

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ACCURIDE CORPORATION,
et al.,¹

Debtors.

Chapter 11

Case No. 09-13449 (____)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS (I)
AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY PREPETITION
EMPLOYEE OBLIGATIONS, (B) CONTINUE EMPLOYEE BENEFIT PLANS AND
PROGRAMS POSTPETITION, AND (C) HONOR WORKERS' COMPENSATION
OBLIGATIONS; (II) CONFIRMING THAT DEBTORS ARE ABLE TO PAY
WITHHOLDING AND PAYROLL-RELATED TAXES AND; (III)
DIRECTING ALL BANKS TO HONOR PREPETITION CHECKS
FOR PAYMENT OF EMPLOYEE OBLIGATIONS**

("Employee Obligations Motion")

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby move this Court (the "**Motion**") for entry of interim and final orders, the interim order in substantially the forms attached hereto as Exhibit A and Exhibit B, respectively, under 11 U.S.C. §§ 105, 363, 364, 507(a)(3), 507(a)(4) and 549, (a) authorizing, but not directing, the Debtors to (i) pay or otherwise honor various employee-related prepetition obligations of the Debtors to, or for the benefit of, employees, (ii) continue postpetition certain of the Debtors' employee benefit

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Accuride Corporation, a Delaware corporation (9077); Accuride Cuyahoga Falls, Inc., a Delaware corporation (9556); Accuride Distributing, LLC, a Delaware limited liability company (3124); Accuride EMI, LLC, a Delaware limited liability company (N/A); Accuride Erie L.P., a Delaware limited partnership (4862); Accuride Henderson Limited Liability Company, a Delaware limited liability company (8596); AKW General Partner L.L.C., a Delaware limited liability company (4861); AOT Inc., a Delaware corporation (3088); Bostrom Holdings, Inc., a Delaware corporation (9282); Bostrom Seating, Inc., a Delaware corporation (7179); Bostrom Specialty Seating, Inc., a Delaware corporation (4182); Brillion Iron Works, Inc., a Delaware corporation (6942); Erie Land Holding, Inc., a Delaware corporation (8018); Fabco Automotive Corporation, a Delaware corporation (9802); Gunitite Corporation, a Delaware corporation (9803); Imperial Group Holding Corp. -1, a Delaware corporation (4007); Imperial Group Holding Corp. -2, a Delaware corporation (4009); Imperial Group, L.P., a Delaware limited partnership (4012); JAI Management Company, a Delaware corporation (N/A); Transportation Technologies Industries, Inc., a Delaware corporation (2791); and Truck Components Inc., a Delaware corporation (5407). The mailing address for Accuride Corporation is 7140 Office Circle, Evansville, Indiana 47715.

plans and programs in effect immediately prior to the filing of these bankruptcy cases, and (iii) honor Debtors' workers' compensation obligations; (b) confirming that the Debtors are permitted, but not required, to pay any and all local, state and federal withholding and payroll-related or similar taxes relating to prepetition periods; and (c) directing all banks to honor prepetition checks for payment of the Debtors' prepetition employee obligations. In support of this Motion, the Debtors respectfully state:²

Jurisdiction

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105, 363, 364, 507(a)(3), 507(a)(4) and 549 of title 11 of the United States Code, 11 U.S.C. §§ 101 -1330, as amended (the "**Bankruptcy Code**"), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

Background

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

² The facts and circumstances supporting this Motion are set forth in the Declaration of James H. Woodward, Jr. in Support of Chapter 11 Petitions and First Day Motions (the "**First Day Declaration**"), filed on the Petition Date (defined below).

4. A description of the Debtors' business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the Court to allow for a smooth transition into chapter 11 (including the facts and circumstances supporting this Motion) are set forth in the First Day Declaration filed contemporaneously with this Motion.

Relief Requested

5. By this Motion, the Debtors request that this Court enter interim and final orders, under Sections 105, 363, 364, 507(a)(3), 507(a)(4) and 549 of the Bankruptcy Code, authorizing, but not directing, the Debtors to (a) pay or otherwise honor the Debtors' various employee-related prepetition obligations (of which the material obligations are set forth more fully below); (b) continue postpetition certain of the Debtors' employee benefit plans and programs in effect immediately prior to the filing of these cases (of which the material plans and programs are set forth more fully below); and (c) honor the Debtors' workers' compensation obligations (the foregoing and other similar obligations collectively referred to herein as the "**Employee Obligations**").³ The Debtors move for entry of an interim order authorizing the payment of Employee Obligations to the extent such Employee Obligations do not exceed \$10,950. The Debtors also move for the authority to pay all Employee Obligations, irrespective of whether they exceed \$10,950, upon the entry of a final order with respect to this Motion.

6. As part of the foregoing relief, the Debtors also seek confirmation that they are authorized, but not directed, to pay any and all local, state, and federal withholding and payroll-related taxes relating to prepetition periods, including but not limited to, all withholding taxes, Social Security taxes, Medicare taxes, and other Employee contributions (as set forth below),

³ As noted below, the term "Employee Obligations" does not include obligations to pay insiders (as such term is defined in the Bankruptcy Code) pursuant to the Bonus Plans, the Long-Term Incentive Plan, or the Executive Bonus Programs (each as defined below).

whether withheld from Employees' wages or paid directly by the Debtors to governmental authorities (collectively, the "**Employment and Withholding Taxes**").

7. Finally, the Debtors seek an order directing all banks to receive, process, honor and pay any and all checks drawn on their payroll and general disbursement accounts, whether presented before or after the Petition Date, upon receipt by each bank and institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

Basis for Relief

8. The Debtors employ approximately 511 active salaried employees and 1,365 active hourly employees in the United States (collectively the "**Employees**").⁴ Of the 1,365 hourly Employees, 842 Employees are governed by eight collective bargaining agreements at various of the Debtors' facilities (the "**Union Employees**").⁵ The continued and uninterrupted service of the Employees is essential to the Debtors' continuing operations and to their ability to reorganize.

9. As set forth in the First Day Declaration, as part of the Debtors' cost-cutting strategy, the Debtors have taken many steps to reduce their labor costs. This year alone, the Debtors' workforce has been reduced by approximately 27.8%, from 2,600 employees to approximately 1,876 employees, for an annual savings of \$28.5 million.

⁴ The Debtors also have approximately 425 hourly Employees who are on layoff status.

⁵ The Debtors are party to a collective bargaining agreement with each of the following eight unions: (1) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1186; (2) United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 2-475; (3) District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO; (4) International Association of Machinists and Aerospace Workers, AFL-CIO District Lodge #190; (5) Teamsters Local 364 (Gunitite Elkhart Plant 1); (6) Teamsters Local 364 (Gunitite Elkhart Plant 2); (7) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 718; and (8) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (Cuyahoga Falls).

10. To minimize the personal hardship the remaining Employees will suffer if prepetition Employee Obligations are not paid when due, and to maintain the Employees' morale during this critical time, the Debtors seek authority, in their sole discretion, to (a) pay Employee claims for wages, salaries, contractual compensation, bonuses, sick leave, vacation time, holiday vacation time, severance, and other accrued compensation,⁶ (b) reimburse all prepetition Employee business expenses, (c) make prepetition contributions and pay benefits under certain Employee benefit plans, including without limitation, certain medical, insurance, retirement and retiree benefits, and (d) honor workers' compensation obligations. In addition, the Debtors seek authority to continue the Employee benefits and programs described herein and in effect immediately prior to the filing of these cases during the postpetition period, as well as pay the Employment and Withholding Taxes.

I. Employee Obligations

A. Compensation Obligations

11. Salaries and Wages. The average monthly payroll for the Debtors' salaried and hourly U.S. Employees is approximately \$8.0 million. Salaried Employees are paid on a semi-monthly basis and current as of their pay dates, except for salaried Employees at the Debtors' Brillion facility, which are paid bi-weekly and current as of their pay dates.⁷ Direct deposits and payroll checks for accrued payroll for salaried Employees at the Debtors' Brillion facility through October 4, 2009 were issued on October 5, 2009. Further, five Employees at the Brillion facilities earn commissions in addition to their wages. As of the Petition Date, the Debtors

⁶ Other than certain limited situations, the Debtors do not include prepetition sick leave, vacation time and holiday vacation time in their calculation of Employee Obligations because the Debtors do not intend to pay cash to compensate employees for this accrued time. Rather, the Debtors intend to honor their current policies which allow employees to exchange accrued sick leave, vacation time and holiday vacation time for days off work.

