

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
 :
RathGibson, Inc., et al.,¹ : Case No. 09-12452 ()
 :
Debtors. : Joint Administration Pending
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**DEBTORS' MOTION FOR ENTRY OF ORDER: (I) AUTHORIZING DEBTORS TO
PAY PREPETITION OBLIGATIONS OF CERTAIN CRITICAL VENDORS AND
SERVICE PROVIDERS; AND (II) GRANTING RELATED RELIEF**

RathGibson, Inc. and Greenville Tube Company (the "Debtors"), two of the debtors and debtors in possession in the above-captioned cases, hereby move (the "Motion") for entry of an order, pursuant to sections 105(a), 363(b), 503(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 amounts (the "Critical Vendor Claims") due to certain vendors and service providers that are essential to the Debtors' business operations (the "Critical Vendors"). 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 undersigned proposed counsel, respectfully represent:

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

¹ 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.

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 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003.

RELIEF REQUESTED

4. By this Motion, the Debtors seek entry of an order, the form of which is annexed hereto as Exhibit B, authorizing the Debtors, in their sole discretion, to pay Critical Vendor Claims. The Critical Vendors provide to the Debtors goods and services that are essential to the Debtors' ability to continue operating their businesses. Absent these Critical Vendors, the Debtors may be unable to continue their operations without materially inflated costs or substantial interruptions, which would be deleterious to the Debtors' businesses. The Debtors have determined that replacing the Critical Vendors would be disruptive, cost-prohibitive and, in certain instances, impossible.

A. Identification of Critical Vendors

5. To ensure the Debtors have identified only those vendors and providers that are critical to the Debtors' business, certain of the Debtors' employees and professionals who have been responsible for maintaining, and have intimate knowledge of, the Debtors' trade relationships conducted an extensive analysis and review of the Debtors' immediate trade and service needs and supplier base. In order to determine which of the Debtors' vendors are critical to the Debtors' business, the Debtors evaluated the following criteria: (a) whether the vendor in question is a "sole-source" provider; (b) whether quality requirements or other specifications prevent the Debtors from obtaining a vendor's products or services from alternative sources within a reasonable timeframe; (c) whether, if a vendor is not a sole-source provider, the Debtors have sufficient product inventory or in-house capabilities to continue operations while a replacement vendor is put in place; and (d) whether a vendor meeting the standards of (a) or (b) is likely to refuse to ship product or provide service to the Debtors postpetition if its prepetition balances are not paid. The Debtors are confident that this process has appropriately identified only those vendors and providers that meet the foregoing stringent guidelines.

6. Based on the foregoing considerations, the Debtors identified several Critical Vendors whose cessation of services or provision of goods would be exceedingly detrimental to the Debtors' reputation and businesses generally. Moreover, the Debtors believe that the Critical Vendors identified will refuse to supply the Debtors postpetition unless their prepetition claims are paid. Without authority to pay the Critical Vendors, the Debtors would be unable to conduct their businesses and fulfill obligations to their customers. As of the Petition Date, the Debtors estimate that the Critical Vendor Claims total approximately \$4.0 million. Of that amount, approximately \$3.5 million is owed to domestic Critical Vendors. The claims of

foreign Critical Vendors total approximately \$450,000. In addition, approximately \$2.5 million of the Critical Vendor Claims relate to goods received by the Debtors in the ordinary course of business within twenty (20) days prior to the Petition Date.

7. Certain of the Critical Vendors supply the raw materials necessary for the Debtors' manufacturing operations, including stainless steel hollows, nickel alloy hollows, stainless steel strip, nickel alloy strip, duplex strip, and titanium strip (such vendors, the "Raw Material Vendors"). The Debtors believe that, if shipments from the Raw Material Vendors were interrupted, the Debtors' raw material inventories would be depleted quickly and they likely would have difficulty filling open purchase orders. As a result, valuable customer relationships would be jeopardized. Moreover, the Debtors anticipate that, in certain cases, the cost of replacement materials from new suppliers will be substantially higher than the cost of materials purchased from the Raw Material Vendors.

