

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  
PAYMENT OF PREPETITION COMMON CARRIER,  
WAREHOUSE, FREIGHT FORWARDER AND RELATED OBLIGATIONS**

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), 363(b), 506(b), 1107(a), and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtors to pay prepetition common carrier, warehouse, freight forwarder and related obligations (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:

**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

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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.

statutory predicates for the relief requested herein are sections 105(a), 363(b), 506(b), 1107(a), and 1108 of the Bankruptcy Code.

### **BACKGROUND**

2. 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.

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 authority, pursuant to sections 105(a), 363(b), 506(b), 1107(a), and 1108 of the Bankruptcy Code, to pay, in the Debtors' sole discretion, the prepetition claims of certain common carriers, warehouse providers, and freight forwarders. Descriptions of these categories of claims, and the Debtors' justifications for paying such claims, are set forth below.

#### A. Common Carriers and Warehouse Providers

5. The Debtors' supply and delivery system depends upon the use of numerous freight companies and common carriers operated by third parties (collectively, the

“Common Carriers”)<sup>2</sup> to transport materials and goods throughout their manufacturing process. The Debtors rely on such Common Carriers to ensure that their supply-chain runs smoothly. As a result, the Common Carriers regularly have possession of certain of the Debtors’ materials or products in the ordinary course of their businesses. As of the Petition Date, the Common Carriers held approximately \$350,000 worth of the Debtors’ materials and products.

6. As of the Petition Date, many of the Common Carriers had claims on account of shipping and transportation and related services previously provided to the Debtors (collectively, the “Carrier Claims”). The Debtors estimate that, as of the Petition Date, the aggregate amount of prepetition Carrier Claims, including the Debtors’ obligations to EL, total approximately \$117,000.

7. The Debtors also supplement their own storage and distribution facilities with a third-party warehouse facility (the “Warehouse Provider”), used to store goods and inventory that are to be shipped to customers. The Warehouse Provider regularly possesses products and materials owned by the Debtors. As of the Petition Date, the Warehouse Provider held approximately \$33,000 worth of such products and materials.

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<sup>2</sup> RathGibson, Inc. utilizes an administrator, England Logistics (“EL”), in connection with its Common Carriers at its Janesville, Wisconsin production facility (“Janesville”). EL administers all payments for freight and carrier expenses in respect of Janesville. EL receives all invoices directly from the Common Carriers, confirms the accuracy of the invoice and pays the Common Carriers on behalf of Janesville. EL also maintains statistical records of each transaction. The administrative services rendered by EL allows Janesville to use numerous carriers to fulfill its shipping needs in an efficient and streamlined manner. Janesville pays EL approximately \$70,000.00 on a weekly basis, for payment owed to Common Carriers and is inclusive of the fee for administrative services, which fee averages approximately \$2,500 per month, charged by EL. As of the Petition Date, the Debtors estimate that there are approximately \$92,000 in freight and carrier expenses incurred, which the Debtors have not yet paid to EL. As Janesville does not receive invoices from Common Carriers directly, if EL is not paid by Janesville for services performed by Common Carriers prior to the Petition Date, such Common Carriers may claim a lien on the goods in their possession, refuse to deliver the goods to the Debtors’ customers, or refuse to continue to do business with the Debtors in the future, which likely will cause irreparable harm to the Debtors’ businesses. Accordingly, the Debtors hereby request that the Court authorize them to pay any prepetition amounts owed to EL in the ordinary course of their business, on the same basis as the other payments addressed herein.

8. The Debtors pay the Warehouse Provider approximately \$2,500 per month for the space provided. The Warehouse Provider is paid in advance, on the first of each month, and to the best of the Debtors' knowledge, the Warehouse Provider has been paid timely to date and no prepetition amounts are owing. However, out of an abundance of caution, in the event a prepetition payment was not remitted to the Warehouse Provider on a timely basis and any prepetition amounts are owing with respect thereto (the "Warehouse Charges"), the Debtors respectfully request authority to pay, in their discretion, any Warehouse Charges owing to the Warehouse Provider as of the Petition Date.