⁷ For salaried employees who are eligible for overtime, overtime pay is paid two to three weeks in arrears, depending on payroll cutoff dates.

anticipate that there will be approximately \$700,000 in earned and unpaid salary and \$14,400 in earned but unpaid commissions.

12. Hourly Employees for the Debtors are paid on a weekly basis five days in arrears, except for hourly Employees at the Debtors' Erie and Brillion facilities, which are paid eleven days in arrears, and hourly Employees at the Debtors' Bostrom, Rockford, and Elkhart facilities, which are paid four days in arrears.⁸ Hourly Employees at the Debtors' facilities were paid on October 7, 2009.

13. Pursuant to this Motion, the Debtors seek authority, but not direction, to pay the outstanding amounts owed as of the Petition Date for accrued and unpaid (i) salaries and wages of Employees;⁹ (ii) amounts that the Debtors are required by law to withhold from Employee payroll checks in respect of federal, state and local income taxes, including unemployment contributions and taxes, and the employer portion of social security and Medicare taxes; and (iii) amounts that the Debtors are required to directly pay in respect of state unemployment taxes and contributions on behalf of Employees.

14. Independent Contractors. In addition to the Employees described above, the Debtors employ approximately 61 independent contractors (the "Independent Contractors") to provide various services including, but not limited to, facility maintenance, construction, and technical consulting services. Ensuring that the Independent Contractors are paid in the ordinary course just like the Employees is essential to the Debtors' continuing operations and, therefore, to their ability to reorganize. As of the Petition Date, the total accrued but unpaid wages for the

⁸ For hourly Employees other than at the Erie and Brillion facilities, the weekly payment covers wages for hours worked through the relevant pay date (four or five days in arrears); however, adjustments for items such as overtime, overtime premium, days not worked, or changes in pay rates are paid in the following check, an additional week in arrears.

⁹ For the avoidance of doubt, the Debtors request authority to pay directors (who are paid quarterly) their base compensation in the ordinary course of business, including payments on account of meeting attendance and committee duties.

Independent Contractors are approximately \$301,000 in the aggregate. The Debtors are seeking authorization, but not direction, to pay the prepetition amounts owed to the Independent Contractors and their agencies to ensure the uninterrupted employment of the Independent Contractors with the Debtors.

15. Temporary Employees. The Debtors also employ 29 temporary Employees (the “Temporary Employees”). Ensuring that the Temporary Employees are paid in the ordinary course is essential to the Debtors’ continuing operations and, therefore, to their ability to reorganize. As of the Petition Date, the total accrued but unpaid wages for the Temporary Employees are approximately \$53,000 in the aggregate. The Debtors are seeking authorization, but not direction, to pay the prepetition amounts owed to the Temporary Employees to ensure their uninterrupted employment with the Debtors.

16. Vacations, Sick Leave and Holidays. For salaried Employees, vacation “credits” accrue at a rate based on the Employee’s length of service with the Debtors. For hourly Employees, vacation credits accrue based upon hours worked and length of service for the Debtors. Union Employees earn their vacation time for a full year on January 1st and must use that vacation throughout the year. The Debtors’ Employees must use their vacation time during the year it was earned, or such vacation time is lost.¹⁰ Upon termination of their employment, Employees are entitled to a cash payout for their unused earned vacation time for the current year. As of the Petition Date, the Debtors have liability for accrued vacation time of approximately \$3,678,395 if such vacation time were to be paid in cash. The Debtors’ sick leave and holiday vacation policies vary by plant location and in certain instances are dictated by

¹⁰ Salaried Employees at the Debtors’ Fabco facilities are entitled to carry-over unused earned vacation.

collective bargaining agreements. As of the Petition Date, the amount of accrued sick leave and holiday vacation liability for the Debtors is negligible.

17. By this Motion, the Debtors seek authority to honor all liabilities to their Employees that arose under their vacation, sick leave and holiday vacation policies prior to the Petition Date. The Debtors anticipate that their Employees will utilize any accrued vacation or sick leave in the ordinary course of business, without resulting in any material cash flow requirements beyond the Debtors' normal payroll obligations.

18. Existing Bonus Plans. The Debtors offer incentive bonuses to certain Employee constituencies at the corporate and local plant levels through a variety of award plans and the Accuride Corporation Annual Incentive Compensation Plan (collectively, the "**Bonus Plans**"). Bonuses may be awarded pursuant to the Bonus Plans for, among other things, achieving corporate and plant performance goals, achieving local plant improvement goals, achieving individual goals, exceptional contributions to specific tasks, or contributing to the realization of savings through participation in strategic initiatives. In 2008, Debtors made \$13,790,546 in payments to their Employees pursuant to the Bonus Plans. As of the Petition Date, 1,434 Employees were eligible to receive bonuses under the Bonus Plans. The Debtors estimate the bonuses earned but unpaid under the Bonus Plans to be \$247,475 in the aggregate as of the Petition Date, owed to approximately 869 Employees. The Debtors, by this Motion, seek authority, but not direction, to continue to honor and perform under the existing Bonus Plans set forth above, subject to the entry of a final order with respect to this Motion.

19. Long-Term Incentive Plan. Approximately 20 Employees participate in a long-term incentive plan, designed to align the incentives and compensation of such Employees with the success of the Debtors and their shareholders (the "**Long-Term Incentive Plan**"). The

Long-Term Incentive Plan has three components, each vesting on December 1st of the calendar year: (a) cash, (b) restricted stock units, and (c) stock appreciation rights. The cash component was added in 2009 due to limitations in the number of available shares in the Debtor's equity plan and due to the significant decline in the price per share of the Debtors' common stock. The cash award is scheduled to vest as follows: 10% in December 2009, 20% in December 2010, 30% in December 2011, and 40% in December 2012, provided that the award recipient remains employed by the Debtors over that period. The amount associated with the cash component amount to be paid in December 2009 to eligible Employees is approximately \$41,000 in the aggregate. The Debtors estimate that the amounts to be paid in restricted stock units and stock appreciation rights in December of 2009 are de minimis. By this Motion, the Debtors seek authority to honor their obligations to Employees under the Long-Term Incentive Plan, including making the cash payment to eligible Employees on December 1, 2009, subject to the entry of a final order with respect to this Motion.

20. Bonus Payments to Insiders. Certain of the Debtors' officers and directors participate in the Bonus Plans and the Long-Term Incentive Plan. Additionally, certain of the Debtors' officers and directors participate in a financial planning stipend plan, and are party to retention bonus agreements and change-in-control agreements¹¹ (collectively, the "Executive Bonus Programs"). The Debtors do not seek authority to make payments to insiders (as such term is defined in the Bankruptcy Code) under the Bonus Plans, the Long-Term Incentive Plan, or under the Executive Bonus Programs, by this Motion, and will not make any such payments without further order of the Court.

¹¹ Certain non-insiders also have change-in-control agreements with the Debtors. The Debtors do not seek authority by this Motion to continue honoring their obligations under the change-in-control agreements with any Employees, regardless of whether they are an insider.

21. Miscellaneous Payroll Deductions. In addition to the deductions discussed herein, the Debtors deduct certain amounts from their Employees' paychecks to make payments on behalf of Employees for, among other things, union dues, court orders, garnishments, child support, and similar deductions, charitable donations, U.S. savings bonds, safety equipment, voluntary health and welfare plans, and other pre-tax and after-tax deductions payable pursuant to certain miscellaneous employee benefit plans (collectively, the "Miscellaneous Payroll Deductions"). The Debtors subsequently forward these deductions to appropriate third party recipients. On average, the Debtors have historically deducted approximately \$955,162 in Miscellaneous Payroll Deductions from Employees' paychecks per month. As of Petition Date, approximately \$65,000 that was previously deducted from Employees' paychecks has not yet been remitted to the appropriate third party recipients. By this Motion, the Debtors seek authority, but not direction, to continue (A) to remit the funds, and (B) to forward all of the Miscellaneous Payroll Deductions to the appropriate parties.

