

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

**HOLLEY PERFORMANCE
PRODUCTS INC., *et al.*,¹**

Debtors.

Chapter 11

Case No. 09-13333 (PJW)

(Jointly Administered)

Objection Deadline: April 8, 2010 at 4:00 p.m. (EDT)

Hearing Date: April 15, 2010 at 3:00 p.m.

**SECOND MOTION OF THE DEBTORS FOR AN ORDER
EXTENDING THE PERIOD TO ASSUME OR REJECT CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

Holley Performance Products Inc. (“Holley Performance”), on behalf of itself and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby submits this motion (the “Motion”) for an order (the “Order”) extending the period of time (the “365(d)(4) Period”) for the Debtors, as lessee, to assume or reject certain unexpired leases of nonresidential real property. In support of this Motion, the Debtors respectfully represent and set forth as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are section 365(d)(4) of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”).

¹ The Debtors are the following entities: Holley Performance Products Inc., a Delaware corporation (EIN XX-XXX1482); Holley Performance Products Holdings, Inc., a Delaware corporation (EIN XX-XXX3923); Nitrous Oxide Systems, Inc., a Delaware Corporation (EIN XX-XXX0663); Weiland Automotive Industries, Inc., a Delaware Corporation (EIN XX-XXX6699); and Holley Performance Systems, Inc., a Delaware Corporation (EIN XX-XXX8014). The Debtors’ address is 1801 Russellville Road, Bowling Green, Kentucky 42101.

Background

2. On September 28, 2009 (the “Petition Date”), the Debtors filed voluntary petitions with this Court for relief under chapter 11 of the Bankruptcy Code. Sections 1107(a) and 1108 of the Bankruptcy Code authorize the Debtors to continue to operate their business and manage their properties as debtors in possession. No trustee, examiner, or creditors’ committee has been appointed in the Debtors’ chapter 11 cases.

3. The Debtors are leading suppliers of high performance automotive products, including carburetors, fuel pumps, fuel injection systems, nitrous oxide injection systems, superchargers, exhaust headers, mufflers, and automotive performance plumbing products, which are designed to enhance street, off-road, recreational, and competitive vehicle performance. The Debtors have a broad distribution network in the performance automotive aftermarket and a portfolio of widely recognized brand names. The Debtors’ products are sold in the performance market aftermarket in all 50 states, Canada, and Europe. Major customers of the Debtors’ high performance automotive products include such leading companies as Summit Racing Equipment, Jegs High Performance, Advance Auto Parts, AutoZone, GM Performance Parts, Ford Racing, and MOPAR.

4. Further information regarding the Debtors, including the facts and circumstances regarding the commencement of these chapter 11 cases, is described in the Declaration of Thomas W. Tomlinson in Support of Chapter 11 Petitions and First Day Motions and Applications, sworn to on September 27, 2009 [Dkt. No. 2] (the “Tomlinson Declaration”).

Relief Requested

5. By the Motion, the Debtors request entry of an order extending the 365(d)(4) Period (a) with respect to the Mississippi Lease (as defined below), through and including May 13, 2010, and (b) with respect to the California Lease (as defined below, and,

collectively with the Mississippi Lease, the “Real Property Leases”), through and including July 1, 2010, without prejudice to the Debtors’ right to seek further extensions of the time to assume or reject their Real Property Leases under section 365(d)(4)(B)(ii) of the Bankruptcy Code. Pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code, the Debtors have obtained the written consent of the respective landlords under the Real Property Leases to the extensions requested herein. The Court previously extended the 365(d)(4) Period to April 26, 2010.

6. The Debtors are lessees under two unexpired leases of nonresidential real property:

- a. Mississippi Lease: On April 20, 2000, Holley Performance, the City of Aberdeen, Mississippi, and the Fourth Supervisor’s District of Monroe County, Mississippi, entered into a lease with respect to real property located in Aberdeen, Mississippi (the “Mississippi Lease”). The Mississippi Lease commenced on May 1, 2000, with a primary lease term of 25 years. The Debtors have the right to extend the Mississippi lease three times for additional ten year periods.
- b. California Lease: On October 30, 2003, Holley Performance and the predecessors in interest to Umberto Savone and Babette Beja entered into a lease with respect to real property located at 19302 S. Laurel Park Road, Rancho Dominguez, California, as amended (the “California Lease”). The California Lease commenced on March 15, 2004, with a primary lease term which expired on March 14, 2009. The California Lease has been extended to June 14, 2010. The Debtors may extend the California Lease for three additional consecutive two month periods.

