

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
RathGibson, Inc., <u>et al.</u> , <sup>1</sup>	:	Case No. 09-12452 ( )
	:	
Debtors.	:	Joint Administration Pending
	:	
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**DEBTORS' MOTION FOR ORDER AUTHORIZING:  
(A) CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM AND PROCEDURES; (B) MAINTENANCE AND CONTINUED USE OF EXISTING BANK ACCOUNTS; (C) WAIVER OF CERTAIN OPERATING GUIDELINES RELATING TO BANK ACCOUNTS; (D) WAIVER OF THE REQUIREMENTS OF SECTION 345 OF THE BANKRUPTCY CODE ON AN INTERIM AND FINAL BASIS; AND (E) CONTINUATION OF INTERCOMPANY TRANSACTIONS AND ACCORDING ADMINISTRATIVE EXPENSE STATUS TO CLAIMS FOR SUCH TRANSACTIONS**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby move for entry of an order, pursuant to sections 105(a), 345, 363, 364 and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and subject to the DIP Facility (as defined below), authorizing:

(i) the continued use of the Debtors’ cash management system and procedures (the “Cash Management System”); (ii) maintenance and continued use of their existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts set forth in the U.S. Department of Justice, Office of the United States Trustee, District of Delaware (the “U.S. Trustee”),

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<sup>1</sup> The last four digits of the taxpayer identification numbers of the Debtors follow in parentheses: (i) Greenville Tube Company (2689); (ii) RathGibson, Inc. (“RathGibson”) (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.

Operating Guidelines for Chapter 11 Cases (the “U.S. Trustee Guidelines”); (iv) a waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis on the terms set forth herein; and (v) continuation of intercompany transactions and according administrative expense status to claims for such transactions (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 undersigned counsel, respectfully represent:

### **JURISDICTION**

1. 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), 345, 363, 364 and 503 of the Bankruptcy Code, as supplemented by Bankruptcy Rule 6003 and Local Rule 2015-2.

### **BACKGROUND**

2. On July 13, 2009 (the “Petition Date”), the Debtors 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.

3. 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.

## **RELIEF REQUESTED**

4. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 345, 363, 364 and 503 of the Bankruptcy Code, Bankruptcy Rule 6003 and Local Rule 2015-2, and subject to the DIP Facility (as defined in the Smith Declaration), authorizing: (i) the continued use of the Debtors' Cash Management System; (ii) maintenance and continued use of their existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts set forth in the U.S. Trustee Guidelines; (iv) waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis on the terms set forth herein; and (v) continuation of intercompany transactions and according administrative expense status to claims for such transactions.

5. The relief requested herein will help ensure the Debtors' orderly entry into chapter 11 and will avoid many of the possible disruptions and distractions that could divert the Debtors' attention from more pressing matters during the initial days of these chapter 11 cases.

### **THE DEBTORS' EXISTING BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM**

6. RathGibson's business is operated primarily through two production facilities located in Janesville, Wisconsin ("Janesville") and North Branch, New Jersey ("North Branch") and one distribution facility located in Marrero, Louisiana ("Mid-South Control Line"). Greenville Tube Company's ("Greenville"), one of the Debtors, business is operated primarily through a production facility located in Clarksville, Arkansas. The Debtors also have domestic and foreign sales offices.

7. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors maintained a Cash Management System designed to, among other things, collect deposits and transfer and disburse funds generated through the Debtors' businesses efficiently.

Each of the Debtor's divisions, other than North Branch, which only has a petty cash account in its own name, have separate accounts.<sup>2</sup> Generally, the Cash Management System is designed so that any excess cash held by Mid-South Control Line and Greenville is swept to the Janesville Operating Account (defined below). However, to the extent there is no excess cash to transfer, RathGibson, Mid-South Control Line and Greenville maintain separate cash management systems, as more fully described below. In addition, RathGibson, through the Janesville Operating Account, transfers funds to certain foreign subsidiaries and foreign sales offices to fund foreign operations and salaries. RG Tube Holdings LLC, the ultimate parent of all of the Debtors, also maintains a bank account, primarily for the payment of certain administrative fees.