B. Reimbursable Business Expense Compensation Obligations

22. In the ordinary course of the Debtors' businesses, many Employees incur a variety of business expenses that are typically reimbursed by the Debtors, pursuant to their normal business practices. The reimbursable business expenses incurred by the Employees include business travel expenses, relocation expenses (which is typically paid directly to a third-party moving company), housing expenses, education expenses, professional memberships, professional certifications, and other similar items reimbursable under the Debtors' existing policies (collectively, the "Reimbursable Business Expenses"). Certain Employees have not yet been reimbursed for Reimbursable Business Expenses previously incurred on behalf of the Debtors primarily because the Debtors filed their chapter 11 petitions in the midst of their regular

reimbursement cycle for Reimbursable Business Expenses. All Reimbursable Business Expenses were incurred with the understanding that they would be reimbursed by the Debtors. As of the Petition Date, the Debtors estimate that approximately \$841,000 in Reimbursable Business Expenses have been incurred by certain Employees and have not yet been reimbursed to Employees. By this Motion, the Debtors seek authority, but not direction, to pay all prepetition Reimbursable Business Expenses in the ordinary course of business, including those incurred prior to the Petition Date.

C. Employee Health and Welfare Programs

23. Health Care Programs. In the ordinary course of their business, the Debtors provide medical, vision, dental and prescription drug coverage, and employee assistance plans, whether through third party insurers or otherwise (the “**Health Care Programs**”). The Debtors’ Health Care Programs are provided through both insured and self-insured programs administered through third parties. For example, the medical coverage for certain of the Debtors’ non-union Employees is provided through self-insured medical plans administered by BlueCross BlueShield of Illinois (“**BCBSIL**”) and BlueCross BlueShield of Alabama (“**BCBSAL**”), as well as through insured plans administered by United Healthcare, Kaiser, and Highmark Insurance Company. The Debtors also utilize Delta Dental, Metlife, Deaconess Concern, and VSP, among others, to provide vision, dental, and employee assistance plans under the Health Care Programs. The Health Care Programs are funded through contributions by the Debtors and participating Employees. The percentage contributed by an Employee varies depending on, among other things, applicable collective bargaining agreements and whether Employees’ family members, partners, or dependents are covered under the Health Care Programs. The Debtors also offer certain executives a “Mayo Clinic Executive Health Program,” which covers a variety of

screenings and tests. On average, the Debtors pay approximately \$1.9 million per month in the aggregate for both insured and self-insured Health Care Programs, including claim payments, premiums, and administrations fees. As of the Petition Date, the estimated outstanding due but unpaid amount for the Health Care Programs is approximately \$2.5 million.

24. Employee Welfare Programs. In the ordinary course of business, the Debtors also provide long and short-term disability insurance, life insurance, accidental death and dismemberment insurance, and other related insurance to their Employees (the “Employee Welfare Programs”).

25. The Debtors provide self-insured short-term disability benefits (“Short-Term Disability Benefits”) for the majority of their Employees.¹² On average, the Debtors monthly cost of providing Short-Term Disability Benefits is \$34,590, including claim payments, premiums, and administration fees.

26. The Debtors currently provide approximately 877 Employees with long-term disability benefits (“Long-Term Disability Benefits”). The Long-Term Disability Benefits are insured and administered through Unum and Assurant. The approximate monthly cost for Long-Term Disability Benefits is \$15,142 per month, including premium payments and administration fees.

27. The Debtors provide basic and supplemental life insurance and basic and supplemental accidental death and dismemberment insurance coverage (“Life/AD&D”).

¹² Short-Term Disability Benefits are self-insured and administered in house except for hourly non-union Employees at the Debtors AOT facility, Union Employees at the Debtors’ Gunite Rockford facility, and Union Employees at the Debtors’ Gunite Elkhart facility (all three of which use The Principal as their insurance provider or claims administrator), and Union Employees at the Debtors’ Fabco facility (at which short-term disability is offered through the multi-employer Automotive Industries Welfare Plan).

Insurance”) to 1,481 of their eligible Employees through Hartford and The Principal.¹³ The Debtors’ approximate monthly cost for providing Life/AD&D Insurance to its Employees is \$32,672, including claim payments, premiums, and administration fees.¹⁴ Additionally, the Debtors offer certain executives the option to participate in an executive life insurance plan (the **“Executive Life Insurance Plan”**). Under the Executive Life Insurance Plan, in lieu of company-paid group term life insurance, the Debtors provide eligible executives with funds to pay for a flexible premium variable universal life insurance policy or variable annuity, to be wholly owned by the executive. The annual cost of the Executive Life Insurance Plan is \$185,000, plus a tax-gross up.

28. The Debtors also offer certain executives supplemental insurance for personal liability (**“Personal Excess Insurance”**). Under the Personal Excess Insurance program, the Debtors subsidize certain insurance, such as personal liability coverage and uninsured motorist coverage. The annual cost of offering Personal Excess Insurance is approximately \$16,000.

29. Furthermore, the Debtors provide Employees with flexible spending account plans, pursuant to which 275 Employees currently maintain flexible spending accounts for healthcare and dependent care expenses. Flexible spending accounts are composed entirely of Employee contributions with average monthly Employee payroll deductions of \$31,957. The Debtors believe that such amounts are being held in trust for the benefit of those contributing Employees and, therefore, are not property of the Debtors’ bankruptcy estates. Nonetheless, out of an abundance of caution, the Debtors seek the approval of this Court to continue this program and reimburse Employees in the ordinary course.

¹³ Life/AD&D insurance coverage for hourly union for employees at the Fabco facility is provided through the multiple-employer Automotive Industries Welfare Plan.

¹⁴ A claim under the life insurance plan for \$103,000 is currently pending.

30. On average, approximately 4% is withheld from Employee payroll as the required contributions to the above-mentioned Health Care Programs and Employee Welfare Programs. The percentage withheld varies depending on, among other things, the benefit program elected and the employee group of the benefit recipient.

31. By this Motion, the Debtors seek authority, but not direction, to continue post-petition and to pay all amounts due and owing as of the Petition Date for the Health Care Programs and the Employee Welfare Programs.

D. Workers Compensation Obligations

32. Under the laws of the various jurisdictions in which they operate, the Debtors are required to maintain workers' compensation policies and programs and to provide Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. Accordingly, the Debtors maintain workers' compensation programs in all states in which they operate pursuant to the applicable requirements of local law.

33. In all states other than Ohio, the Debtors insure their workers' compensation liabilities through a workers' compensation policy issued by Arch Insurance Company. The Debtors' aggregate annual premium payments to the Arch Insurance Company for workers' compensation insurance in 2008 was \$485,886. The Arch Insurance Company policy also has deductible amounts of \$400,000 per claim, which is subject to an annual aggregate deductible of \$12,250,000. In support of their deductible obligations, the Debtors have obtained, and there are currently outstanding, letters of credit in the aggregate amount of \$9.8 million, issued by Citibank for the benefit of Arch Insurance Company. If the Debtors fail to satisfy their deductible obligations under the workers compensation policies, the Arch Insurance Company may draw on the letter of credit to satisfy such obligations. The letters of credit issued for the

benefit of Arch Insurance Company are set to expire on December 31, 2009, but the Debtors are required to renew such letters of credit under the policies.

34. Before obtaining the Arch Insurance Company policy, the Debtors formerly insured their workers' compensation liabilities through policies issued by many different companies, including, among others, the Reliance Insurance Company, Hartford Insurance Company, Ace American Insurance Company, Discover Re, Royal & Sun Alliance, and Travelers Indemnity Company. In connection with these various former policies, the Debtors obtained, and there are currently outstanding, seven letters of credit in the aggregate amount of approximately \$4.7 million, issued for the benefit of these insurance companies. Certain of these letters of credit cover actual claims and "tail off" for the Debtors' liabilities related to claims that arose while those former insurance programs were in effect. Five of the outstanding letters of credit aggregating approximately \$2.6 million will expire at the end of 2009. If the Debtors are unable to pay their prepetition workers' compensation obligations, the Debtors expect that any such letters of credit will be drawn.