7. The Debtors seek extensions of the 365(d)(4) Period with respect to the Real Property Leases to provide the Debtors additional time to evaluate the Real Property Leases and make assumption/rejection decisions. The Debtors recently filed their plan of reorganization and expect to commence soliciting votes on the plan of reorganization shortly after approval of the Debtors’ disclosure statement. Further, the Debtors are currently involved in negotiations to revise the terms of the Mississippi Lease. Absent satisfactory modifications to the Mississippi Lease, the Debtors intend to reject the lease and relocate their Mississippi operations.

8. The Debtors are and will remain current on their postpetition obligations under the Real Property Leases, and therefore the requested extensions will not prejudice the respective landlords. Finally, the respective landlords have consented to the extensions requested herein. Accordingly, given the size and complexity of these cases, the Debtors submit that the requested extensions are appropriate.

Basis for Relief

9. Section 365(d)(4) of the Bankruptcy Code provides in relevant part:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of – (i) the date that is 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan.

(B) (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4)(A)-(B).

10. Upon a showing of cause by a debtor, courts have routinely granted extensions of the Section 365(d)(4) Period. See In re Channel Home Ctrs., Inc., 989 F.2d 682 (3d Cir. 1993); In re GST Telecom Inc., Case No. 00-1982-GMS, 2001 WL 686971 (D. Del. June 8 2001). Courts review the following factors, among others, in determining whether “cause” exists to extend the Section 365(d)(4) Period: (a) whether the debtors’ continued occupation could damage the landlord beyond the compensation available under the Bankruptcy Code; (b) whether the debtor was paying for the use of the property; and (c) whether the debtor

has had sufficient time to formulate a plan of reorganization. See In re Wedtech Corp., 72 B.R. 464, 471-73 (Bankr. S.D.N.Y. 1987); see also Channel, 989 F.2d at 689 (stating that the court agrees with Wedtech, 72 B.R. at 471-72, “that it is permissible for the bankruptcy court to consider a particular debtor’s need for more time in order to analyze leases in light of the plan it is formulating.”).

11. The Debtors submit that the application of these factors to the facts and circumstances of their chapter 11 cases establish cause to extend the 365(d)(4) Period for the Real Property Leases.

12. The Debtors’ landlords have consented in writing to the extensions requested herein. Further, the Debtors’ landlords will not be prejudiced by the requested extensions. To the extent that a landlord suffers any postpetition damages in connection with its lease with a Debtor, the remedies permitted under the Bankruptcy Code will sufficiently compensate the landlord, whether the lease is ultimately assumed or rejected. Further, the Debtors are and will remain current on their postpetition obligations under the Real Property Leases.

13. Absent the relief requested herein, the Debtors would be deemed to reject the Real Property Leases. This would potentially disrupt relations between the Debtors and the landlords for these locations.

14. Courts in this district have routinely granted relief similar to that requested in this Motion. See, e.g., In re TSIC, Inc. aka Sharper Image Corp., Case No. 08-10322 (Bankr. D. Del. June 17, 2008) (KG); In re Supplements LT Inc., (f/k/a Leiner Health Prods. Inc.), Case No. 08-10446 (Bankr. D. Del. July 2, 2008) (KJC); In re Maxjet Airways, Inc., Case No. 07-11912 (Bankr. D. Del. March 25, 2008) (PJW).

15. Accordingly, based on the foregoing, the Debtors submit that the requested relief is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

Notice

16. No trustee, examiner, or creditors' committee has been appointed in the Debtors' chapter 11 cases. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Wells Fargo Foothill, Inc.; (iii) counsel to the Indenture Trustee for the Debtors' 12 ½% Senior Second Lien Secured Notes due 2013; (iv) counsel to the Majority Secured Noteholders (as defined in the Tomlinson Declaration); (v) the Debtors' thirty largest unsecured creditors (on a consolidated basis) as of the Petition Date; (vi) the landlords under the Debtors' Real Property Leases; and (vii) all other parties required to receive service under Local Rule 2002-1(b). In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

No Prior Request

17. No prior request for the relief sought herein has been made by or granted to the Debtors in this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an order: (i) authorizing the extension of the Debtors' 365(d)(4) Period (a) with respect to the Mississippi Lease, through and including May 13, 2010, and (b) with respect to the California Lease, through and including July 1, 2010, without prejudice to the Debtors' ability to seek further extensions, and (ii) granting such other and further relief as is just and proper.

Dated: March 29, 2010
Wilmington, Delaware

Respectfully submitted,
PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

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