herein is intended or shall be construed: (a) as an admission as to the validity of any claim against the Debtors; (b) as a waiver of the Debtors' rights to dispute any claim on any grounds; (c) as a promise to pay any claim; (d) as a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Common Carrier.

NOTICE

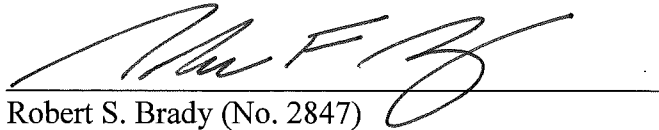
30. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' prepetition secured lenders; (c) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis; and (d) the Common Carriers. The Debtors will serve copies of the Motion pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
January 24, 2010

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Robert S. Brady (No. 2847)
Matthew B. Lunn (No. 4119)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

- and -

WILLKIE FARR & GALLAGHER LLP
John C. Longmire
Shaunna D. Jones
Andrew D. Sorkin
787 Seventh Avenue
New York, New York 10019-6099
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

Proposed Co-Counsel for Debtors and
Debtors in Possession

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
In re : Chapter 11
: :
Telogy, LLC., et al.,¹ : Case No. 10- 10206 ()
: :
Debtors. : Jointly Administered
: :
-----X Ref. Docket No. _____

**ORDER AUTHORIZING PAYMENT OF
PREPETITION OBLIGATIONS TO COMMON CARRIERS**

Upon consideration of the motion (the “**Motion**”) of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) for entry of an order, pursuant to sections 105(a), 363(b), 506(b), 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), as supplemented by Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing, but not directing, the Debtors to pay prepetition common carrier obligations; and upon the Affidavit of Gary B. Phillips, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings (the “**Phillips Affidavit**”); and due notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of these estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted.

¹ The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) e-Cycle, LLC (1582) and (ii) Telogy, LLC (1530). The Debtors’ executive headquarters are located at 3200 Whipple Road, Union City, California 94587.

2. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

3. The Debtors are authorized, but not directed, in their sole discretion, to pay in the ordinary course the Carrier Claims, in an aggregate amount not to exceed \$5,000.

4. The Debtors are authorized, consistent with this Order, to issue postpetition checks, or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests, for prepetition Carrier Claims dishonored or rejected as of the commencement of these chapter 11 cases.

5. All applicable banks and other financial institutions are hereby authorized and required to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

6. Upon the payment of any Carrier Claim, any property of the Debtors held by or within the control of a Common Carrier shall be immediately released and delivered to its destination as directed by one or more of the Debtors consistent with their customary practices in the ordinary course of business with the Debtors.

7. The authorization granted hereby to pay certain Carrier Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay the Carrier Claims, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Carrier Claim, and nothing contained in this order shall

be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the Carrier Claims to the extent they are not paid.

8. Upon any and all third parties' refusal to release property being held as leverage against payment of such party's prepetition claim, the Debtors shall be entitled to request an expedited hearing on not less than five (5) days' notice without the need to file a further written motion to compel the Common Carrier, or a related third party, to release such property.

9. Neither the relief granted herein nor any actions or payments made by the Debtors pursuant to this Order with respect to the Carrier Claims shall (i) constitute an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or (ii) be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation.

10. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors, and timely entry of this Order is not prohibited by Bankruptcy Rule 6003(b).

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

12. This Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
January __, 2010

UNITED STATES BANKRUPTCY JUDGE