35. The Debtors' claims administrator for workers compensation claims is G.A.B. Robins Inc. ("**G.A.B.**"), which handles the investigation and payment of claims against the Debtors. Pursuant to a contract for claims administration with G.A.B. for the period of March 2009 through February 2012, the Debtors pay G.A.B. approximately \$150,000 per year in service fees. Additionally, the Debtors reimburse G.A.B. for payment of claims within 30 days of invoice. To secure the payment of invoices, the Debtors deposited approximately \$504,000 with G.A.B (roughly equivalent to 90 days of paid claims).

36. The Debtors' outstanding obligations relating to workers' compensation arise from incurred but not paid claims ("**IBNP**") and incurred but not reported claims ("**IBNR**"). The

Debtors estimate their IBNR through an actuarial process that is common in the insurance industry. As of the Petition Date, approximately 156 IBNP claims were pending against the Debtors arising out of Employees' alleged on-the-job injuries. The Debtors expect that cash payments related to all workers' compensation claims for the next 12 months will be approximately \$2.9 million.¹⁵ By this Motion, the Debtors seek authority, but not direction, to pay amounts related to workers' compensation claims that arose prior to the Petition Date as they become due; to maintain, enter into, or renew necessary letters of credit related to workers' compensation; and to continue honoring all workers' compensation obligations in the ordinary course of business.

E. Retirement Plans and Obligations

37. Retirement Savings Plans. The Debtors maintain various retirement savings plans (the "Retirement Savings Plans") for their Employees. The Retirement Savings Plans are defined contribution retirement plans qualified under Section 401(k) of the Internal Revenue Code. As of the Petition Date, there are 2,373 Employees participating in the various Retirement Savings Plans. Under the Retirement Savings Plans, the Debtors make deductions from each participating salaried and hourly Employee's payroll check and transfer the withheld funds to the plan trustee. The Debtors simultaneously remit the Employee contributions to the Retirement Savings Plan on the date of each payroll run and, therefore, believe the Employee contributions not yet remitted to the Retirement Savings Plans are negligible as of the Petition Date.

¹⁵ In Ohio, the Debtors' plants participate in the "monopolistic" workers' compensation insurance program, which is funded through, and administered by, the Ohio Bureau of Workers' Compensation. The Debtors pay 10-year retrospectively rated premiums to the Ohio Bureau of Workers' Compensation based upon the Debtors' payroll for Employees covered by the monopolistic program. The Debtors estimate that the aggregate amount payable on account of (i) prepetition claims from Ohio and (ii) retrospectively rated premium rate adjustments from the Ohio Bureau of Workers' Compensation, is approximately \$15,300.

38. The Debtors have historically provided partial matching contributions of up to varying percentages of each salaried and hourly Employee's annual compensation. As of March 23, 2009, the Debtors suspended the employee match program with respect to its non-union Employees. As of the Petition Date, the Debtors' estimated outstanding matching liability for the Retirement Savings Plans to Union Employees is \$42,000. In addition to matching, the Debtors make an annual "retirement contribution" (formerly called "profit sharing") to the Retirement Savings Plan.¹⁶ By this Motion, the Debtors seek authority, but not direction, to pay amounts owed as of the Petition Date and continue performing under the Retirement Savings Plans.

39. Executive Retirement Allowance. The Debtors have supplemented the retirement benefits available to executives for a number of years through the Accuride Corporation Supplemental Savings Plan (the "SSP"). While the SSP continues to allow executives to defer the receipt of some of their income, the Debtors contribution portion of the SSP was eliminated. In order to replace the benefits lost due to the elimination of the company contribution features in the SSP, the Debtors adopted an Executive Retirement Allowance Policy (the "Executive Retirement Allowance Policy"). Under the Executive Retirement Allowance Policy, the Debtors pay certain executives a "retirement allowance" based on a percentage of the executive's base salary. The retirement allowance is partially paid in December, with the balance paid within 90 days after the end of the calendar year. The Debtors estimate that the annual cost of the Executive Retirement Allowance Policy is \$66,137, plus a tax gross-up. By this Motion, the Debtors seek authority, but not direction, to pay amounts owed as of the Petition Date and

¹⁶ The Debtors also have a profit sharing plan for Union Employees at the Brillion Facility. The outstanding obligations under this profit sharing plan as of the Petition Date are de minimis.

continue performing under the Executive Retirement Allowance Policy, subject to the entry of a final order.

40. Pension Plans. The Debtors maintain six defined benefit pension plans (the “**Pension Plans**”),¹⁷ pursuant to which a benefit is payable to the Employee or other designated beneficiary upon the Employee’s retirement from the company, total and permanent disability, or death. The Accuride Retirement Plan was frozen as of December 31, 2008 and therefore Employees are not currently accruing any additional credited service or increased benefit amount (but are still accruing interest credits). Similarly, the Transportation Technologies Industries, Inc. Pension Plan was frozen as of December 31, 2000, and the Transportation Technologies Industries, Inc. Bargaining Unit Pension Plan was frozen as of June 4, 1999.

41. As of the most recent actuarial analysis on January 1, 2008, (1) the Accuride Retirement Plan was approximately 85.81% funded; (2) the Accuride Erie Hourly Employee Pension Plan was 80.0% funded; (3) the Gunit Corporation Hourly-Rate Employees Pension Plan (Elkhart) was 101.64% funded; (4) the Gunit Corporation Rockford (UAW) Hourly-Rated Employees Pension Plan was 85.02% funded; (5) the Transportation Technologies Industries, Inc. Pension Plan was 80.16% funded; and (6) the Transportation Technologies Industries, Inc. Bargaining Unit Pension Plan was 80.36% funded.

42. Furthermore, as of the last actuarial analysis on January 1, 2008, (1) the Accuride Retirement Plan had assets and liabilities with market values of approximately \$26,962,113 and \$29,539,633, respectively; (2) the Accuride Erie Hourly Employee Pension Plan had assets and liabilities with market values of approximately \$3,382,166 and \$3,302,672, respectively; (3) the

¹⁷ The Debtors have the following six defined benefit pension plans: (1) Accuride Retirement Plan; (2) Accuride Erie Hourly Employee Pension Plan; (3) Gunit Corporation Hourly-Rate Employee Pension Plan (Elkhart) (4) Gunit Corporation Rockford (UAW) Hourly-Rated Employees Pension Plan; (5) Transportation Technologies Industries, Inc. Pension Plan; and (6) Transportation Technologies Industries, Inc. Bargaining Unit Pension Plan.

Gunitite Corporation Hourly-Rate Employees Pension Plan (Elkhart) had assets and liabilities with market values of \$8,677,127 and \$8,938,615, respectively; (4) the Gunitite Corporation Rockford (UAW) Hourly-Rated Employees Pension Plan had assets and liabilities with market values of approximately \$14,036,653 and \$13,411,827, respectively; (5) the Transportation Technologies Industries, Inc. Pension Plan had assets and liabilities with market values of approximately \$13,892,103 and \$16,737,325, respectively; and (6) the Transportation Technologies Industries, Inc. Bargaining Unit Pension Plan had assets and liabilities with market values of approximately \$25,498,388 and \$31,013,398, respectively.

43. The Debtors have a pension contribution of \$236,000 and a PBGC premium of \$168,127, each due on October 15, 2009. By this Motion, the Debtors seek authority, but not the direction, to continue funding the Pension Plans and to any make payments with respect thereto, including premium payments to the Pension Benefit Guaranty Corporation, as they become due.

