

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

Order
5-27-04

Healy

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

CEI ROOFING, INC., et al.

Debtors

§
§
§
§
§
§

**CASE NO. 04-35113-HDH-11
(Jointly Administered)**

Hearing: May 20, 2004

**ORDER AUTHORIZING DEBTORS
TO PAY CRITICAL PREPETITION SUPPLIER CLAIMS**

Upon the Amended Emergency Motion for Order Authorizing Debtor to Pay Critical Prepetition Supplier Claims (the "Motion"), filed by the above-captioned debtors and debtors in possession, CEI Roofing, Inc. and its affiliated debtors (collectively, the "Debtors"), and the Limited Motion for Reconsideration of Order Granting Authority to Pay Prepetition M&M Lien Claims ("Reconsideration Motion"), filed by the Official Unsecured Creditors Committee ("Committee") appointed in these cases, and the Court, having jurisdiction to consider the Motion and the Reconsideration Motion, having heard the evidence and statements of counsel regarding the Motion and the Reconsideration Motion, and finding that no further notice is needed, it is therefore:

ORDERED, that the Motion and the Reconsideration Motion are GRANTED as provided herein; and it is further

ORDERED, that all capitalized terms not defined herein shall have the meaning given to them in the Motion; and it is further

ORDERED, that the Court's Order Granting Authority to Pay Prepetition M&M Lien Claims entered on May 5, 2004 is hereby superceded by the terms of this Order; and it is further

ORDERED, that the Debtors are authorized to pay (subject to the terms and conditions set forth herein) the entire amount of the Critical M&M Lien Claims, the Critical Certification Claims and the Critical Bond Claims (collectively, the "Critical Prepetition Supplier Claims"); it is further

ORDERED, that the Debtors are authorized to satisfy the Critical Prepetition Supplier Claims from available funds, when feasible and appropriate in the Debtors' business judgment and in their sole and absolute discretion, based upon the liquidity available to the Debtors at the time such determination is made, and upon the following conditions:

- (i) all such claims shall be paid by check or by wire transfer of funds; and
- (ii) contemporaneous with payment, a Critical M&M Lien Claimant or a Critical Certification Claimant must execute an acceptable release of lien and a Critical Bond Claimant must execute an acceptable release of a claim against the bond, such releases to be acceptable to both the Debtors and the releasing claimant;

it is further

ORDERED, that prior to making any payments authorized herein, the Debtors shall provide to counsel for the Committee five (5) days prior to paying the Critical Prepetition Supplier a notice of intent to pay Critical Prepetition Supplier Claims (the "Notice") that shall provide the Committee with a "protocol report" containing the same information relied upon by the Debtors in making a payment decision, which shall contain the following information: (a) the

name and address of the Critical Prepetition Supplier(s); (b) the amount of the Critical Prepetition Supplier Claims proposed to be paid; (c) the job(s) associated with the Critical Prepetition Supplier Claims; (d) the amount of accounts receivable remaining on the job or other jobs associated with the customer; and (e) any comments or other information justifying the payment. Such notice shall be faxed by the Debtors to Joseph J. Wielebinski at (214) 978-4375 and Robert Medlin at (214) 397-1795. The Debtors agree to provide to the Committee such other reasonable information that the Committee reasonably requests to support the payments reflected in the Notice; it is further

ORDERED, that the Committee shall have five (5) days from receipt of the Notice (the “Objection Period”) to object to the proposed payments described in the Notice by filing an appropriate objection with the Court and serving the same on Debtors’ counsel; it is further

ORDERED, that if no objections are timely filed within the Objection Period, the Debtors are authorized to make the payments described in the Notice without further Order of this Court. If an objection is timely asserted, the Debtors are not authorized to make the payments described in the Notice without further order of this Court; it is further

ORDERED, that, notwithstanding the above procedures, the Debtors are authorized to immediately pay Critical Prepetition Supplier Claims for work performed on projects for the following companies:

- (a) Anheuser-Busch in the amount of \$58,408.24;
- (b) Ford Motor Company in the amount of \$484,213.05; and
- (c) any and all Critical Prepetition Supplier Claims associated with Wal-Mart properties in the aggregate amount of \$465,540.00.

ORDERED, that any party who accepts a payment pursuant to this Order shall be deemed to have accepted and be bound by the terms of this Order; it is further

ORDERED, that the Debtors are authorized (consistent with this Order) to issue postpetition checks, postpetition drafts, or effect postpetition fund transfer requests, to pay Critical Prepetition Supplier Claims and to replace any prepetition checks issued on account of such claims that were dishonored as a consequence of these cases; it is further

ORDERED, that the Debtors are authorized to honor prepetition and postpetition joint check agreements; it is further

ORDERED, that prior to payment, nothing in this Order shall impair the ability of the Debtors to contest any invoice or claim of any creditor; it is further

ORDERED, that the relief requested herein shall not constitute or be deemed to be an assumption of or an authorization to assume, pursuant to Section 365 of the Bankruptcy Code, any executory contract or unexpired lease to which the Debtors are a party; it is further

ORDERED, that any payment made in accordance with the terms of this Order to a Critical M&M Lien Claimant, a Critical Certification Claimant, a Critical Bond Claimant, or a Critical Prepetition Supplier shall not be subject to avoidance, disgorgement, setoff or recovery by the Debtors or any other party in interest herein under any provision of the Bankruptcy Code or other applicable law.

ORDERED, that the Debtors, their officers, employees and agents, are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein; and it is further

ORDERED, that this Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

END OF ORDER

Submitted By:

Charles R. Gibbs
Keith Miles Aurzada
Randell J. Gartin
AKIN GUMP STRAUSS HAUER & FELD LLP
1700 Pacific Avenue, Suite 4100
Dallas, TX 75201
Telephone: 214.969.2800
Facsimile: 214.969.4343