

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11  
 :  
RathGibson, Inc., et al.,<sup>1</sup> : Case No. 09-12452 ( )  
 :  
Debtors. : Joint Administration Pending  
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**DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS  
TO HONOR CERTAIN PREPETITION OBLIGATIONS TO  
CUSTOMERS AND TO CONTINUE CUSTOMER PROGRAMS**

RathGibson, Inc. and Greenville Tube Company (the “Debtors”), two of the debtors and debtors in possession in the above-captioned cases, hereby move for entry of an order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), as supplemented by Rule 6003 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), authorizing, but not directing, the Debtors to honor certain prepetition obligations to customers and to otherwise continue their prepetition customer programs and practices in the ordinary course of business (the “Motion”). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Jon M. Smith in Support of Chapter 11 Petitions and First Day Pleadings (the “Smith Declaration”), which was filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represent:

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the debtors in these chapter 11 cases follow in parentheses: (i) Greenville Tube Company (2689); (ii) RathGibson, Inc. (3283); (iii) RG Tube Holdings LLC (4080); and (iv) RGCH Holdings Corp. (9683). Such debtors’ executive headquarters’ address is 475 Half Day Road, Suite 210, Lincolnshire, Illinois 60069.

## **BACKGROUND**

1. On July 13, 2009 (the "Petition Date"), the Debtors and their debtor affiliates 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 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 Smith Declaration.

## **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) and 363(b) of the Bankruptcy Code, as supplemented by Rule 6003(b) of the Bankruptcy Rules.

## **CUSTOMER PROGRAMS**

4. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors sought to maximize sales, develop and sustain a positive reputation in the marketplace, attract new customers, and enhance existing customer loyalty through the implementation of certain customer programs (collectively, the "Customer Programs"), including, without limitation, the programs and practices set forth below.

## Volume Rebates

5. In order to maximize sales and build customer loyalty, the Debtors offer volume rebates (the “Volume Rebates”) to certain of their customers, on individualized terms. Each Volume Rebate is unique and is negotiated to fit the unique attributes of the particular customer. The Volume Rebate is calculated by multiplying net sales by a certain percentage (the “Rebate Percentage”) which varies based on: (a) the dollar value of net sales to the customer; (b) the total footage of piping or tubing sold to the customer; or (c) in the case of stock material, the aggregate weight of material shipped to the customer, over the course of a pre-defined period (in most cases, one year). Volume Rebates incentivize customers to purchase greater quantities of the Debtors’ products because customers earn a higher Rebate Percentage based on the amount of their purchases. Moreover, in certain instances, sales for which payment is not timely received by a customer will not be included for the purposes of calculating the applicable customer’s Volume Rebate. In such cases, the Volume Rebates encourage prompt payment by the Debtors’ customers.

6. Typically, customers receive the Volume Rebate in the form of final credit to their open accounts with the Debtors at the conclusion of the period used for the purpose of calculating the rebate. Accordingly, in most cases, the Volume Rebates require no cash outlay by the Debtors. On average, Volume Rebates total approximately \$13,000 per month.

## Sales Incentive Programs

7. To increase the Debtors’ sales from their Janesville, Wisconsin facility, the Debtors have established sales incentive programs (the “Sales Incentive Programs”), that reward distributors (“Distributor”) of the Debtors’ products for selling RathGibson product lines manufactured at the Debtors’ Janesville, Wisconsin facility. Pursuant to the Sales Incentive

Program, the Debtors offer cash rewards or rebates, as applicable, to a Distributor if the Distributor's sales of the Debtors' product lines meet a minimum monthly threshold based on the footage of product sold by the Distributor. A Distributor receives a greater cash reward or rebate as sales reach higher thresholds established by the Debtors.

8. Typically, rebates in respect of the Sales Incentive Programs total approximately \$600 per month. Rebates are credited to a Distributor's open account once the applicable threshold is achieved. Accordingly, only the Sales Incentive Program(s) offering cash rewards give rise to any cash liability of the Debtors. Cash rewards in respect of the Sales Incentive Programs total approximately \$1,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$1,000 is owed on account of the Sales Incentive Programs, including cash rewards and accrued but unapplied rebate credits.

#### Warranties

9. The Debtors provide manufacturers' warranties (the "Warranties") to purchasers of their tubing. The Debtors' tubing is guaranteed against defects in materials and workmanship for one year from the date that the tubing is put into use by the customer, but no longer than 18 months from the date on which the Debtors shipped the tubing. The Debtors honor the Warranties either by: (i) replacing the defective tubing; or (ii) providing a refund ("Refund") of the original purchase price of the defective tubing, in their sole discretion. As of the Petition Date, the Debtors believe that they may have outstanding obligations under the Warranties.<sup>2</sup>

#### Customer Deposits

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<sup>2</sup> Although Refunds are provided only in rare circumstances, by this Motion, the Debtors are not seeking authority to continue to provide Refunds.