8. Other Critical Vendors include providers of industrial gases used for tungsten inert gas and laser welding (such vendors, the "Industrial Gas Vendors"). Without the continued cooperation of the Industrial Gas Vendors, the Debtors' welding operations would cease until the Debtors were able to secure replacement gas tanks and related parts. However, replacement of the Industrial Gas Vendors could take longer than six weeks thereby causing severe disruption to the Debtors' businesses. In addition, a new industrial gas supplier may need to provide a replacement tank farm, which could result in significant costs to the Debtors.

9. At least one Critical Vendor provides steel slitting services (the "Steel Slitting Vendor"). The Debtors deliver steel to the Steel Slitting Vendor for slitting. If the Steel Slitting Vendor is not paid either it may refuse to return the steel to the Debtors or may forego further services with the Debtors. The Debtors estimate that it would take at least three to four

weeks to secure a replacement slitter, and that the cost of such replacement slitter's services could be three times as high as the Steel Slitting Vendor's services plus costs incurred by the Debtors to move the steel from one steel slitting vendor to another. Furthermore, an interruption in steel slitting services could disrupt the material flow to and from certain of the Debtors' plants.

10. The loss of these Critical Vendors as well as other Critical Vendors' goods and services will impair the Debtors' ability to fill customer orders and cause the Debtors to lose business.

B. Foreign Critical Vendors and Other Service Providers

11. In the operation of their businesses, the Debtors regularly rely on goods and services provided by Critical Vendors located outside of the United States. Many of the foreign Critical Vendors are Raw Materials Vendors.

12. In addition, the Debtors and their foreign subsidiaries maintain sales offices with a total of 13 employees in China, Korea, Singapore, Australia, Austria, India, Bahrain, and Argentina (the "International Sales Offices"). The majority of the International Sales Offices are operated by RathGibson, and certain of the International Sales Offices are operated by RathGibson Pte, Ltd., RathGibson Australia Pty, Ltd., and RathGibson Tubes Pvt., Ltd. (the "Foreign Subs"), non-Debtor subsidiaries of RathGibson. The Foreign Subs are funded by the Debtors solely to support the sales services provided in the foreign countries; accordingly, operations in all of the International Sales Offices are funded, directly or indirectly, by the Debtors.

13. The International Sales Offices are critical to the Debtors' businesses because they provide the Debtors with access to a wide variety of markets. Expenses associated

with the International Sales Offices are generally limited to payment of basic operational needs such as rent and utilities (the service providers, the “International Operations Providers”) and salaries, and are paid directly by the Debtors or the Foreign Subs, as applicable. The Debtors estimate that the prepetition claims of the International Operations Providers total approximately \$10,000, in the aggregate.

14. The foreign Critical Vendors and the International Operations Providers generally are not familiar with the United States bankruptcy laws and process, and may react to the Debtors’ bankruptcy filings with confusion and fear. The Debtors are concerned that many of the foreign Critical Vendors and International Operations Providers may threaten to cease providing goods and services to the Debtors if they are not paid on account of the foreign Critical Vendor Claims. Although the Debtors may, in theory, be protected by the automatic stay of section 362 of the Bankruptcy Code in such instances, the power of this Court to enforce the stay against an entity lacking any presence in the United States is limited. In light of the potentially serious consequences if the foreign Critical Vendors and the International Operations Providers do not continue to make uninterrupted deliveries of goods and services, the Debtors believe that payment of the foreign Critical Vendor Claims, inclusive of the claims of the International Operations Providers, is necessary to avoid irreparable harm to their operations.

C. Proposed Terms and Conditions of Payment of Critical Vendor Claims

15. The Debtors respectfully request that the Court authorize the Debtors to pay those Critical Vendor Claims, which the Debtors, in their sole discretion, determine must be paid in order to continue receiving vital goods and services. Subject to the terms set forth below, the Debtors propose to condition the payment of Critical Vendor Claims, on the agreement of individual Critical Vendors, to continue supplying goods and services to the Debtors on the trade

terms that such Critical Vendors provided to the Debtors on a historical basis prior to the Petition Date (the “Customary Trade Terms”), or pursuant to such other favorable trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date. The Debtors reserve the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim.