8. The Debtors' Cash Management System includes: operating accounts, zero balance accounts ("ZBAs"), lockbox accounts and a money market account. As of the Petition Date, the Debtors collectively maintain ten (10) active bank accounts<sup>3</sup> and three (3) inactive bank accounts (collectively, the "Bank Accounts") at several different banks (collectively, the "Banks"). A non-exhaustive list of the Bank Accounts is annexed hereto as Exhibit A.<sup>4</sup> A cash management schematic is annexed hereto as Exhibit B. The Debtors believe that all of the Bank Accounts, wherever located, are held at financially stable banking institutions. The Bank Accounts and cash flow are described below.

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<sup>2</sup> As explained below, North Branch shares accounts with Janesville and corporate headquarters.

<sup>3</sup> Nine of the active bank accounts are located in the United States. One bank account, maintained at Bank of China in Shanghai, is used to support operations at the Debtors' sales office in China.

<sup>4</sup> Exhibit A contains all of the Bank Accounts of which the Debtors are currently aware. If any other accounts are later identified, such accounts are hereby included in the definition of "Bank Accounts."

A. The Bank Accounts and Cash Management System

(a) Janesville

9. RathGibson maintains three accounts in Janesville, Wisconsin, which are used to collect customer funds and make disbursements on behalf of the Debtors' facilities in Janesville and North Branch.

10. Customer remittances for Janesville and North Branch are deposited into a ZBA lockbox account maintained at Wells Fargo Bank, N.A. ("Wells Fargo"). At the end of each day, funds from the lockbox are automatically deposited into an operating account (the "Janesville Operating Account") at Wells Fargo. Disbursements made on behalf of Janesville or North Branch are made, if by wire transfer, from the Janesville Operating Account, or if by check, from a controlled disbursement account maintained at Wells Fargo, which is a ZBA and sweeps daily to the Janesville Operating Account. North Branch also maintains a money market petty cash account at PNC Bank (the "North Branch Petty Cash Account"), which generally contains less than \$2,500. In addition, at the direction of RathGibson's management, when necessary, intercompany transfers are made from the Janesville Operating Account to Greenville and to Mid-South Control Line.

(b) Mid-South Control Line

11. Mid-South Control Line maintains two bank accounts at JPMorgan Chase Bank, N.A. One account (the "Mid-South Operating Account") is funded by customer remittances. The second account (the "Mid-South Disbursement Account"), is funded by transfers from the Janesville Operating Account. The majority of the disbursements for Mid-South Control Line are currently made from the Mid-South Disbursement Account.

(c) Greenville

12. Greenville maintains three active bank accounts for collections and disbursements. Greenville's customer remittances are deposited into an operating account with Bank of America, N.A. ("BofA"). The funds in the operating account automatically are transferred on a daily basis into a disbursement account at BofA (the "Greenville Disbursement Account") from which disbursements are made. In addition, Greenville maintains an account through First Security Bank (the "Greenville Petty Cash Account"), which is used primarily for petty cash, and, generally, has a balance of less than \$10,000.

B. Payroll Accounts

13. Each of RathGibson and Greenville utilizes Automatic Data Processing, Inc. ("ADP") to pay their payroll and payroll taxes. In each case, in order to fund payroll, ADP initiates reverse wire transfers against the applicable Bank Account, and funds are transferred into an account held by ADP. ADP then issues checks or direct deposits funds to the Debtors' employees. By this Motion, the Debtors request authority to continue their prepetition practices with respect to their payroll processing.

C. Intercompany Transfers

14. The Debtors initiate intercompany transfers between RathGibson and Greenville, as well as between RathGibson and its non-Debtor foreign subsidiaries. Generally, on a weekly basis, Greenville determines whether it has cash in excess of its disbursements and, if so, transfers such excess cash to the Janesville Operating Account held in the name of RathGibson. When necessary to fund Greenville's operations, RathGibson transfers funds to Greenville from the Janesville Operating Account.

15. RathGibson has three non-debtor foreign subsidiaries (the “Foreign Subs”) located in Australia, India and Singapore, each of which consists solely of a sales office. In addition to the Foreign Subs’ sales offices, RathGibson itself maintains sales offices in China, Korea, Austria, Bahrain, and Argentina (together with the sales offices in Australia, India and Singapore, the “International Sales Offices”), in order to facilitate the sale of the Debtors’ goods outside of North America. The Foreign Subs each maintain a bank account which is funded by monthly transfers from RathGibson out of the Janesville Operating Account, based on expense reports submitted to RathGibson. The average monthly payroll for employees in the International Sales Offices is approximately \$88,000 per month, and expenses related to maintaining these offices are approximately \$10,000 per month. The International Sales Offices are critical to the Debtors’ businesses, as they provide the Debtors with access to a wide variety of markets in which they would otherwise be unable to readily sell their goods.

16. The Debtors account for intercompany transfers through book entries on the Debtors’ books and records. The Debtors hereby request authority to continue their prepetition practices with respect to intercompany transfers and further, to accord superpriority administrative expense status to obligations arising out of intercompany transfers, subject only to liens granted to the Debtors’ prepetition secured lenders as adequate protection for the use of cash claimed as collateral, prior to any payoff thereof, liens granted to the Debtors’ postpetition secured lenders, administrative expenses subject to the carve-out under the Debtors’ postpetition credit facility and other claims granted superpriority administrative expense status pursuant to orders of this Court.

D. Shanghai Foreign Office

17. As indicated in footnote 3, RathGibson maintains a bank account with Bank of China in Shanghai, which is funded solely to meet payroll and operational needs. RathGibson considers this account a ZBA, in that funds are deposited solely to cover disbursement obligations of the Shanghai office. As of the Petition Date, there was approximately \$2,500.00 in this account.

**U.S. TRUSTEE GUIDELINES**

18. The U.S. Trustee Guidelines were adopted in order to assist the U.S. Trustee in supervising the administration of chapter 11 cases. The U.S. Trustee Guidelines require chapter 11 debtors to, among other things:

- (a) close all existing bank accounts and open new accounts which must be designated debtor in possession bank accounts;
- (b) establish and maintain separate debtor in possession accounts for the payment of taxes and separate debtor in possession accounts for cash collateral; and
- (c) obtain and utilize new checks for all debtor in possession accounts which bear the designation "Debtor in Possession" and contain certain other information related to the chapter 11 case.

19. Notwithstanding the U.S. Trustee Guidelines, the continued use of the Bank Accounts is essential to a smooth and orderly transition into chapter 11. All parties in interest will be best served by the continued use of such Bank Accounts as it will minimize disruption of the Debtors' businesses. Moreover, such a changeover is unnecessary because the Debtors will perform a "hard close" of their books (including recordation of account balances) as of the Petition Date, which will ensure the Debtors and others will be able to differentiate between pre and postpetition transactions, account balances and obligations. Accordingly, the

Debtors request a waiver of the U.S. Trustee Guidelines requiring that they close all existing Bank Accounts and open new debtor in possession accounts.

20. The Debtors further request that all Banks where the Debtors hold Bank Accounts be authorized to: (a) continue to administer the Bank Accounts in the manner maintained prior to the Petition Date, without interruption, in the usual and ordinary course; and (b) to receive, process and honor and pay any and all checks, drafts, wires or ACH transfers issued or initiated by the Debtors, and drawn on the Bank Accounts by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any Bank only if specifically authorized by order of this Court.

21. The Debtors also request that, except for those checks that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain prepetition claims,<sup>5</sup> no checks or drafts issued on the Bank Accounts before the Petition Date, but presented for payment after the Petition Date, be honored or paid.

22. The Debtors also seek a waiver of the requirement to establish specific bank accounts for tax payments. The Debtors believe that their tax obligations can be paid most efficiently out of their existing Bank Accounts, that the U.S. Trustee can adequately monitor the

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<sup>5</sup> The Debtors have filed the following motions seeking relief to pay prepetition amounts owed: (i) Debtors' Motion for an Order (I) Authorizing Debtors to Pay: (a) Prepetition Employee Wages, Salaries and Other Compensation; (b) Prepetition Employee Business Expenses; and (c) Other Miscellaneous Employee Expenses and Employee Benefits, (II) Authorizing Debtors to Continue Employee Benefit Programs, and (III) Granting Related Relief; (ii) Debtors' Motion for Order Authorizing Payment of Prepetition Common Carrier, Warehouse, and Related Obligations; (iii) Debtors' Motion for Order Authorizing Debtors to Honor Certain Prepetition Obligations to Customers and to Continue Customer Programs; (iv) Debtors' Motion for Entry of Order Authorizing Debtors to Pay Prepetition Obligations of Certain Critical Vendors and Service Providers; and (v) Debtors' Motion for Order Authorizing Payment of Certain Prepetition Taxes Pursuant to Sections 105(a), 363 and 541 of the Bankruptcy Code.

flow of funds into, among, and out of such accounts, and that the creation of new debtor in possession accounts designated solely for tax obligations would be unnecessary and inefficient.

23. Furthermore, to minimize administrative expense and delay, the Debtors request authority to continue to use their checks without reference to their status as debtors in possession. Pursuant to Local Rule 2015-2(a), in the event the Debtors need to purchase new check stock during the pendency of these chapter 11 cases, such check stock will include a legend referring to the Debtors as “Debtors in Possession” or “DIP.”

### **BASIS FOR RELIEF**

#### A. Section 345 Deposit and Investment Requirements

24. Section 345 of the Bankruptcy Code governs a debtor’s deposit and investment of cash during a chapter 11 case and authorizes the deposits or investments of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit on investment.” 11 U.S.C. § 345(a).

25. Section 345(b) of the Bankruptcy Code provides:

Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

(1) a bond—

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on—

(i) a proper accounting for all money so deposited or invested and for any return on such money;

(ii) prompt repayment of such money and return; and

(iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 9303 of title 31;

unless the court for cause orders otherwise.

11 U.S.C. § 345(b) (emphasis added).

26. Local Rule 2015-2(b) provides that no waiver of “section 345 shall be granted without notice and an opportunity for hearing in accordance with these Local Rules.” Local Rule 2015-2(b). Nevertheless, Local Rule 2015-2(b) further provides that “if a motion for such waiver is filed on the first day of a chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the debtor’s motion can be held.”

27. The purpose of section 345(b) of the Bankruptcy Code is to protect creditors of an estate against a loss of funds of the estate through deposit or investment. See 3 COLLIER ON BANKRUPTCY ¶345.04 (Lawrence P. King, 15<sup>th</sup> ed. rev’d 2008). However, in 1994, in order to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” the Bankruptcy Code was amended to allow bankruptcy courts to waive or modify the stringent requirements of section 345(b) of the Bankruptcy Code. See 140 Cong. Rec. H10,767 (daily ed. October 4, 1994).

28. As this Motion has been filed on the first day of the Debtors’ chapter 11 cases and the Debtors have in excess of 200 creditors, the Debtors request that the Court enter an order waiving, on an interim basis, the requirements of section 345(b) of the Bankruptcy Code

for forty-five (45) days, without prejudice to the Debtors' ability to seek a further interim waiver or a final waiver upon a final hearing.

29. The Debtors believe that there is ample "cause" to waive the deposit, investment and reporting requirements because the Debtors maintain their Bank Accounts with reputable banking institutions, they have only one money market account, which is for petty cash needs, and the size of the Debtors' business operations and the costs associated with satisfying the requirements of section 345(b) make satisfying such requirements impracticable. See, e.g., In re Service Merchandise, 240 B.R. 894 (Bankr. M.D. Tenn. 1999).

30. The Debtors believe it is in the best interests of the estates to continue to follow the banking practices necessitated by the Cash Management System, notwithstanding the requirements of section 345(b) and the U.S. Trustee Guidelines. The Debtors believe that their deposits in the Bank Accounts on Exhibit A are commercially reasonable and appropriate and consistent with the intent of section 345 of the Bankruptcy Code. The Debtors submit that the funds will not be sufficiently at risk to necessitate strict adherence to the requirements of section 345(b) of the Bankruptcy Code.

31. Moreover, the Debtors believe that the vast majority of the funds held in the Bank Accounts are temporarily fully insured by the Federal Deposit Insurance Corporation (the "FDIC") pursuant to the Temporary Liquidity Guaranty Program (the "TLGP"). Among other things, the TLGP provides that all funds in non-interest bearing transaction deposit accounts held in the domestic offices of participating FDIC-insured institutions will be fully FDIC insured through December 31, 2009. It is the Debtors' understanding that all of the Bank Accounts, other than the Greenville Petty Cash Account and RathGibson's account with Bank of China in Shanghai (the "China Account"), are currently eligible for fully-insured status under the

TLGP. Also, all of the Bank Accounts, except the Greenville Petty Cash Account and the China Account, are maintained through financial institutions that have executed the Uniform Depository Agreement required by U.S. Trustee for compliance with the requirements of section 345(b) of the Bankruptcy Code. In addition, with respect to the Greenville Petty Cash Account, the Debtors do not maintain a balance in such account in excess of the amount that is ordinarily guaranteed by the FDIC. Despite this, out of an abundance of caution, the Debtors require additional time to ensure that all of the Bank Accounts are either in compliance with or will be in compliance with section 345(b) of the Bankruptcy Code, or to determine whether it is necessary to seek a further waiver of the requirements of section 345(b) of the Bankruptcy Code. Therefore, the Debtors submit that cause exists for an interim waiver of the investment and deposit restrictions of section 345(b) of the Bankruptcy Code.

32. In addition, the China Account is necessary to support the Debtors' sales in the region. Six employees are located out of the Shanghai office and the funds transferred to Bank of China generally are limited to the Debtors' payroll obligations, expense reimbursement, if any, rent, utilities and other basic operational needs. In light of the fact that this sales office is vital to the Debtors' operations and global presence, and in light of the fact that the funds transferred into such account generally are limited, the Debtors believe that waiver of the investment and deposit restrictions of section 354(b) of the Bankruptcy Code are necessary and in the best interests of these estates.

33. Courts in this District have granted requests to approve similar relief as requested herein. See, e.g., In re Source Interlink Companies Inc., et al., No. 09-11424 (KG) (Bankr. D. Del. April 29, 2009); In re Dayton Superior Corp., No. 09-11351 (BLS) (Bankr. D. Del. April 21, 2009); In re Magna Entertainment Corp., et al., No. 09-10720 (MFW) (Bankr. D.

Del. March 6, 2009); In re Aleris Int'l, Inc., et al., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009); In re Interlake Material Handling, Inc., et al., No. 09-10019 (KJC) (Bankr. D. Del. Jan. 30 2009); In re HPG Int'l, Inc., et al., No. 09-10231 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re Gottschalks, Inc., No. 09-10157 (KJC) (Bankr. D. Del. Jan 15, 2009); In re Recycled Paper Greetings, Inc., et al., No. 09-10002 (KG) (Bankr. D. Del. Jan. 5, 2009); ); In re GWLS Holdings, et al., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008).

B. Continuation of the Cash Management System is in the Best Interests of the Debtors, Their Creditors, and All Other Parties in Interest

34. The Debtors' cash management procedures constitute ordinary course, essential business practices for the Debtors. The Cash Management System provides significant benefits to the Debtors including, inter alia, the ability to: (i) control corporate funds; (ii) ensure the maximum availability of funds when necessary; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance information.

35. The Debtors' business operations require that the existing Cash Management System continue, as any serious disruption could have a severe and adverse impact upon the restructuring efforts of the Debtors. The Debtors will take reasonable steps to ensure that maintaining the present system will not result in any prejudice to any party in interest.

36. In other large chapter 11 cases, this Court has granted substantially similar relief. See, e.g., In re Source Interlink Companies Inc., et al., No. 09-11424 (KG) (Bankr. D. Del. April 29, 2009); In re Dayton Superior Corp., No. 09-11351 (BLS) (Bankr. D. Del. April 21, 2009); In re Magna Entertainment Corp., et al., No. 09-10720 (MFW) (Bankr. D. Del. March 6, 2009); In re Aleris Int'l, Inc., et al., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009); In re

Interlake Material Handling, Inc., et al., No. 09-10019 (KJC) (Bankr. D. Del. Jan. 30 2009); In re HPG Int'l, Inc., et al., No. 09-10231 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re Gottschalks, Inc., No. 09-10157 (KJC) (Bankr. D. Del. Jan 15, 2009); In re Recycled Paper Greetings, Inc., et al., No. 09-10002 (KG) (Bankr. D. Del. Jan. 5, 2009); In re GWLS Holdings, et al., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008). The Debtors respectfully submit that such relief should be granted here.

C. Intercompany Claims Should be Treated as Administrative Expenses Pursuant to Sections 503(b)(1) and 364(b) of the Bankruptcy Code

37. To ensure that each individual Debtor will not, at the expense of the creditors, fund the operation of an affiliated entity, the Debtors respectfully request that the Court, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, authorize the Debtors to treat all intercompany obligations (collectively, the “Intercompany Claims”) arising after the Petition Date in the ordinary course of business as superpriority administrative expenses, subject only to liens granted to the Debtors’ prepetition secured lenders as adequate protection for the use of cash claimed as collateral, prior to any payoff thereof, liens granted to the Debtors’ postpetition secured lenders, administrative expenses subject to the carve-out under the Debtors’ postpetition credit facility and other claims granted superpriority administrative expense status pursuant to orders of this Court. If the Court authorizes the Debtors to treat Intercompany Claims as administrative expenses, then each entity utilizing funds flowing through the Cash Management System and receiving services through the intercompany arrangements should continue to bear ultimate repayment responsibility for such ordinary course transactions and their related share of the cost of services provided.

38. Courts have routinely granted such authority in other multi-debtor chapter 11 cases for similar reasons. See, e.g., In re Source Interlink Companies Inc., et al., No. 09-11424 (KG) (Bankr. D. Del. April 29, 2009) (granting administrative priority status to intercompany claims); In re MMC Precision Holdings Corp., et al., No. 09-10998 (BLS) (Bankr. D. Del. March 24, 2009) (same); In re Masonite Corp., et al., No. 09-10844 (PJW) (Bankr. D. Del. March 17, 2009) (authorizing debtors to continue to honor and pay obligations relating to intercompany transactions in the ordinary course of business); In re Aleris Int'l, Inc., et al., No. 09-10478 (BLS) (Bankr. D. Del. Feb. 13, 2009) (same); In re Retail Pro, Inc, et al., No. 09-10087 (PJW) (Bankr. D. Del. Jan. 13, 2009) (granting administrative priority status to intercompany claims); In re GWLS Holdings, Inc., No. 08-12430 (PJW) (Bankr. D. Del. Oct. 22, 2008) (same); In re Internet Corp., Case No. 08-11859 (KG) (Bankr. D. Del. Aug. 14, 2008) (same).

39. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and all other interested parties, and should be granted in all respects.

40. 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.

#### **NOTICE**

41. 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.


42. 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 C, 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

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Proposed Co-Counsel for the Debtors and  
Debtors in Possession

**EXHIBIT A**

Bank Accounts

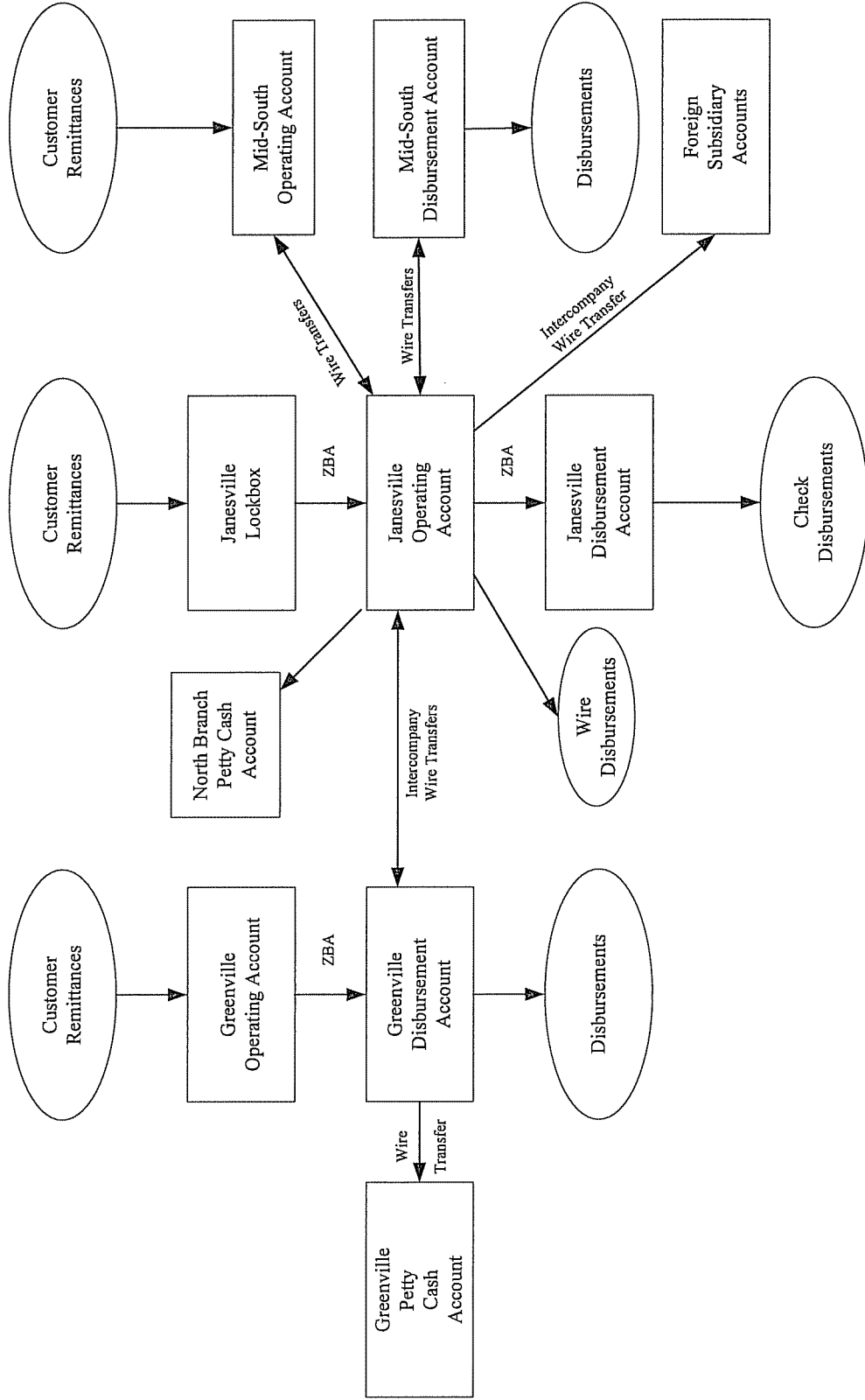
<b>Bank Name</b>	<b>Bank Acct Number</b>	<b>Acct Description</b>
Bank of America, N.A.	*****0826	Greenville Operating Account
Bank of America, N.A.	*****5347	Greenville Disbursement Account
Bank of China	*****1001	RathGibson China Account
First Security Bank	***774	Greenville Petty Cash Account
JPMorgan Chase	*****7806	Mid-South Operating Account
JPMorgan Chase	*****7814	Mid-South Disbursement Account
PNCBank	*****6805	North Branch Petty Cash Account
Wells Fargo Bank, N.A.	***368	Janesville Lockbox Account
Wells Fargo Bank, N.A.	*****0531	Janesville Operating Account
Wells Fargo Bank, N.A.	*****9728	Janesville Disbursement Account
Wells Fargo Bank, N.A.	*****5400	Inactive Janesville Operating Account
Wells Fargo Bank, N.A.	*****0543	Inactive Janesville ZBA Account
Wells Fargo Bank, N.A.	*****5578	RG Tube Account

**EXHIBIT B**

Bank Account Schematic

RG Tube Account

**RathGibson - Bank Account Flow<sup>1</sup>**



<sup>1</sup> This schematic does not include accounts which are held by the Debtors but which the Debtors do not actively use.

**EXHIBIT C**

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
RathGibson, Inc., <u>et al.</u> , <sup>1</sup>	:	Case No. 09-12452 ( )
	:	
Debtors.	:	Joint Administration Pending
	:	
	:	<b>Ref. Docket No.</b> _____
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**ORDER AUTHORIZING: (A) CONTINUED USE OF THE DEBTORS' CASH MANAGEMENT SYSTEM AND PROCEDURES; (B) MAINTENANCE AND CONTINUED USE OF EXISTING BANK ACCOUNTS; (C) WAIVER OF CERTAIN OPERATING GUIDELINES RELATING TO BANK ACCOUNTS; (D) WAIVER OF THE REQUIREMENTS OF SECTION 345 OF THE BANKRUPTCY CODE ON AN INTERIM BASIS; AND (E) CONTINUATION OF INTERCOMPANY TRANSACTIONS AND ACCORDING ADMINISTRATIVE EXPENSE STATUS TO CLAIMS FOR SUCH TRANSACTIONS**

Upon the motion (the "Motion") of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for an order, pursuant to sections 105(a), 345, 363, 364 and 503 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Code for the District of Delaware (the "Local Rules"), authorizing: (i) the continued use of the Debtors' cash management system and procedures (the "Cash Management System"); (ii) maintenance and continued use of their existing bank accounts; (iii) a waiver of certain operating guidelines relating to bank accounts; (iv) waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis and on a final basis on the terms set forth in the Motion; and (v)

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<sup>1</sup> 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.

continuation of intercompany transactions and according administrative expense status to claims for such transactions; and upon the Declaration of Jon M. Smith in Support of Chapter 11 Petitions and First Day Pleadings; and due and sufficient notice of the Motion having been given; 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.
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.
3. Nothing in this Order shall be deemed to alter any provision or obligation of the Debtors under their Secured Super-Priority Debtor-In-Possession Multiple Draw Term Loan Agreement (the "DIP Facility") or any order of this Court approving or authorizing the Debtors to enter into the DIP Facility and related documents (collectively, the "DIP Documents"). In the event of any conflict between this Order and the DIP Documents, the terms of the DIP Documents shall govern.
4. Subject to the terms of the DIP Facility, the Debtors are authorized and empowered to continue to manage their cash pursuant to the Cash Management System maintained by the Debtors prior to the commencement of these chapter 11 cases and to collect and disburse cash in accordance with the Cash Management System.
5. The requirements of the U.S. Trustee Guidelines that the Debtors close all existing bank accounts and open new debtor in possession accounts are hereby waived. Further,

the requirements of the U.S. Trustee Guidelines that the Debtors establish specific bank accounts for tax payments are hereby waived.

6. The Debtors may disburse funds by checks, drafts, wires, debits, ACH transfers or by any other means.

7. The Debtors are authorized to use their checks, substantially in the forms existing immediately prior to the Petition Date, without reference to their status as debtors in possession; provided, however, in the event that the Debtors need to purchase new check stock during the pendency of these chapter 11 cases, such check stock will include a legend referring to the Debtors as “Debtors in Possession” or “DIP.”

8. The Debtors are authorized to continue to invest and deposit funds in the Bank Accounts in accordance with their prepetition practices, without the need for a bond or other collateral as required by section 345(b) of the Bankruptcy Code, notwithstanding that this practice may not strictly comply with the requirements of section 345(b) of the Bankruptcy Code, and that the entities with which the Debtors’ money is invested shall be excused from compliance with the requirements of section 345(b) of the Bankruptcy Code for a period of forty-five (45) days, without prejudice to the Debtors’ right to seek a further interim waiver or final waiver upon final hearing.

9. Subject to terms of the immediately preceding paragraph, all applicable Banks and other financial institutions are authorized to accept and hold or invest funds, at the Debtors’ direction, in accordance with the Debtors’ prepetition investment practices.

10. The Banks where the Debtors maintain the Bank Accounts are authorized and directed to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive,

process and honor and pay any and all checks, drafts, wires or ACH transfers issued or initiated by the Debtors, and drawn on the Bank Accounts, after the Petition Date by the holders or makers thereof, as the case may be, provided there are sufficient funds, whether deposited prior or subsequent to the Petition Date, in the requisite Bank Account, or otherwise available to cover and permit payment thereof.

11. The Banks shall not honor any request by a non-Debtor to sweep funds from the Bank Accounts, absent further order of this Court.

12. All Banks where the Debtors maintain Bank Accounts are hereby authorized to: (a) continue to service and administer the Bank Accounts in the manner maintained prior to the Petition Date, without interruption, in the usual and ordinary course; and (b) to receive, process and honor and pay any and all checks, drafts, wires or ACH transfers issued or initiated by the Debtors, and drawn on the Bank Accounts, by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by any bank only if specifically authorized by order of this Court.

13. Except for those checks that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain prepetition claims, no checks or drafts issued on the bank accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid.

14. Notwithstanding any other provision of this Order, no Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order: (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.

15. For Banks that are a party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), within fifteen (15) days from the date of entry of this Order, the Debtors shall (a) contact each Bank, (b) provide the Bank with each of the Debtors' employer identification numbers, and (c) identify each of their accounts held at such banks as being held by a debtor in possession.

16. For Banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the Bank to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within forty-five (45) days of the date of entry of this Order.

17. Intercompany Claims are hereby granted superpriority expense status pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, subject only to liens granted to the Debtors' prepetition secured lenders as adequate protection for the use of cash claimed as collateral, prior to any payoff thereof, liens granted to the Debtors' postpetition secured lenders and other claims granted superpriority administrative expense status pursuant to orders of this Court.

18. The Debtors are authorized to continue their prepetition practices with respect to transfers of funds to the Foreign Subs.

19. The Debtors shall record the consolidated balances of each of their Bank Accounts so that all postpetition transfers and transactions respecting such Bank Accounts shall be adequately and promptly documented in, and readily ascertainable from, their books and

records, to the same extent maintained by the Debtors prior to the commencement of these chapter 11 cases.

20. Nothing contained herein shall prevent the Debtors from opening any additional bank accounts, or closing any existing Bank Accounts, as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors request to open or close, as applicable, such Bank Accounts or other bank accounts, and the Debtors shall provide notice of same in their monthly operating report filed in these cases.

21. As promptly as possible, but in no event later than five (5) business days after entry of this Order, the Debtors shall serve a copy of this Order on all Banks whose Bank Accounts are listed on Exhibit A attached to the Motion.

22. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of the Motion.

23. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

24. This Court shall retain jurisdiction with respect to all 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