10. In the ordinary course of business, the Debtors regularly hold deposits (the “Customer Deposits”) provided by their customers. As part of the Debtors’ billing cycle, the Debtors apply these Customer Deposits in satisfaction of such customers’ invoices. By accepting Customer Deposits, the Debtors reduce their bad debt exposure. As of the Petition Date, the Debtors estimate that they hold Customer Deposits having a value of approximately \$1.5 million.

Bill and Hold Program

11. In the ordinary course of business, and for the convenience of their customers and at their customers’ request, the Debtors receive payment from certain customers for goods that the Debtors then store in a warehouse on the customers’ behalf (the “Bill and Hold Program”). As of the Petition Date, the Debtors estimate that they have received approximately \$2.2 million in payments from customers for goods that the Debtors are storing pursuant to the Bill and Hold Program. The Debtors seek to continue to ship or release these goods to their customers under the Bill and Hold Program since such customers paid for the goods prior to the Petition Date.

12. Excluding Customer Deposits and the Bill and Hold Program, the Debtors estimate that the Customer Programs cost (mainly through applied credits) approximately \$175,000 annually. As of the Petition Date, the Debtors estimate outstanding liabilities (exclusive of Customer Deposits and the Bill and Hold Program) in the amount of approximately \$1,000 (plus: (i) any accrued but unapplied customer account credits in connection with the Volume Rebates; and (ii) the cost of any outstanding replacement obligations under the Warranties) for the cost of Customer Programs.<sup>3</sup>

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<sup>3</sup> The Debtors’ obligations in connection with the Warranties are typically *de minimis*.

13. Except as otherwise set forth herein, the Debtors desire to continue postpetition the Customer Programs, which they believe are beneficial and critical to their businesses and cost-effective during the prepetition period. In addition, certain of the Customer Programs may give rise to unperformed prepetition obligations of the Debtors, and may evidence prepetition claims against the Debtors (the “Prepetition Customer Obligations”). Thus, the Debtors also seek this Court’s authority to perform, in their discretion, Prepetition Customer Obligations.

14. The total operational and administrative cost to the Debtors to continue the Customer Programs is relatively insignificant in comparison to the revenue that such Customer Programs generate. For the reasons set forth herein, the Debtors believe it is in the best interests of the Debtors and their estates to continue, in the ordinary course of their businesses, those of the Customer Programs that the Debtors determine to be beneficial.<sup>4</sup>

#### **RELIEF REQUESTED**

15. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003, authorizing the Debtors, in their discretion, to: (i) satisfy Prepetition Customer Obligations as they determine advisable, except to the extent such Prepetition Customer Obligations relate to Refunds; and (ii) continue, renew, replace, and/or terminate any of the Customer Programs as they determine advisable, in the ordinary course of business, without further application to this Court.

16. 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

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<sup>4</sup> Nothing contained herein shall constitute, nor shall it be construed as, a request to assume or adopt any executory contract with respect to any Customer Program. The Debtors expressly reserve all rights with respect to the continuation or cessation of any Customer Program and the assumption, adoption, or rejection of any executory contract with respect to any Customer Program.

Customer Programs 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**

17. The Court may authorize continuation of the Customer Programs under section 363(b) of the Bankruptcy Code. Bankruptcy Code section 363(b) 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, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition claims where the debtors articulate “some business justification, other than the mere appeasement of major creditors”); In re James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

18. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 105(a), the 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); see also In re Just for Feet, Inc., 242 B.R. 821, 825

(D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is ‘critical to the debtor’s reorganization.’”).

19. Moreover, federal courts have regularly permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport Ry., 106 U.S. 286 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of [crucial] business relations”); In re Lehigh & New Eng. Ry., 657 F.2d 570 (3d Cir. 1981); Dudley v. Mealy, 147 F.2d 268 (2d Cir.), cert. denied, 325 U.S. 873 (1945); Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279 (S.D.N.Y. 1987), appeal dismissed, 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits); In re Environdyne Indus., 150 B.R. 1008 (Bankr. N.D. Ill. 1993); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); In re Financial News Network, Inc., 134 B.R. 732 (Bankr. S.D.N.Y. 1991); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989); In re Ionosphere Clubs, Inc., 98 B.R. 174 (Bankr. S.D.N.Y. 1989). “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). Furthermore, “[t]he 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.

20. 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.”