16. To ensure that the Critical Vendors deal with the Debtors on Customary Trade Terms, the Debtors propose that a letter agreement (a “Trade Agreement”),² substantially in the form annexed hereto as Exhibit A, be sent to the Critical Vendors for execution, together with a copy of the order granting this Motion (the “Critical Vendor Order”).

17. The Debtors propose that each Trade Agreement include, without limitation:

- (a) the amount of the relevant Critical Vendor’s estimated Critical Vendor Claims, accounting for any setoffs, other credits and discounts thereto; provided, however, such amount shall be used only for the purposes of determining such Critical Vendor’s claim under the Critical Vendor Order and shall not be deemed an “allowed claim” under section 502 of the Bankruptcy Code, and, absent further order of this Court, the rights of all interested persons to object to such claim shall be fully preserved;
- (b) the Customary Trade Terms applicable to such Critical Vendor, or such other terms as the Critical Vendor and the Debtors may agree on that are at least as favorable as those that were in effect immediately prior to the Petition Date, and the Critical Vendor’s agreement to provide goods and/or services to the Debtors pursuant to such terms during the pendency of the Debtors’ bankruptcy cases, unless the Debtors fail to make timely payments under the agreed-upon terms;
- (c) the Critical Vendor’s agreement not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a “Lien”), claim for reclamation (“Reclamation Claim”), or claim under section 503(b)(9) of the Bankruptcy Code (a “503(b)(9)”).

² The Debtors’ entry into a Trade Agreement shall not change the nature or priority of the underlying Critical Vendor Claims and shall not constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor.

Claim”), regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, or 503(b)(9) Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent the Critical Vendor has already obtained or otherwise asserted such a Lien, Reclamation Claim, or 503(b)(9) Claim, the Critical Vendor shall take (at such vendor’s own expense) whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim and or 503(b)(9) Claim;

- (d) the Critical Vendor’s acknowledgment that it has reviewed the terms and provisions of the Critical Vendor Order and is bound thereby; and
- (e) the Critical Vendor’s agreement that it will not separately seek payment for Reclamation Claims or 503(b)(9) Claims outside the terms of the Critical Vendor Order unless the Critical Vendor’s participation in the program to pay Critical Vendor Claims pursuant to such order is terminated.

18. By this Motion, the Debtors seek only the authority to enter into Trade Agreements when the Debtors determine, in their sole discretion, that payment of such Critical Vendor Claims is necessary and that such agreements are advisable. The Debtors also hereby seek authority to make payments on account of Critical Vendor Claims in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that failure to pay such Critical Vendor Claims is likely to result in immediate and irreparable harm to the Debtors’ business operations and if the Debtors have used commercially reasonable efforts to negotiate with the relevant Critical Vendor but have failed to reach an acceptable Trade Agreement.³

19. In the event a Critical Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim, or fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, the Debtors hereby seek authority, in

³ Nothing in this Motion should be construed as a waiver by any of the Debtors of their rights to contest any claim of a Critical Vendor under applicable non-bankruptcy law.

their sole discretion and without further order of the Court: (a) to declare that any Trade Agreement between the Debtors and such Critical Vendor is terminated; (b) to declare that payments made to such Critical Vendor on account of its Critical Vendor Claims be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and (c) to recover any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceed the postpetition claims of such Critical Vendor without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense. In sum, in the event a Trade Agreement is terminated or a Critical Vendor refuses to supply services to the Debtors on Customary Trade Terms (or such other terms as have been agreed by the parties) following receipt of payment on its Critical Vendor Claim, the Debtors seek authority to return the parties to the positions they held immediately prior to the entry of the order approving this Motion with respect to all prepetition claims. In addition, the Debtors reserve the right to seek damages or other appropriate remedies against any breaching Critical Vendor.

20. The Debtors further propose that any Trade Agreement terminated as a result of a Critical Vendor's refusal to comply with the terms thereof may be reinstated in the Debtors' sole discretion if:

- (a) the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor of such a default; or
- (b) the Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

21. Some of the Critical Vendors also may have obtained mechanics' liens, possessory liens, or other similar state law trade liens ("Trade Liens") on the Debtors' (or other

parties’) assets, based upon Critical Vendor Claims held by such vendors. As a further condition of receiving payment on a Critical Vendor Claim, a Critical Vendor must agree to take whatever action is necessary to remove any such Trade Lien, at such Critical Vendor’s sole cost and expense.