44. Retiree Medical Benefits. The Debtors provide retiree medical benefits (the “Retiree Medical Benefits”) to approximately 697 former employees or surviving dependents. The Debtors provide different levels of medical, dental, life insurance and prescription drug programs to retired employees and to retired union workers pursuant to various collective bargaining agreements. A portion of the Retiree Medical Benefits for Medicare-eligible retirees and their covered dependents is insured or covered by a multi-employer plan. Plan types for the insured benefits include preferred provider organizations, among others, a majority of which are provided by Highmark Health Insurance Company. The remaining Retiree Medical Benefits liability is self-insured with claims administered by several third-party administrators, predominately BCBSIL, BCBSAL, and Preferred Health, and paid by the Debtors. The estimated cost of providing Retiree Medical Benefits in 2009 is \$3,150,000. The Debtors’

cumulative long-term liability for fully performing all of their existing Retiree Medical Benefits on behalf of all eligible retired employees and dependents and current Employees and dependents who have accrued rights to the Retiree Medical Benefits totals approximately \$76.5 million as of the most recent actuarial analysis.

45. By this Motion, the Debtors seek authority, but not direction, to pay amounts due and owing as of the Petition Date on account of the Retiree Medical Benefits in the ordinary course of business. The Debtors currently intend to continue honoring their commitment with respect to Retiree Medical Benefits in accordance with 11 U.S.C. § 1114.

F. Obligations to Severed Employees

46. Severance Plan. Prior to the Petition Date and in the ordinary course of business, the Debtors maintained the Accuride Corporation Separation Pay Plan (as amended, the “Severance Plan”). The Severance Plan provides for the payment of severance pay and benefits to terminated salaried employees who elect to participate in the Severance Plan and execute a “Waiver and Release Agreement” pursuant to the Severance Plan. Benefits under the Severance Plan are based on an Employee’s years of service.¹⁸ As of the Petition Date, approximately 77 former employees are receiving benefits pursuant to the Severance Plan (the “Severed Employees”). The Debtors’ aggregate liability for severance pay and benefits owed to the 77 Severed Employees is approximately \$1.7 million, to be paid as such payments become due under the Severance Plan. By this Motion, the Debtors seek authority to honor their obligations under the Severance Plan to Severed Employees who have executed a Waiver and Release

¹⁸ Each eligible Employee who is eligible for separation pay is entitled to receive base separation pay of one week of pay paid in a lump sum (“Base Separation Pay”). An eligible Employee will be eligible to receive supplemental separation of (a) one week of pay for each complete year of 0 to 9 years of continuous service, (b) one and one-half weeks of pay for each complete year of 10 to 19 years of continuous service, and (c) two weeks of pay for each complete year of 20 or more years of continuous service. Certain Employees are also eligible for outplacement services. The aggregate amount outstanding for obligations for outplacement services is approximately \$40,000.

Agreement, with \$400,000 payable upon the entry of an interim order, and \$1,300,000 payable upon the entry of a final order with respect to this motion.¹⁹ Further, the Debtors request authority, but not direction, to continue the Severance Plan on a go-forward basis for non-insider Employees terminated post-petition in the ordinary course of business. To the extent the Debtors propose to provide severance payments during the Chapter 11 cases to any insiders, the Debtors will seek approval from this Court prior to making such payments.

47. COBRA Obligations. As of the Petition Date, there were 130 Severed Employees receiving COBRA benefits (“Continued Healthcare Benefits”). Further, as of the Petition Date, there were 79 Severed Employees that are eligible but have not yet elected Continued Healthcare Benefits. Therefore, in the event that a Severed Employee makes such an election after the Petition Date, by this Motion, the Debtors request authority to pay pre-petition and post-petition Continued Healthcare Benefits to such Severed Employees. The Debtors’ Continued Healthcare Benefits are self-insured and the Debtors believe that there is no outstanding liability related to Continued Healthcare Benefits as of the Petition Date.

48. Additionally, the American Recovery and Reinvestment Act of 2009 (the “ARRA”) provides for an employer subsidy of COBRA premiums for involuntarily terminated employees. Under the ARRA, an employee who becomes eligible for COBRA between September 1, 2008 and December 31, 2009 due to a covered employee’s involuntary termination of employment will only be required to pay 35 percent of his or her COBRA premium. The remaining 65 percent of the COBRA premium will be paid for by the employer and then reimbursed by means of a payroll tax credit to the employer. As of the Petition Date, approximately 130 of the Debtors’ Severed Employees elected COBRA and may be eligible for

¹⁹ There are approximately 58 Severed Employees owed more than \$10,950 under the Severance Plan. Any funds owed in excess of \$10,950 to a Severed Employee will not be paid until entry of a final order with respect to this Motion.

employer subsidized COBRA under the ARRA. As the Petition Date, the Debtors estimate that there are approximately 79 Severed Employees who may elect COBRA (and the ARRA subsidy) after receiving notice. By this Motion, the Debtors seek authority to honor all obligations related to COBRA premiums subsidies for eligible individuals under the ARRA.

G. Obligations to Employees on Layoff

49. Continuation of Benefits. Union Employees on layoff status at the Debtors' Brillion and Elkhart facilities receive certain benefits while on layoff. At the Debtors' Brillion facility, the Debtors continue making contributions for medical and dental benefits for a period of three months following the month in which the layoff takes place. At the Debtors' Gunite facilities, the debtors continue making contributions for medical, dental and prescription benefits to employees for a period of one month or less after the Employee is placed on layoff status. The Debtors estimate the amount outstanding under these programs is approximately \$17,500. By this Motion, the Debtors seek authority, but not direction, to pay amounts owed under as of the Petition Date and continue performing under such "continuation of benefit" programs postpetition.

50. SUB Plans. Prior to the Petition Date, the Debtors maintained the AKW L.P. Supplemental Unemployment Plan for the Union Employees of the Erie Plant (the "**Erie SUB Plan**") and the Gunite Corporation Rockford Supplemental Unemployment Plan for the Union Employees of the Gunite location (the "**Gunite Corporation SUB Plan**", and together with the Erie SUB Plan, the "**SUB Plans**"). The SUB Plans hold assets in a trust and pay supplemental benefits to eligible Employees during a period of layoff. There are approximately 112 and 125 eligible Employees at the Erie and Gunite facilities, respectively. As of the Petition Date, the Debtors do not believe they have any outstanding liability for the SUB Plans. By this Motion,

the Debtors seek authority, but not direction, to pay amounts owed under the SUB Plans as of the Petition Date and continue performing under such plans postpetition.

H. Miscellaneous Programs

51. Educational Assistance Program. In addition, the Debtors provide their Employees with an educational reimbursement program (the “Educational Assistance Program”) whereby the Debtors reimburse Employees for the cost of tuition for various educational programs and degrees, including degree producing college programs. The annual cost to the Debtors for the Educational Assistance Program is approximately \$106,791. By this Motion, the Debtors seek authority, but not direction, to pay these outstanding prepetition obligations and to continue performing under their Educational Assistance Program.

52. Leased Car Programs. The Debtors have two programs whereby they provide automobiles to certain Employees who must travel to, and interface with, customers as a regular part of their responsibilities (the “Leased Car Programs”). Under the first program, the Debtors make direct lease payments for 27 cars used by Employees. Under this program, the Employees are also separately reimbursed for gas, oil changes, and regular maintenance of the vehicles. The annual amount of lease payments for the leased cars under this program is \$192,756. Under the second program, the Debtors provide \$750 per month to 17 Employees to cover all costs related to using automobiles in the course of their responsibilities (except for fuel, which is separately reimbursed).²⁰ The Debtors’ estimated annual cost for providing this benefit is approximately \$179,400. The Debtors estimate that their unpaid liability under the Leased Car Programs is de minimis as of the Petition Date. By this Motion, the Debtors seek authority, but

²⁰ Additionally, two Employees receive an allowance of \$1,100 per month.

not direction, to pay any outstanding prepetition obligations and to continue performing under the Leased Car Programs postpetition.