9. It is essential for the Debtors' continuing business viability and the success of their restructuring efforts that they maintain the reliable and efficient flow of raw materials and goods through their manufacturing and distribution systems. The Debtors' manufacturing capabilities are dependant upon their Common Carriers and the Warehouse Provider, as is their ability to distribute products to their customers. Even a minor delay could undermine the Debtors' ability to meet internal production schedules or fulfill their customers' supply needs. Such disruptions also likely would cause the Debtors' relationships with their customers to be severely, and possibly irreparably, impaired. As a result, the Debtors' ability to effect a successful restructuring would be immediately jeopardized. This is particularly so where, as here, the Debtors' customers may already be tempted to source their supplies elsewhere due to the Debtors' chapter 11 filings. Therefore, the Debtors respectfully request authority to pay, in their discretion, any Carrier Claims and Warehouse Charges owing as of the Petition Date.

B. Freight Forwarders

10. The Debtors also utilize the services of certain freight forwarders (the "Freight Forwarders"). The Freight Forwarders provide vital services that enable the Debtors to comply with the complex customs laws and regulations of the United States when importing product from outside the United States. Among other things, the Freight Forwarders provide the back-office services necessary for customs clearance, prepare import summaries, facilitate exportation of the Debtors' products, obtain tariff numbers, and perform numerous other critical services for the Debtors. The Debtors pay the Freight Forwarders for their services and reimburse the Freight Forwarders for any funds advanced on behalf of the Debtors to pay fees to the United States Customs Service ("Customs Service"), as well as for charges of certain ocean, air, and land shippers, and certain miscellaneous storage and handling expenses (collectively, the "Freight Forwarder Claims," and together with the Carrier Claims and Warehouse Charges, the "Shipping Claims").

11. Sourcing goods and materials overseas has become an increasingly important part of the Debtors' business and strategy. The Debtors believe they must pay the Freight Forwarder Claims to prevent any disruption in the essential services that the Freight Forwarders provide. The Debtors believe that the Freight Forwarders will refuse to continue to make further advances and pay custom duties on time if the outstanding Freight Forwarder Claims remain unpaid. Hence, the nonpayment of the Freight Forwarder Claims would lead to a severe disruption in the Debtors' integrated distribution system and potentially cause irreparable damage to the Debtors' relationship with customers whose orders go unsatisfied. Such nonpayment also may result in the imposition of Customs Service sanctions against the Debtors, including fines and storage fees.

12. Moreover, even if the Debtors could replace the Freight Forwarders with other freight forwarders willing to perform the same services, there is no guarantee that the services would be available either on a timely basis or on terms as favorable as those the Debtors currently enjoy. It is also likely that any replacement freight forwarder would demand payment in advance, given the nonpayment of the Freight Forwarders' outstanding claims. Further, the current import and export system is designed to enable goods to flow to the Debtors and their customers, from carrier to carrier, without any interruption for Customs Service processing. The Freight Forwarders know how this delivery system works, but there is no guarantee that any replacement customs brokers could learn the system in sufficient time to prevent its breakdown and the consequential costs and delays.

13. The Debtors estimate that, as of the Petition Date, the aggregate amount of prepetition Freight Forwarder Claims was approximately \$4,000.

14. The Debtors will, in their discretion, attempt to condition any payment on account of a Shipping Claim on the written acknowledgement from the applicable Common Carrier, Warehouse Provider or Freight Forwarder that they will continue to provide their services to the Debtors on trade terms that, at a minimum, such Common Carrier, Warehouse Provider or Freight Forwarder provided to the Debtors six months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date. Furthermore, the Debtors reserve the right to negotiate more favorable trade terms with any Common Carrier, Warehouse Provider or Freight Forwarder as a condition to payment of any such prepetition claim.

15. In addition, the Debtors request that upon any and all third parties' refusal to release property being held as leverage against payment of such party's prepetition claim, the

Debtors shall be granted an expedited hearing on not less than five (5) days notice without the need to file a further written motion to compel the Common Carrier, Warehouse Provider, Freight Forwarder, or third party to release such property.

### **BASIS FOR RELIEF**

A. The Debtors are Authorized To Pay the Shipping Claims Pursuant To Section 363(b)

16. 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). Pursuant to section 363 of the Bankruptcy Code, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court’s discretion, including in connection with the payment of prepetition amounts, outside the ordinary course of business. See In re Ionosphere Clubs, Inc., 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”). Payment of the Shipping Claims in order to preserve and protect the Debtor’s business and to ultimately reorganize, even if such payment were deemed to be outside the ordinary course of business, is a sufficient business justification for such an authorization.

B. Fiduciary Duties under Sections 1107(a) and 1108

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

18. 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.

19. Payment of the Shipping Claims meet each element of the CoServ court’s standard. As described above, alternative providers would be difficult, and in certain instances, nearly impossible to find. Any disruption in the Debtors’ heavily interdependent transportation and storage network would significantly disrupt the Debtors’ businesses. The shutdown of the Debtors’ operations would cost the Debtors’ estates millions of dollars in lost revenues. The harm and economic disadvantage that would stem from the failure of any of the Common Carriers, Warehouse Providers, or the Freight Forwarders is grossly disproportionate to the amount of the prepetition claim that would have to be paid. Finally, the Debtors have examined other options short of paying the Shipping Claims and have determined that to avoid significant disruption to the Debtors’ business operations, there exists no practical alternative to payment of

the Shipping 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 Shipping Claims.

C. Failure To Pay The Shipping Claims May Result in Possessory Liens

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

21. Moreover, since the amount of Shipping Claims likely is less than the value of any property securing those claims, any party holding lien rights arguably are fully

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<sup>3</sup> Under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . . .” 11 U.S.C. § 546(b)(1)(A).

secured creditors.<sup>4</sup> In general, pursuant to section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive: (a) payment in full of their prepetition claims pursuant to any confirmed plan or plans in these chapter 11 cases; and (b) the postpetition interest accruing on such claims to the extent such claims are oversecured. Consequently, payment of the Shipping Claims will: (a) give the Common Carriers, Warehouse Providers, and Freight Forwarders no more than that to which they otherwise would be entitled under a plan; and (b) save the Debtors the interest costs that otherwise may accrue on the Shipping Claims during these chapter 11 cases.

D. The Doctrine of Necessity and Section 105(a)

22. This Court also can authorize the Debtors to pay prepetition Shipping Claims under section 105(a) of the Bankruptcy Code. Bankruptcy Code section 105(a) provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

23. Numerous courts have used their section 105(a) powers to authorize payment of a debtor in possession’s prepetition obligations under the “doctrine of necessity” or “necessity of payment” rule first recognized by the Supreme Court more than 120 years ago in Miltenberger v. Logansport, C. & S. Ry. Co., 106 U.S. 286 (1882). In Miltenberger, the Supreme Court acknowledged the basic duty of an equity receiver “to protect and preserve the trust funds in his 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

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<sup>4</sup> Any successful imposition of a lien may constitute a default under the Debtors’ debtor in possession financing facility.

the property, for the receiver to pay pre-existing debts . . . out of the earnings of the [debtor] . . . under the order of the court . . . .” Id. at 311-12. “The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.” In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999). “The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11—a successful reorganization.” Id. at 825-26.

24. This doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re UNR Industries, Inc., 143 B.R. 506, 519-20 (Bankr. N.D. Ill 1992), rev’d on other grounds, 173 B.R. 149, 158-59 (N.D. Ill. 1994); see also In re Lehigh & N.E. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); In re C.A.F. Bindery, Inc., 199 B.R. 828 (Bankr. S.D.N.Y. 1996) (payment of pre-petition claims warranted when critical to debtor’s reorganization); In re Ionosphere Clubs, Inc., 98 B.R. at 176. This doctrine is consistent with the paramount goal of chapter 11—“facilitating the continued operation and rehabilitation of the debtor.” In re Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (“Let [a hotel] once be shut down, and it will lose much of its value . . . . Some priority [to prepetition suppliers] may be essential to the preservation of the business . . . .”).

25. A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. at 175 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court “can permit pre-

plan payment of a prepetition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992). For example, in In re Structurelite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of pre-petition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” The Structurelite court stated that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

26. Courts in this district have authorized the payment of prepetition amounts due to freight and common carriers, warehouse providers, and freight forwarders in other chapter 11 cases. See In re Smurfit-Stone Container Corporation, Case No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009); In re KB Toys, Inc., Case No. 08-13269 (KJC) (Bankr. D. Del. Dec. 12, 2008); In re Ultimate Electronics, Inc., Case No. 05-10104 (PJW) (Bankr. D. Del. Jan. 13, 2005); In re Cone Mills Corp., Case No. 03-12944 (MFW) (Bankr. D. Del. Sept. 26, 2003).

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

28. 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).

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

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

#### **NOTICE**

31. 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.

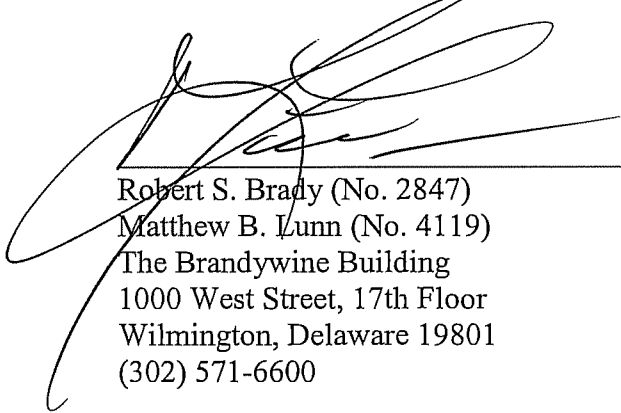
32. No previous motion for the relief sought herein has been made to this or any other Court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit 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 the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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 ( )  
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Debtors. : Joint Administration Pending  
 :  
 : **Ref. Docket No. \_\_\_\_\_**  
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**ORDER AUTHORIZING PAYMENT OF  
PREPETITION COMMON CARRIER, WAREHOUSE,  
FREIGHT FORWARDER AND RELATED OBLIGATIONS**

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 an order, pursuant to sections 105(a), 363(b), 506(b), 1107(a), and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtors to pay prepetition common carrier, warehouse, freight forwarder, and related obligations, all as more fully set forth in the Motion; 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; 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

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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.

**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. The Debtors are authorized, but not directed, to pay the prepetition Shipping Claims, including amounts owed to Common Carriers, the Warehouse Provider, Freight Forwarders and EL, consistent with their customary practices in the ordinary course of business, not in excess of \$175,000.
4. The Debtors' banks are authorized to process, honor, and pay, to the extent of funds on deposit, any and all prepetition wire transfer requests or checks issued by the Debtors for any prepetition Shipping Claims prior to or after the commencement of these cases.
5. The Debtors are authorized, consistent with this order, to issue postpetition checks, or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests, for prepetition Shipping Claims dishonored or rejected as of the commencement of these chapter 11 cases.
6. Upon the payment of any Shipping Claim, any property of the Debtors held by or within the control of a Common Carrier, Warehouse Provider, or Freight Forwarder shall be immediately released and delivered to its destination as directed by one or more of the Debtors consistent with their customary practices in the ordinary course of business with the Debtors.
7. The authorization granted hereby to pay certain Shipping Claims shall not create any obligation on the part of the Debtors, their officers, directors, attorneys, or agents to pay the Shipping Claims, and none of the foregoing persons shall have any liability on account

of any decision by the Debtors not to pay a Shipping Claim, and nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the Shipping Claims to the extent they are not paid.

8. Notwithstanding any provision herein to the contrary, the Debtors shall not be authorized to pay any Shipping Claim if they determine that funding sufficient to make such payment is not available to them for any reason.

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

10. The relief granted herein is not and shall not be deemed an approval or assumption of any agreement, contract, or lease.

11. The Debtors, in their discretion, shall undertake appropriate efforts to cause the Common Carriers, Warehouse Providers and Freight Forwarders to acknowledge in writing that payment of their prepetition claims is conditioned upon the applicable Common Carrier, Warehouse Provider or Freight Forwarder continuing to supply services to the Debtors on trade terms that, at a minimum, such Common Carrier, Warehouse Provider or Freight Forwarder provided to the Debtors within the six months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date, and the Debtors shall have the right to negotiate more favorable trade terms with any Common Carrier or Warehouse Provider as a condition to payment of any such prepetition claim.

12. Any payment made pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

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

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

16. This Court shall, and hereby does, retain jurisdiction respecting all matters arising from or related to the implementation of this Order.

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

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UNITED STATES BANKRUPTCY JUDGE