BASIS FOR RELIEF

22. The relief requested in this Motion is supported by several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations in certain circumstances. Courts have recognized each of these statutory provisions as valid authority for such payments. Specifically, courts have found a basis for allowing debtors to make payments to creditors under section 363 of the Bankruptcy Code. See, e.g., In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002). Authority for such payments also may be found in sections 1107(a) and 1108 of the Bankruptcy Code, which vest debtors-in-possession with authority to continue operating their businesses. In particular, courts have held that the pre-plan payment of certain unsecured claims may be necessary to avoid serious damage to a debtor’s business, maximize estate value, and enable the debtor to comply with its fiduciary duties. See, e.g., In re Mirant Corp., 296 B.R. 427 (Bankr. N.D. Tex. 2003); In re CoServ, L.L.C., 273 B.R. 487, 499 (Bankr. N.D. Tex. 2002). Finally, courts have authorized payment of prepetition obligations pursuant to section 105(a) of the Bankruptcy Code, which allows a bankruptcy court to enter any order “necessary or appropriate” to carry out the provisions of the Bankruptcy Code. See, e.g., In re Just for Feet, Inc., 242 B.R. 821 (D. Del. 1999).

A. This Court May Authorize Payment of the Critical Vendor Claims Pursuant to Sections 105 and 363 of the Bankruptcy Code

23. The relief requested in this Motion is authorized pursuant to sections 105 and 363 of the Bankruptcy Code. See In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill.

Dec. 11, 2002) (essential trade motion relying upon section 363 of the Bankruptcy Code is “completely consistent with the Bankruptcy Code;” payments to critical trade vendors have further support when debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”). Such relief contemplates payments to be made to Critical Vendors who agree to extend postpetition credit or other valuable consideration in exchange for such payment. As a result, the payment of such Critical Vendor Claims is consistent with and appropriate under sections 105 and 363 of the Bankruptcy Code.

B. The Court Should Authorize Payment of the Critical Vendor Claims as a Valid Exercise of the Debtors’ Fiduciary Duties

24. 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. at 497. 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.

25. 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.

26. Payment of the Critical Vendor Claims meets each element of the CoServ court's standard. As described above, the Debtors have narrowly tailored the Critical Vendor Claims to encompass only those service providers and suppliers who are critical because the time and expense that would be involved in transitioning to a new provider or supplier would be prohibitive and would significantly disrupt the Debtors' business. The shutdown of the Debtors' operations would cost the Debtors' estates millions of dollars in lost revenue. The harm and economic disadvantage that would stem from the failure of any of the Critical Vendors to supply goods or services is grossly disproportionate to the amount of the prepetition claims that must be paid. Finally, with respect to each Critical Vendor, the Debtors have examined other options short of payment of Critical Vendor Claims and have determined that to avoid significant disruption of the Debtor's business operations there exists no practical or legal alternative to payment of the Critical Vendor 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 Critical Vendor Claims.

C. The Court May Rely on the "Necessity of Payment" Doctrine and its General Equitable Powers to Grant The Motion

27. The "doctrine of necessity" or "necessity of payment" rule "is a well-settled doctrine that recognizes the existence of the judicial power to authorize a debtor in a

reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.”⁴ In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); 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 Financial News Network, Inc., 134 Bankr. 732, 736 (Bankr. S.D.N.Y. 1991) (to invoke the doctrine, debtor must show that the payment is “critical to the debtor’s reorganization”). 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.

28. 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 pre-petition 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. 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). Maintaining access to the services supplied by the Critical Vendors is absolutely critical to the Debtors’ businesses and is in the best interests of the Debtors’ estates and their creditors. Hence, granting the Debtors the authority to pay the Critical Vendor Claims is essential to assure that the

⁴ The traditional source of authority for preplan payments of prepetition debts is 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). In Miltenberger, the Supreme Court acknowledged the basic duty of an equity receiver “to protect and preserve the trust funds in its hands.” Id. at 310 (quoting Wallace v. Loomis, 97 U.S. 146, 162-63 (1878)). More importantly, the Court held that, consistent with this duty, “[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.