21. Here, the importance of the Debtors’ major customers to their businesses cannot be overstated. The commencement of the Debtors’ chapter 11 cases will no doubt create apprehension on the part of customers or potential customers regarding their willingness to commence or continue doing business with the Debtors. The Debtors believe that without the requested relief, the stability of the Debtors’ business will be significantly undermined, and otherwise loyal customers may explore alternative sources for their products and materials. The damage that would result if the Debtors failed to honor their Prepetition Customer Obligations 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 necessary to preserve their customer relationships and goodwill for the benefit of their estates. The Debtors, therefore, must be permitted, in their sole discretion, to continue honoring or paying all Prepetition Customer Obligations without interruption or modification, including applying Customer Deposits in the ordinary course of business, and distributing goods to customers that have already paid for such goods pursuant to the Bill and Hold Program.

22. In addition, to provide necessary assurances to customers on a going-forward basis, the Debtors request authority to continue honoring or paying all obligations to customers that arise from and after the Petition Date in the ordinary course of the Debtors’ businesses. Considering the relatively minimal expense of the relief requested herein as compared to the size of these chapter 11 cases and the critical importance of the Customer Programs to the Debtors’ continued viability, entry of an order granting the relief requested herein is appropriate and,

indeed, necessary to avoid irreparable harm to the Debtors. The Debtors believe that granting the relief requested herein is in the best interests of the Debtors, their estates, and their creditors.

23. Courts in this district have authorized debtors to honor certain prepetition obligations to customers and to continue customer programs. See, e.g., In re AbitibiBowater Inc., No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re BT Tires Group Holding, LLC, No. 09-11173 (CSS) (Bankr. D. Del. Apr. 3, 2009); In re Sun Times Media Group, Inc., No. 09-11092 (CSS) (Bankr. D. Del. Apr. 1, 2009); In re Magna Entertainment Corp., No. 09-10720 (MFW) (Bankr. D. Del. March 6, 2009); In re EZ Lube, LLC, No. 08-13256 (CSS) (Bankr. D. Del. Dec. 10, 2008); In re Portola Packaging, Inc., No. 08-12001 (CSS) (Bankr. D. Del. Aug. 29, 2008); In re BSCV, Inc., No. 08-11637 (KG) (Bankr. D. Del. Aug. 5, 2008); In re ACG Holdings, Inc., No. 08-11467 (CSS) (Bankr. D. Del. July 16, 2008); In re Pierre Foods, Inc., No. 08-11480 (KG) (Bankr. D. Del. July 16, 2008).

24. 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, Rule 6003 of the Bankruptcy Rules has been satisfied.

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

26. 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 10 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 ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**NOTICE**

27. 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 first lien secured lenders; (c) the indenture trustee under the 11.25% senior notes due 2014 issued by RathGibson, Inc. (the "Senior Notes"); (d) the agent for RGCH Holdings Corp.'s prepetition unsecured lenders; (e) counsel to the agent for the Debtors' postpetition secured lenders and the ad hoc committee of certain holders of the Senior Notes; and (f) each of the Debtors' twenty (20) largest unsecured creditors. The Debtors submit that, under the circumstances, no other or further notice is required.

28. No previous motion for the relief sought herein has been made to this or any other Court.

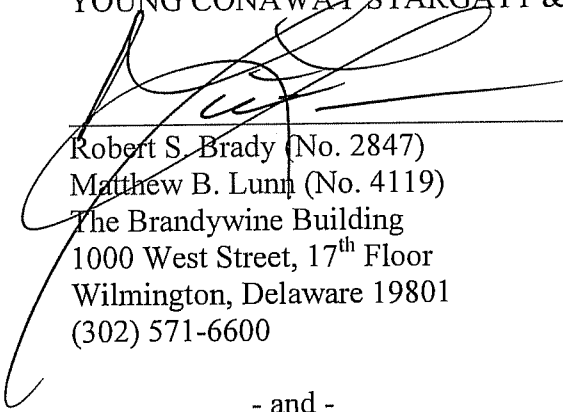
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**CONCLUSION**

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  
July 13, 2009

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Proposed Co-Counsel for Debtors and  
Debtors in Possession

**EXHIBIT A**

**Proposed Order**



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

3. The Debtors are authorized, in their sole discretion and in the ordinary course of business, to honor and perform all obligations in respect of the Customer Programs, including the Prepetition Customer Obligations (except to the extent such Prepetition Customer Obligations relate to Refunds), without regard to whether the Debtors' obligations under any such Customer Programs arose before or after the Petition Date, provided, however, that the Debtors' aggregate cash payments relating to such Prepetition Customer Obligations shall not exceed \$5,000.

4. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.

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. The authorization granted hereby to continue the Customer Programs shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay or provide credits under the Customer Programs, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay or provide credits

under the Customer Programs and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the payments or credits provided under the Customer Programs to the extent they are not paid.

7. The relief granted herein shall not constitute an approval or assumption of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code.

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

9. The notice requirements of Bankruptcy Rule 6004(a) are hereby deemed waived.

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

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

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE