

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	)	Chapter 11
)	
GULF PACKAGING, INC., ¹	)	Case No. 15-15249
)	
Debtor.	)	Honorable Pamela S. Hollis
)	
	)	Hearing Date: May 5, 2015
	)	Hearing Time: 10:00 a.m.
	)	Courtroom: 644

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Tuesday, May 5, 2015 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Pamela S. Hollis in the courtroom usually occupied by her, No. 644, in the Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, or whomever may be sitting in her place and stead, and then and there present the **DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF**, a copy of which is attached hereto and hereby served upon you, at which time and place you may appear.

¹ The last four digits of the Debtor's tax identification number are 5030.

GULF PACKAGING, INC.

By: /s/ Joseph D., Frank
Joseph D. Frank (IL ARDC 6216085)
Jeremy C. Kleinman (IL ARDC 6270080)
FRANKGECKER, LLP
325 North LaSalle Street, Suite 625
Chicago, Illinois 60654
Telephone: (312) 276-1400
Facsimile: (312) 276-0035
Email: jfrank@fgllp.com
jkleinman@fgllp.com

-and-

GRAY REED & MCGRAW, P.C.
Jason S. Brookner (*pro hac vice* pending)
Micheal W. Bishop (*pro hac vice* pending)
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
mbishop@grayreed.com

PROPOSED COUNSEL TO THE DEBTOR

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
GULF PACKAGING, INC., ¹	)	Case No. 15- <u>15249</u> (PSH)
)	
Debtor.)	
)	

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)
AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND FEES
AND (II) GRANTING RELATED RELIEF**

Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor,” “GPI” or the “Company”), for its Motion (the “Motion”) For Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Taxes and Fees, and (II) Granting Related Relief, respectfully represents:

JURISDICTION AND VENUE

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

INTRODUCTION

3. On this date (the “Petition Date”), the Debtor filed with this Court a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ The last four digits of the Debtor’s tax identification number are 5030.

4. No request has been made for the appointment of a trustee or examiner, and no statutory committee has yet been appointed.

BACKGROUND

5. GPI is a national distributor of packaging equipment and supplies, which sells its product by and through several independent entities ("Affiliates").² The Affiliates are Gulf Arizona Packaging Corporation, Carolina-Gulf Packaging, LLC, Florida Gulf Properties, LLC, Gulf Packaging–Sacramento, LLC, Gulf Systems, Inc. ("GSI"), Gulf-Pacific Packaging Corporation, and Gulf-Great Lakes Packaging Corporation. Each of these Affiliates is also a guarantor under GPI's credit facility with FCC, LLC d/b/a First Capital ("FCC"). When GPI is combined with the Affiliates, there are over twenty (20) warehousing locations to better serve GPI's customer base.

6. For the majority of GPI's business,³ the Affiliates employ the bulk of the salesforce and generate sales to customers. Customers issue purchase orders to GPI through one of the Affiliates, and GPI then issues a purchase order to its own trade vendors, thereby creating an account payable for GPI. GPI pays for the purchase and delivery of the goods in question, which are delivered to the customers. GPI creates an account receivable with the customer in the name of GPI with remittance by the customer to be made for the benefit of GPI to a Key Bank lock box account owned and controlled by FCC.

² As used herein, "Affiliate" means a company that has a relationship – formal or informal – to the Debtor, and sells packaging products under a variation of the Gulf name. Unless otherwise set forth, use of the term "Affiliate" is not intended to have the same meaning as the "affiliate" term of art defined in section 101(2) of the Bankruptcy Code. All rights with respect to this issue are reserved.

³ In addition to the standard sale of packaging products and supplies as described herein, GPI sells packaging equipment (that is, equipment used to package products). On occasion GPI may lease equipment to a customer with a buyout option at the end of the term. In other instances, GPI may provide a piece of equipment free of charge in exchange for the customer purchasing consumable products, with which the equipment is used, from GPI. In this scenario, the equipment remains the property of GPI. Finally, GPI also has consignment arrangements with certain of its customers. In these instances, GPI keeps its inventory on the customer's floor and reconciles once per month. GPI bills the customer for the monthly usage and then replenishes the stock back to appropriate levels.

7. Additional information about the Debtor, its business and corporate and capital structures is set forth in the *Declaration of Edward T. Gavin, CTP in Support of Chapter 11 Petition and First Day Pleadings* filed on the Petition Date.

THE DEBTOR'S TAX AND FEE OBLIGATIONS

8. In the ordinary course of business, the Debtor: (a) collects and incurs Sales and Use Taxes, Franchise Taxes, Income Taxes, Property Taxes, and other taxes (as each is defined herein, and, collectively, the "Taxes"); (b) incurs fees, assessments, and other similar charges necessary to operate its business, including fees related to Business Licenses and Permits and Other Fees (as each is defined herein, and, collectively, the "Fees"); and (c) remits such Taxes and Fees to the appropriate taxing, licensing, regulatory, or other governmental authorities (collectively, the "Taxing Authorities").⁴ The Debtor pays or remits, as applicable, Taxes and Fees daily, weekly, monthly, quarterly, semi-annually, or annually to the respective Taxing Authorities, as required by applicable laws and regulations. Any failure by the Debtor to pay the Taxes and Fees could have a material adverse impact on its ability to operate.

I. Sales and Use Taxes

9. The Debtor incurs and collects from customers various state and local sales taxes (the "Sales Taxes") in connection with the sale of various products and services to its customers. Sales Taxes are charged at the point of purchase for certain goods and services and set by the applicable taxing authority as a percentage of the total purchase price. Generally, the Debtor collects and remits Sales Taxes to the Taxing Authorities on a quarterly basis following their

⁴ The Debtor will shortly be filing its *Debtor's Motion (I) For Interim and Final Orders (A) Authorizing the Debtor to Pay Certain Prepetition (1) Wages, Salaries, and Other Compensation, (2) Reimbursable Employee Expenses, and (3) Obligations Relating To Benefits Programs, (B) in the Alternative, Authorizing the Debtor to Pay Certain Prepetition Claims for Compensation and Commissions Related to Affiliate Employees and ADP as Critical Vendors, (C) Granting Related Relief, and (II) Scheduling a Final Hearing*, by which the Debtor seeks authority to remit various federal, state, and local income taxes, FICA, Social Security, and Medicare taxes (collectively, the "Payroll Taxes") to applicable Taxing Authorities.

collection.

10. The Debtor must also remit use taxes (the "Use Taxes," and together with the Sales Taxes, the "Sales and Use Taxes") on account of the purchase of tangible personal property and certain goods and services from vendors who are not always located in the state to which the property is to be delivered. Use Taxes typically arise if a supplier does not have business operations in the state in which it is supplying goods and does not charge state taxes. In such instances, applicable law generally requires the Debtor to self-assess the amount of Use Taxes, and pay such Use Taxes to the applicable Taxing Authorities. Generally, the Debtor collects and remits Use Taxes to the Taxing Authorities on a quarterly basis following their collection.

11. Prior to the Petition Date, the Debtor collected from its customers and paid first quarter 2015 Sales and Use Taxes to its various Taxing Authorities. The Debtor has also collected from its customers approximately \$40,000.00 in Sales and Use Taxes from April 1, 2015 through the Petition Date that will be owing to the Taxing Authorities on or about July 20, 2015. The Debtor seeks authority to continue to timely pay Sales and Use Taxes in the ordinary course of business.

II. Franchise and Income Taxes.

12. The Debtor pays certain franchise taxes (the "Franchise Taxes") to Taxing Authorities as a condition to operate its business in the applicable taxing jurisdictions. Franchise Taxes may be based on net operating income, a flat fee, or the amount or value of capital used in the business. The Debtor pays Franchise Taxes on an annual basis.

13. As of the Petition Date, the Debtor believes it is current with respect to its payment of Franchise Taxes and that no Franchise Taxes will come due within the first 21 days of this chapter 11 case. However, out of an abundance of caution, the Debtor seeks authority to (i) pay any outstanding Franchise Taxes due as of the Petition Date, upon entry of a final order

on this Motion, and (ii) continue to pay Franchise Taxes on a postpetition basis in the ordinary course of business.

14. Additionally, certain Taxing Authorities require that the Debtor pay income or corporate taxes (the "Income Taxes") on net income. The Debtor is required to pay, when due, Income Taxes on an annual basis. As of the Petition Date, the Debtor believes it is current with respect to its payment of Income Taxes and that no Income Taxes will come due within the first 21 days of this chapter 11 case. However, out of an abundance of caution, the Debtor seeks authority to (i) pay any outstanding Income Taxes due as of the Petition Date, upon entry of a final order on this Motion, and (ii) continue to pay Income Taxes on a postpetition basis in the ordinary course of business.

III. Property Taxes

15. State and local laws in many of the jurisdictions in which the Debtor operates generally grant Taxing Authorities the power to levy property taxes against the Debtor's personal and real property (the "Property Taxes"). The Debtor typically pays the Property Taxes in the ordinary course of business, as and when due, on a quarterly, semi-annual, or annual basis, as applicable by jurisdiction, which typically are calculated in arrears.

16. As of the Petition Date, the Debtor believes it is current with respect to its payment of Property Taxes and that no Property Taxes will come due within the first 21 days of this chapter 11 case. However, out of an abundance of caution, the Debtor seeks authority to (i) pay any outstanding Property Taxes due as of the Petition Date, upon entry of a final order on this Motion, and (ii) continue to pay Property Taxes on a postpetition basis in the ordinary course of business.

IV. Business Licenses, Permits, and Other Fees

17. The Debtor must obtain various business licenses and permits (the "Business License and Permits") and pay corresponding fees (the "Other Fees") to operate its business in certain jurisdictions. Local laws require the Debtor to pay Other Fees for a wide-range of Business Licenses and Permits. Further, certain state Taxing Authorities require that the Debtor pay annual reporting fees to remain in good standing and conduct business within the state. The method for calculating amounts due for the Business Licenses and Permits and the deadlines for paying such amounts varies by jurisdiction. Generally, the Debtor collects and remits the Other Fees due on a quarterly, annual, or semi-annual basis, depending on the jurisdiction.

18. For 2014, the Debtor remitted less than approximately \$10,000.00 in the aggregate to various Taxing Authorities on account of Other Fees for Business License and Permits. As of the Petition Date, the Debtor believes it is current with respect to its payment of Other Fees for Business License and Permits and that no Other Fees for Business License and Permits will come due within the first 21 days of this chapter 11 case. However, out of an abundance of caution, the Debtor seeks authority to pay (i) any outstanding Other Fees for Business License and Permits due as of the Petition Date, upon entry of a final order on this Motion, and (ii) continue to pay Other Fees for Business License and Permits on a postpetition basis in the ordinary course of business.

RELIEF REQUESTED

19. By this Motion, pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107, and 1108 of the Bankruptcy Code, and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), GPI seeks entry of interim and final orders, (a) authorizing, but not directing, the Debtor to remit and pay certain Taxes and Fees in the ordinary course of business, without regard to whether such obligations accrued or arose before or after the commencement

of this chapter 11 proceeding, and (b) granting related relief. In addition, the Debtor requests that the Court schedule a final hearing within approximately 25 days of the commencement of this chapter 11 proceeding to consider approval of this Motion on a final basis.

20. Further, the Debtor requests that this Court authorize the Debtor's banks to receive, process, honor and pay all checks, drafts, or other forms of payment ("Tax Payments") drawn or issued on the Debtor's bank accounts prior to the Petition Date in respect of such Taxes and Fees (or to re-issue checks and electronic transfers, as may be necessary), provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such relief will be without prejudice to the Debtor's right to contest the amounts of any Taxes and Fees on any grounds it deems appropriate, and the Debtor expressly reserves all rights with respect thereto.