53. Other Benefits. The Debtors provide a number of other miscellaneous benefits to Employees. For example, the Debtors have a military leave policy which provides Employees in the military reserve a payroll reimbursement to ensure that their Employees' income while attending annual two week training duty, after accounting for what they receive from the government, is equivalent to what the Employees were receiving from the Debtors prior to the military leave. The Debtors also offer other types of leave, such as jury duty, medical leave, and time-off benefits, such as personal days and sickness-in-family days. Finally, the Debtors offer their Employees various service awards, sponsor a variety of Employee social functions, such as picnics and holiday parties for Employees, and provide gift cards to Employees around the holidays. The Debtors believe that the amounts owing on the Petition Date under all of these and other miscellaneous benefits are negligible. By this Motion, the Debtors seek authority, but not direction, to pay any outstanding prepetition obligations under any of the miscellaneous benefit programs and to continue these benefits postpetition.

54. Administration of Payroll Taxes. As is customary in the case of most large companies, the Debtors utilize the services of ADP to administer their payroll taxes. The administration services cost the Debtors approximately \$1,300 per month. The Debtors request that they be authorized, but not directed, to pay the various costs incident to maintaining, or paying third parties to maintain and provide, record keeping relating to the various Employee benefit programs identified in this Motion that may be outstanding as of the Petition Date. The Debtors believe that these unpaid processing costs will be de minimis.

I. Employment and Withholding Taxes

55. The Debtors accrue, in the ordinary course of business, state, local and federal employment and withholding taxes as wages are earned by the Debtors' Employees. These taxes are calculated based on statutorily mandated percentages of earned wages. Historically the Debtors have timely paid all federal, state and local Employment and Withholding Taxes to the relevant Taxing Authority, usually on a per pay period basis. The Debtors' payroll taxes, including both the employee and employer portion, for calendar year 2008 were approximately \$50.5 million. The Employment and Withholding Taxes constitute so-called "trust fund" taxes which are required to be collected from third parties and held in trust for payment to the taxing authorities, and thus, are not property of the Debtors' estates under Section 541(d) of the Bankruptcy Code. As of the Petition Date, the Debtors estimate that the amount of accrued and outstanding prepetition obligations with respect to the payroll taxes to be \$110,000. Accordingly, in the event the Court authorizes the Debtors to pay the Employee Obligations, the Debtors seek the authority to continue to timely pay the Employment and Withholding Taxes with respect thereto.

J. Bank Accounts

56. Finally, the Debtors seek an order authorizing and directing all banks to receive, process, honor and pay any and all checks, drafts, and other forms of payment drawn on the Debtors' bank accounts related to Employee Obligations, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable bank accounts to cover such payments.

II. The Requested Relief is Appropriate Under Applicable Law.

A. The Proposed Payments are Accorded Priority under Section 507 of the Bankruptcy Code.

57. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave and employee benefit contributions be accorded priority in payment in an amount not to exceed \$10,950 for each employee (to the extent such amounts accrued within 180 days of the Petition Date). The majority of the Employees are owed amounts for Employee Obligations under the statutory caps of Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Further, even if certain Employee Obligations are not entitled to priority status under Section 507 of the Bankruptcy Code, the Debtors believe that such amounts should be paid pursuant to any one of several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations if the circumstances warrant.

B. The Proposed Payments are Appropriate under Section 363 of the Bankruptcy Code.

58. Under Section 363(b) of the Bankruptcy Code, after notice and a hearing, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business. Under Section 363(b) of the Bankruptcy Code, a court should authorize non-ordinary course business transactions where the debtor has articulated a valid business justification for the requested use of estate assets. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The payment of the Employee Obligations serves the sound business purpose of maximizing the value of the Debtors' estates. The Debtors' success in these cases hinges in large part on the morale and continued efforts of the Debtors' Employees. Through the payment of the Employee Obligations, the Debtors seek to motivate and encourage

the Employees to continue to support the Debtors' restructuring efforts. Accordingly, this Court should grant the requested relief under Section 363 of the Bankruptcy Code.

C. The Payment of the Employee Obligations Is Appropriate Under Section 541 of the Bankruptcy Code.

59. The payment of the Employee Withholdings or payment of garnished wages will not prejudice the Debtors' estates because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under Section 541 of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 66-67 (1990).²¹

D. The Debtors Should Be Authorized to Pay the Employee Obligations under Sections 1107(a) and 1108 of the Bankruptcy Code.

60. The Debtors, operating their businesses as debtors-in-possession under 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.

61. 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." Id. 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:

²¹ See also City of Farrell v. Sharon Steel Corp., 41 F.3d 92 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes).

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.

62. Payment of the Employee Obligations meets each element of the CoServ court's standard. As described above, the Employees likely maintain priority claims against the Debtors for the Employee Obligations. In addition, any failure by the Debtors to pay the Employee Obligations would negatively impact the morale of the Debtors' Employees at a critical time for the Debtors and their businesses when the Employees are most needed. Indeed, the Debtors' Employees are familiar with the Debtors' manufacturing and delivery processes; hiring and training new workers will seriously impact the Debtors' efficiency as well as their ability to deliver their products in a timely and safe fashion. The damage to the Debtors' prospects for rehabilitation and, hence, the costs to creditors as a whole, would be immediate and irreparable. In short, the potential harm and economic disadvantage that would stem from the failure to pay the Employee Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid.

63. With respect to the Employees, the Debtors have determined that to avoid significant disruption of the Debtors' business operations there exists no practical or legal alternative to payment of the Employee Obligations. 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 Employee Obligations.

E. Payment of the Employee Obligations Should Be Authorized under Section 105 of the Bankruptcy Code and the Doctrine of Necessity.

64. The proposed payments of the Employee Obligations should be authorized under Section 105 of the Bankruptcy Code and under the “doctrine of necessity.” Section 105 of the Bankruptcy Code authorizes this Court to “issue any order . . . necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the value of their businesses in order to effect a successful reorganization through, among other things, preservation of the Debtors’ workforce and its morale, payment of the wages and benefits as requested herein is proper in accordance with Section 105 of the Bankruptcy Code.

65. Payment of the Employee Obligations is further supported by the doctrine of necessity. The doctrine “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.” Ionosphere Clubs, 98 B.R. at 176; see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment);²² In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify

²² The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “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). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in Miltenberger v. Logansport, C & S.W. R. Co., 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. See id. at 309-12. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in Miltenberger. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious jeopardy.”).

payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

66. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-48 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); Ionosphere Clubs, 98 B.R. at 175-76. Moreover, courts have recognized the applicability of the doctrine of necessity with respect to the payment of prepetition employee compensation and benefits. See, e.g., Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 281-82, 285-89 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it was appropriate for bankruptcy court to defer to debtors’ business judgment in permitting payment of certain workers’ compensation claims); Ionosphere Clubs, 98 B.R. at 176 (“This rule 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.”).

F. The Debtors Should Be Permitted to Pay the Employment and Withholding Taxes.

67. The Debtors submit that the Employment and Withholding Taxes constitute so-called “trust fund” taxes which are required to be collected from third parties and held in trust for payment to the taxing authorities. See, e.g., Rosenow v. Illinois Dept. of Revenue (In re Rosenow), 715 F.2d 277, 282 (7th Cir. 1983) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax); Shank v. Washington State Dep’t of Revenue (In re Shank), 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected

by sellers from their customers is “trust fund” tax); DeChiaro v. New York State Tax Comm’n, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); see also In re Columbus Gas Sys. Inc., 997 F.2d 1039 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor’s estate).

68. Since the Employment and Withholding Taxes are “trust fund” taxes collected by the Debtors for remittance to taxing authorities, they are not property of the Debtors’ estates under Section 541(d) of the Bankruptcy Code. See Begier v. IRS, 496 U.S. 53, 67 (1990) (trust fund taxes are not property of the estate); In re Al Copeland Enters., Inc., 133 B.R. 837 (Bankr. W.D. Tex. 1991), aff’d, 991 F.2d 233 (5th Cir. 1993) (debtor obligated to pay Texas sales taxes plus interest because such taxes were “trust fund” taxes). The Debtors, therefore, arguably have no equitable interest at all in such Employment and Withholding Taxes and are obligated to remit to the appropriate taxing authority all amounts withheld from Employees’ payroll checks.

G. The Relief Requested in this Motion Is Necessary to Avoid Immediate and Irreparable Harm.

69. Similarly, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following: . . . (b) 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, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003; In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

70. No court within the Third Circuit has interpreted the “immediate and irreparable harm” language in the context of Bankruptcy Rule 6003 in any reported decision. However, the

Third Circuit Court of Appeals has interpreted the same language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, No. 05-4286, 2007 WL 1643179 at *2 (3d Cir. June 7, 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). To the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm as defined by the Third Circuit Court of Appeals.

71. Numerous courts in this district have permitted the postpetition payment of prepetition wage and salary obligations on the first day or in the early stages of other chapter 11 bankruptcy cases. See, e.g., In re Hayes Lemmerz Int'l, Inc., Case No. 09-11655 (MFW) (Bankr. D. Del. May 13, 2009); In re Goody's Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 9, 2008); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); and In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006).

72. Accordingly, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

Waiver of Stay Under Bankruptcy Rule 6004(h)

73. The Debtors also request that the court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other

than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” Fed R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the ten-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

74. Nothing in this motion or the requested relief (including any actions taken or payments made by the debtors pursuant to the requested relief) shall (a) be construed as a request for authority to assume any executory contract under 11 U.S.C. § 365; (b) waive, affect, or impair any of the Debtors’ rights, claims, or defenses including, but not limited to, those arising from Sections 365, 1113, and 1114 of the Bankruptcy Code, among others, other applicable law, and any agreement; (c) grant any additional rights to any third party; or (d) be enforceable by any third party.

75. For the avoidance of doubt, the Debtors seek authority, but not direction, to pay any amounts or satisfy any obligations with respect to the relief requested in this Motion.

Notice

76. No trustee, examiner or creditors’ committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) counsel to administrative agent under the prepetition secured loan facility; (c) counsel to the ad hoc committee for the holders of 8.5% senior subordinated notes due February 1, 2015; (d) counsel to the proposed debtor in possession lenders; (e) the creditors listed on the Debtors’ consolidated list of 30 largest unsecured creditors, as filed with the Debtors’ chapter 11 petitions; (f) the Internal Revenue Service; and (g) the Securities and

Exchange Commission. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

77. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, Garden City Group, at www.accurideinfo.com or can be requested by calling 888-478-2068.

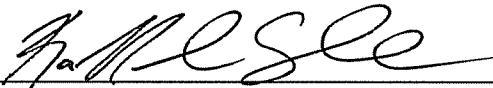
No Prior Request

78. No prior motion for the relief requested herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter interim and final orders, in substantially the forms attached hereto as Exhibit A and Exhibit B, respectively, (a) authorizing, but not directing, payment of Employee Obligations in accordance with this Motion, (b) confirming the Debtors' authority to pay withholding and payroll-related taxes, (c) authorizing and directing all banks to honor prepetition checks for payment of such obligations and (d) granting such other and further relief as is just and proper.

Dated: October 8, 2009
Wilmington, Delaware

Respectfully Submitted,



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PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS-IN-POSSESSION

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

ACCURIDE CORPORATION,
et al.,¹

Debtors.

Chapter 11

Case No. 09-13449 (____)

Joint Administration Pending

Reference Document No. _____

INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE OBLIGATIONS, (B) CONTINUE EMPLOYEE BENEFIT PLANS AND PROGRAMS POSTPETITION, AND (C) HONOR WORKERS' COMPENSATION OBLIGATIONS; (II) CONFIRMING THAT DEBTORS ARE ABLE TO PAY WITHHOLDING AND PAYROLL-RELATED TAXES AND; (III) DIRECTING ALL BANKS TO HONOR PREPETITION CHECKS FOR PAYMENT OF EMPLOYEE OBLIGATIONS

(“Interim Employee Obligations Order”)

Upon consideration of the motion (the “Motion”)² of the Debtors for the entry of an order (the “Order”) under 11 U.S.C. §§ 105, 363, 364, 507(a)(3), 507(a)(4) and 549, (a) authorizing, but not directing, the Debtors to (i) pay or otherwise honor various employee-related prepetition obligations of the Debtors to, or for the benefit of, employees, (ii) continue postpetition certain of the employee benefit plans and programs in effect immediately prior to the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Accuride Corporation, a Delaware corporation (9077); Accuride Cuyahoga Falls, Inc., a Delaware corporation (9556); Accuride Distributing, LLC, a Delaware limited liability company (3124); Accuride EMI, LLC, a Delaware limited liability company (N/A); Accuride Erie L.P., a Delaware limited partnership (4862); Accuride Henderson Limited Liability Company, a Delaware limited liability company (8596); AKW General Partner L.L.C., a Delaware limited liability company (4861); AOT Inc., a Delaware corporation (3088); Bostrom Holdings, Inc., a Delaware corporation (9282); Bostrom Seating, Inc., a Delaware corporation (7179); Bostrom Specialty Seating, Inc., a Delaware corporation (4182); Brillion Iron Works, Inc., a Delaware corporation (6942); Erie Land Holding, Inc., a Delaware corporation (8018); Fabco Automotive Corporation, a Delaware corporation (9802); Gunit Corporation, a Delaware corporation (9803); Imperial Group Holding Corp. -1, a Delaware corporation (4007); Imperial Group Holding Corp. -2, a Delaware corporation (4009); Imperial Group, L.P., a Delaware limited partnership (4012); JAI Management Company, a Delaware corporation (N/A); Transportation Technologies Industries, Inc., a Delaware corporation (2791); and Truck Components Inc., a Delaware corporation (5407). The mailing address for Accuride Corporation is 7140 Office Circle, Evansville, Indiana 47715.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

filing of these bankruptcy cases, and (iii) honor workers' compensation obligations; (b) confirming that the Debtors are permitted to pay any and all local, state and federal withholding and payroll-related or similar taxes relating to prepetition periods; and (c) directing all banks to honor prepetition checks for payment of the Debtors' prepetition employee obligations; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given, with no objections or requests for hearing having been filed, or all objections having been overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
3. The Debtors are authorized, but not directed, to honor their Employee Obligations (as set forth in the Motion), including, without limitation, paying prepetition amounts owed to their Employees. As set forth in the Motion, any funds owed in excess of \$10,950 per Employee shall not be paid until entry of a final order with respect to the Motion.
4. The Debtors are authorized, but not directed, to pay prepetition amounts owed to Independent Contractors in an amount not to exceed \$301,000.
5. The Debtors are authorized, but not directed, to pay prepetition amounts owed to Temporary Employees in an amount not to exceed \$53,000.

6. The Debtors are authorized, but not directed, to pay prepetition Reimbursable Business Expenses in an amount not to exceed \$841,000.

7. The Debtors are authorized, but not directed, to continue the Employee benefits and programs described in the Motion and in effect immediately prior to the filing of these cases during the postpetition period in the ordinary course of business, including the payment of prepetition obligations under the Health Care Programs in an amount not to exceed \$2.5 million, and to continue honoring all Employee Welfare Programs, as set forth in the Motion.

8. The Debtors are authorized, but not directed, to pay amounts related to workers' compensation claims that arose prepetition, as they become due, in the ordinary course of the Debtors' business.

9. The Debtors are authorized, but not directed, to continue funding the Pension Plans and to any make payments with respect thereto, including premium payments to the Pension Benefit Guaranty Corporation, as they become due, including the pension contribution of \$236,000 and the PBGC premium of \$168,127, each due on October 15, 2009.

10. The Debtors are authorized, but not directed, to pay Retiree Medical Benefits as set forth in the Motion.

11. The Debtors are authorized, but not directed, to pay prepetition amounts due under the Severance Plan, in an amount not to exceed \$1.7 million, as well as honoring their prepetition obligations to continue benefits to employees on layoff status, in an amount not to exceed \$17,500.

12. The Debtors are authorized, but not directed, to continue the Miscellaneous Programs set forth in the Motion.

13. The Debtors are authorized, but not directed, to forward the Miscellaneous Payroll Deductions, which include the amounts that the Debtors withhold from their Employees' paychecks to make payments on behalf of Employees for, among other things, union dues, court orders, charitable donations, U.S. savings bonds, safety equipment, voluntary health and welfare benefit plans, and miscellaneous health-related items, to the appropriate third party recipients.

14. The Debtors are authorized, but not directed, to pay any and all local, state, and federal withholding and payroll-related taxes relating to prepetition periods, including but not limited to, all withholding taxes, Social Security taxes, Medicare taxes, and other Employee contributions, whether withheld from Employees' wages or paid directly by the Debtors to governmental authorities (collectively, the "**Employment and Withholding Taxes**").

15. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

16. The financial institutions upon which any checks are drawn in payment of the Employee Obligations, either before, on, or after the date on which the Debtors filed these chapter 11 cases, are hereby authorized and directed to (a) honor, upon presentation, any such checks and (b) rely upon the representations of the Debtors as to which checks are in payment of the Employee Obligations.

17. The Debtors shall be and hereby are authorized, but not directed, to reissue payment on account of the Employee Obligations to replace any inadvertently dishonored or rejected payments.

18. Nothing in the Motion or the requested relief (including any actions taken or payments made by the debtors pursuant to the requested relief) shall (a) be construed as a request for authority to assume any executory contract under Section 365 of the Bankruptcy Code; (b)

waive, affect, or impair any of the debtors' rights, claims, or defenses including, but not limited to, those arising from Sections 365, 1113, and 1114 of the Bankruptcy Code, among others, other applicable law, and any agreement; (c) grant any additional rights to any third party; or (d) be enforceable by any third party.

19. Neither the provisions of this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any Employee or other person, including without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to Sections 503 and 507 of the Bankruptcy Code.

20. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein, said Debtors retaining the business judgment to make or not make said payments, and in all instances subject to the condition that funds are available to effect any payment and in no event shall any person (Debtor, officer, director or otherwise) be personally liable for any amounts authorized for payment herein but not paid.

21. The final hearing to consider entry of an order granting the relief requested in this Motion on a final basis shall be held on _____, 2009, at _____ (Eastern Time) (the "**First Omnibus Hearing**").

22. Any objection to the relief requested in the Motion on a permanent basis must (a) be filed in writing with the Court, at 3rd Floor, 824 North Market Street, Wilmington, DE 19801-3024, by 4:00 p.m. (Eastern Time) on _____, 2009 (the "**Objection Deadline**") and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the Debtors, at Accuride Corporation, 7140 Office Circle,

Evansville, Indiana 47715 (Attn: Stephen Martin, Esq.), (ii) the U.S. Trustee, 844 King Street, J. Caleb Boggs Federal Building, Room 2207, Lockbox 35, Wilmington, Delaware 19801 (hand delivery or overnight) or 19899 (postal box) (Attn: Jane Leamy, Esq.), (iii) proposed co-counsel to the Debtors, Latham & Watkins, LLP, 233 South Wacker Drive, Chicago, IL 60606 (Attn: David S. Heller, Esq.) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Kara Hammond Coyle, (iv) counsel to the Debtors' prepetition lenders, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787 (Attn: Alan P. Rockwell and Scott Greissman), (v) counsel to the ad hoc committee for the holders of Debtors' prepetition bonds, Milbank, Tweed, Hadley & McCloy LLP, 601 South Figueroa Street, Los Angeles, CA 90017 (Attn: Paul S. Aronzon), and (vi) the official committee of unsecured creditors appointed in these chapter 11 cases.

23. If no objections are received by the Objection Deadline, the Debtors may present a final order with respect to this matter to the Court at the First Omnibus Hearing.

24. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or any order regarding the use of cash collateral.

25. This court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested herein is necessary to avoid immediate and irreparable harm.

26. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for ten (10)

days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the ten (10) day stay provided in such rules is hereby expressly waived and shall not apply.

27. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

28. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2009
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ACCURIDE CORPORATION,
et al.,¹

Debtors.

Chapter 11

Case No. 09-____ (____)

Joint Administration Pending

Reference Document No. ____

FINAL ORDER (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE OBLIGATIONS, (B) CONTINUE EMPLOYEE BENEFIT PLANS AND PROGRAMS POSTPETITION, AND (C) HONOR WORKERS' COMPENSATION OBLIGATIONS; (II) CONFIRMING THAT DEBTORS ARE ABLE TO PAY WITHHOLDING AND PAYROLL-RELATED TAXES AND; (III) DIRECTING ALL BANKS TO HONOR PREPETITION CHECKS FOR PAYMENT OF EMPLOYEE OBLIGATIONS

(“Final Employee Obligations Order”)

Upon consideration of the motion (the “Motion”)² of the Debtors for the entry of an order (the “Order”) under 11 U.S.C. §§ 105, 363, 364, 507(a)(3), 507(a)(4) and 549, (a) authorizing, but not directing, the Debtors to (i) pay or otherwise honor various employee-related prepetition obligations of the Debtors to, or for the benefit of, employees, (ii) continue postpetition certain of the employee benefit plans and programs in effect immediately prior to the filing of these bankruptcy cases, and (iii) honor workers’ compensation obligations; (b)

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confirming that the Debtors are permitted to pay any and all local, state and federal withholding and payroll-related or similar taxes relating to prepetition periods; and (c) directing all banks to honor prepetition checks for payment of the Debtors' prepetition employee obligations; and the Court having reviewed the Motion and First Day Declaration; and the Court having determined that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and upon the record herein and after due deliberation thereon; and good and sufficient cause appearing, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to honor their Employee Obligations (as set forth in the Motion), including, without limitation, paying all prepetition amounts owed to their Employees.
3. The Debtors are authorized, but not directed, to continue all Employee benefits and programs described in the Motion and in effect immediately prior to the filing of these cases during the postpetition period in the ordinary course of business.
4. The Debtors are authorized, but not directed, to pay amounts related to workers' compensation claims that arose prepetition, as they become due, in the ordinary course of the Debtors' business.
5. The Debtors are authorized, but not directed, to forward the Miscellaneous Payroll Deductions, which include the amounts that the Debtors withhold from their Employees' paychecks to make payments on behalf of Employees for, among other things, union dues, court

orders, charitable donations, U.S. savings bonds, safety equipment, voluntary health and welfare benefit plans, and miscellaneous health-related items, to the appropriate third party recipients.

6. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

7. The Debtors are authorized, but not directed, to pay any and all local, state, and federal withholding and payroll-related taxes relating to prepetition periods, including but not limited to, all withholding taxes, Social Security taxes, Medicare taxes, and other Employee contributions, whether withheld from Employees' wages or paid directly by the Debtors to governmental authorities (collectively, the "**Employment and Withholding Taxes**").

8. The financial institutions upon which any checks are drawn in payment of the Employee Obligations, either before, on, or after the date on which the Debtors filed these chapter 11 cases, are hereby authorized and directed to (a) honor, upon presentation, any such checks and (b) rely upon the representations of the Debtors as to which checks are in payment of the Employee Obligations.

9. The Debtors shall be and hereby are authorized, but not directed, to reissue payment on account of the Employee Obligations to replace any inadvertently dishonored or rejected payments.

10. Nothing in the Motion or the requested relief (including any actions taken or payments made by the debtors pursuant to the requested relief) shall (a) be construed as a request for authority to assume any executory contract under Section 365 of the Bankruptcy Code; (b) waive, affect, or impair any of the debtors' rights, claims, or defenses including, but not limited to, those arising from Sections 365, 1113, and 1114 of the Bankruptcy Code, among others, other

applicable law, and any agreement; (c) grant any additional rights to any third party; or (d) be enforceable by any third party.

11. Neither the provisions of this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any Employee or other person, including without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to Sections 503 and 507 of the Bankruptcy Code.

12. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein, said Debtors retaining the business judgment to make or not make said payments, and in all instances subject to the condition that funds are available to effect any payment and in no event shall any person (Debtor, officer, director or otherwise) be personally liable for any amounts authorized for payment herein but not paid.

13. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or any order regarding the use of cash collateral.

14. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for ten (10) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the ten (10) day stay provided in such rules is hereby expressly waived and shall not apply.

15. Service of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

17. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2009
Wilmington, Delaware

United States Bankruptcy Judge