Debtors continue to receive the goods and services required for operations. This Court should therefore exercise its equitable powers to grant the relief requested in this Motion.

29. Courts in this and other jurisdictions have granted similar critical vendor relief in other cases. See, e.g., In re BT Tires Group Holding, LLC, No. 09-11173 (CSS) (Bankr. D. Del. Apr. 3, 2009); In re Foamex International, Inc., 09-10560 (KJC) (Bankr. D. Del. Feb. 20, 2009); In re Midway Games, Inc., 09-10465 (KG) (Bankr. D. Del. Feb. 13, 2009); In re Autobacs Strauss Inc., No. 09-10358 (CSS) (Bankr. D. Del. Feb. 5, 2009); Interlake Material Handling, Inc., 09-10019 (KJC) (Bankr. D. Del. Feb. 3, 2009); In re Smurfit-Stone Container Corp., No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re Tribune Company, 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008); JHT Holdings, Inc., Case No. 08-11267 (Bankr. D. Del. June 26, 2008); In re Global Motorsport Group, Inc., Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 1, 2008); see also In re Chemtura Corp., 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 13, 2009).

D. Payment Of Certain Critical Vendor Claims
May Be Justified Pursuant To Section 503(b)(9) Of The Bankruptcy Code

30. Pursuant to section 503(b)(9) of the Bankruptcy Code, a claim shall be accorded administrative expense priority where such claim is for the value of any goods received by the debtor within 20 days before the Petition Date if such goods were sold to the debtor in the ordinary course of such debtor's business. 11 U.C.S. § 503(b)(9). Furthermore, pursuant section 507(a)(2) of the Bankruptcy Code, administrative expenses allowed under section 503(b)(9) of the Bankruptcy Code are granted priority status. See 11 U.S.C. § 507(a)(2).

31. As noted above, approximately \$2.5 million of the Critical Vendor Claims relate to goods received by the Debtors in the ordinary course of business within twenty (20) days prior to the Petition Date. Such Critical Vendor Claims thus are entitled to priority status under sections 503(b)(9) and 507(a)(2) of the Bankruptcy Code, and must be paid in full in order

for the Debtors to confirm a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority under section 507(a)(2) of the Bankruptcy Code). Accordingly, the Debtors respectfully submit that payment of Critical Vendor Claims, to the extent such claims are entitled to administrative expense status under section 503(b)(9), will not adversely affect the Debtors' other unsecured creditors.

32. Courts in this and other jurisdictions have approved the payment of undisputed claims arising under section 503(b)(9) of the Bankruptcy Code in the early stages of a chapter 11 case. See, e.g., In re Diamond Glass, Inc., Case No. 08-10601 (CSS) (Bankr. D. Del. Apr. 23, 2008); In re Ampex Corp., Case No. 08-11094 (AJG) (Bankr. S.D.N.Y. Apr. 22, 2008); In re Buffets Holdings, Inc., Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008); In re Dura Automotive Sys., Inc., Case No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006); In re Werner Holding Co. (DE), Inc., Case No. 06-10578 (KJC) (Bankr. D. Del. June 13, 2006); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); In re Pliant Corp., Case No. 06-10001 (MFW) (Bankr. D. Del. Feb. 8, 2006).

E. Payment Of The Critical Vendor Claims Is Authorized Pursuant To Bankruptcy Rule 6003

33. Bankruptcy Rule 6003 empowers bankruptcy courts to grant relief with respect to “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.”

34. The Critical Vendors are integral to the Debtors' uninterrupted operations; if the Debtors fail to pay these prepetition obligations, the Critical Vendors may refuse to provide services and/or goods with respect to both prepetition goods and services in transit and postpetition goods and services which would cause delivery delays and may result in lost

customer accounts. Accordingly, paying the Critical Vendor Claims is essential to the continuation of the Debtors' operations.

35. The Debtors 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.

36. To successfully implement the foregoing, the Debtors respectfully seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay under Bankruptcy Rule 6004(h).

NOTICE

37. 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.

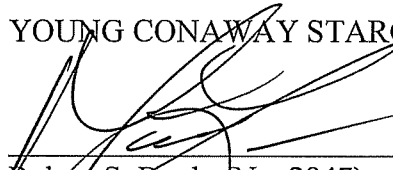
38. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit B, granting 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
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EXHIBIT A

Trade Agreement

[July __], 2009

TO: [Critical Vendor/Service Provider]
[Name]
[Address]

Dear Valued Supplier/Service Provider:

As you may be aware, on July 13, 2009 (the "Petition Date"), RGCH Holdings Corp., together with certain of its subsidiaries identified on Schedule 1 hereto (collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Cases" and the "Bankruptcy Court," respectively). On the Petition Date, we requested the Bankruptcy Court's authority to pay certain critical service providers and suppliers (the "Critical Vendors") in recognition of the importance of our relationship with the Critical Vendors and our desire that the Bankruptcy Cases have as little effect on them as possible. On July 13, 2009, the Bankruptcy Court entered an order (the "Order") authorizing us, under certain conditions, to pay pre-bankruptcy claims of Critical Vendors that agree to the terms set forth below and agree to be bound by the terms of the Order. A copy of the Order is enclosed.

To receive payment on pre-bankruptcy claims, we require each Critical Vendor to agree to continue supplying services and/or goods to the Debtors based on "Customary Trade Terms." In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowance, rebates and availability and other applicable terms and programs) in effect between such trade creditor and the Debtors on a historical basis prior to the Petition Date (the "Prepetition Trade Terms") or such other trade terms, practices and programs that are at least as favorable to the Debtors as the Prepetition Trade Terms.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, the Debtors and you agree as follows:

1. The estimated balance of the prepetition trade claim (net of any setoffs, credits or discounts) is \$ _____ (the "Trade Claim"). **Your Trade Claim does not constitute a claim allowed by the Bankruptcy Court in the Bankruptcy Cases, and signing this Trade Agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Cases.**
2. The open trade balance or credit line that you will extend to the Debtors for shipment of postpetition goods is \$ _____ (which shall not be less than the greater of the open trade balance outstanding: (a) on July 13, 2009, or (b) on normal and customary terms on a historical basis for the period prior to the Petition Date).
3. In consideration for the payment described herein, you agree not to file or otherwise assert against any or all of the Debtors, their estates or any other

person or entity or any of their respective assets or property (real or personal) any lien (a "Lien"), claim for reclamation ("Reclamation Claim"), or claim under section 503(b)(9) of the Bankruptcy Code (a "503(b)(9) Claim"), regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, or 503(b)(9) Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent you have already obtained or otherwise asserted such a Lien, Reclamation Claim, or 503(b)(9) Claim, you shall (at your own expense) take whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim or 503(b)(9) Claim.

4. You will hereafter extend to the Debtors all Customary Trade Terms, which are:

[ADD INDIVIDUALIZED SET OF CUSTOMARY TRADE/SERVICE TERMS]

Payment of your Trade Claim in the manner set forth in the Order may occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter agreement and the return of the same to the Debtors constitutes an agreement by you and the Debtors:

- (a) to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Trade Claim set forth above;
- (b) that, during the pendency of the Bankruptcy Cases, you will continue to supply the Debtors with goods and/or services pursuant to the terms hereof and that the Debtors will pay for such goods and/or services in accordance with the terms hereof;
- (c) that you have reviewed the terms and provisions of the Order and acknowledge that you are bound by such terms;
- (d) that you will not file a Lien or separately seek payment for Reclamation Claims, 503(b)(9) Claims, or similar claims outside of the terms of the Order unless your participation in the trade payment program authorized by the Order (the "Trade Payment Program") is terminated; and
- (e) that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Trade Claim will be deemed to have been in payment of postpetition obligations owed to you and you will immediately repay to the Debtors any payments made to you on account of your Trade Claim to the extent that the aggregate

amount of such payments exceed the postpetition obligations, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or other defense.

The Debtors and you also hereby agree that any dispute with respect to this agreement, the Order and/or your participation in the Trade Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call [Name] at () _____ or [Name] () _____.

Sincerely,

[Applicable Debtor]

By: _____

Title: _____

Agreed and Accepted by:
[Name of Trade Vendor]

By: _____

Title: _____

Dated: _____

EXHIBIT B

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X	:	Chapter 11
In re	:	
	:	
RathGibson, Inc., <u>et al.</u> , ¹	:	Case No. 09-12452 ()
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	Ref. Docket _____

**ORDER AUTHORIZING DEBTORS TO PAY PREPETITION
OBLIGATIONS OF CERTAIN CRITICAL VENDORS AND SERVICE PROVIDERS**

Upon the motion (the “Motion”) of RathGibson, Inc. and Greenville Tube Company (the “Debtors”), two of the debtors and debtors in possession in the above-captioned cases, for entry of an order, pursuant to sections 105(a), 363(b), 503(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 amounts (the “Critical Vendor Claims”) due to certain vendors and service providers that are essential to the Debtors’ business operations (the “Critical Vendors”); and upon the Declaration of Jon M. Smith in Support of Chapter 11 Petitions and First Day Pleadings (the “Smith Declaration”); and due and sufficient 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

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

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted to the extent set forth herein.
2. Capitalized terms not otherwise defined herein 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 all or part of the Critical Vendor Claims, including the claims of foreign Critical Vendors and International Operations Providers, in an amount not to exceed \$4 million in the aggregate.
4. The Debtors are authorized, but not directed, to undertake commercially reasonable efforts to cause Critical Vendors to enter into agreements with the Debtors substantially similar to that annexed as Exhibit A to the Motion, as a condition of payment of each Critical Vendor Claim.
5. The Debtors are authorized, in their sole discretion, to pay Critical Vendor Claims, subject to the other limits set forth herein, even in the absence of a Trade Agreement, if the Debtors have used commercially reasonable efforts to negotiate with the relevant Critical Vendor and the Debtors determine, in their business judgment, that failure to pay such Critical Vendor Claim is likely to result in irreparable harm to the Debtors' business operations.
6. If a Critical Vendor: (a) refuses to supply goods and/or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Vendor Claim (regardless of whether such Critical Vendor has entered into a Trade Agreement); or (b) fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors may, in their sole discretion:
 - (a) declare that any Trade Agreement between the Debtors and such Critical Vendor is terminated;

- (b) declare that payments made to such Critical Vendor, on account of its Critical Vendor Claims be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of the Court or action by any person or entity; and
- (c) recover any payment made to such Critical Vendor, on account of its Critical Vendor Claims to the extent that such payments exceed the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense.

Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

7. Notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if:

- (a) the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the Critical Vendor of such a default; or
- (b) the Debtors, in their sole discretion, reach a favorable alternative agreement with the Critical Vendor.

8. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to object to any Critical Vendor Claim.

9. Nothing contained in this Order shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease between the Debtors and a Critical Vendor.

10. The authorization granted hereby to pay Critical Vendor Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Critical Vendor Claims and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Critical Vendor Claim. Further, nothing

contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Critical Vendor Claims to the extent they are not paid.

11. The amount of each Critical Vendor's Critical Vendor Claims set forth in connection with a Trade Agreement shall be used only for purposes of determining such Critical Vendor's claim under this Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Order shall not excuse such Critical Vendor from the requirement to file a proof of claim in these cases.

12. No claimant who receives payment on account of a Critical Vendor Claim (whether or not such claimant signs a Trade Agreement) shall be permitted to: (a) file or perfect a Lien on account of such claim, and any such claimant shall take all necessary action to remove any existing lien relating to such claim, even if the Lien is against property of a non-Debtor; or (b) seek payment for a Reclamation Claim, 503(b)(9) Claim, or similar claim outside of the terms of this Order.

13. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

14. Nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder.

15. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions, that may be held by the Debtors.

16. 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.

17. Notwithstanding any other provision of this Order, no bank or other financial institution that honors a prepetition check or other item drawn on any account that is the subject of this Order either: (a) at the direction of the Debtors; (b) in a good faith belief that the Court has authorized such prepetition check or item; or (c) as the result of a good faith error made despite implementation of reasonable item handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

18. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

19. The notice provisions under Bankruptcy Rule 6004(a) are hereby deemed waived.

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

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

Dated: Wilmington, Delaware
_____, 2009

UNITED STATES BANKRUPTCY JUDGE