I. Payment of the Taxes and Fees Is Necessary and Appropriate

21. Payment of the Taxes and Fees in the ordinary course of business is necessary and appropriate in this chapter 11 case. Among other things: (a) certain of the Taxes and Fees are not property of the estate pursuant to section 541(a) of the Bankruptcy Code; (b) paying the Taxes and Fees will avoid potential audits, liens, or other enforcement actions while the Debtor focuses on maintaining and maximizing value of its assets; (c) the Debtor's directors and officers may be held personally liable for the non-payment of certain Taxes; and (d) certain Taxing Authorities may take precipitous actions against the Debtor's directors and officers for unpaid Taxes and Fees, which would distract the Debtor from its efforts to maintain and maximize the value of the Debtor's assets.

A. Certain of the Taxes and Fees May Not Be Property of the Debtor's Estate

22. Section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an

equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors' legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

23. Some of the Taxes and Fees constitute "trust fund" taxes, which the Debtor is required to collect and/or hold in trust for payment to Taxing Authorities. Courts have held that such taxes are not part of a debtor's estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's property); *Rosenow v. Ill. Dep't of Revenue (In re Rosenow)*, 715 F.2d 277, 279–82 (7th Cir. 1983) (holding that sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held "in trust" for the taxing authority); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (holding that a sales tax that is required by state law to be collected by sellers from their customers is a "trust fund" tax). The Debtor, therefore, does not have an equitable interest in such trust funds, and should be permitted to remit the same to the Taxing Authorities as and when due.

B. Certain of the Taxes and Fees May Constitute Secured or Priority Claims Entitled to Special Treatment under the Bankruptcy Code

24. The Debtor believes that most, if not all, of the Taxes and Fees would be priority claims under section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(8). Moreover, to the extent that such amounts are entitled to priority treatment under section 507(a)(8), Taxing Authorities may also attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting priority status to "a penalty related to a claim of a kind specified in this paragraph and

in compensation for actual pecuniary loss”). As priority claims, these Taxes and Fees must be paid in full before the Debtor may obtain confirmation of a chapter 11 plan or make distributions to general unsecured creditors. 11 U.S.C. § 1129(a)(9)(C). Accordingly, the payment of the Taxes and Fees at this time affects only the timing of the payment and, therefore, should not unduly prejudice the rights of other creditors. Furthermore, payment of the Taxes and Fees will not give the Taxing Authorities any more than that to which they otherwise would be entitled under the priority scheme of the Bankruptcy Code, and will save the Debtor the potential interest expense, legal expense, and penalties that might otherwise accrue on the Taxes and Fees during this chapter 11 case.

C. Section 363 of the Bankruptcy Code Provides Authority for the Immediate Payment of the Taxes and Fees

25. Section 363(c)(1) of the Bankruptcy Code provides that a debtor in possession “may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

26. The Bankruptcy Code does not define the “ordinary course of business.” *In re Commercial Mortg. and Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). Courts in this District apply the “reasonable expectations” test to determine whether a specific transaction is in the ordinary course of business. *Id.* (citing *In re Garofalo’s Finer Foods, Inc.*, 186 B.R. 414, 424 (Bankr. N.D. Ill. 1995)). Under the reasonable expectations test, a court looks to a debtor’s prepetition conduct to inform and develop expectations with respect to its postpetition conduct, while at the same time considering the changing circumstances inherent in a debtor’s efforts to operate its business under chapter 11. *Id.* A fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Id.* at 394.

27. Here, the Debtor seeks authority to pay the Taxes and Fees in the ordinary course of business, to the same extent as it would have paid such Taxes and Fees prepetition. Because there are no significant alterations between the Debtor's prepetition activities and the relief sought in this Motion, *Commercial Mortg.*, 414 B.R. at 393-94, the Debtor submits that the Court should authorize the payment of the Taxes and Fees in the ordinary course of business.

28. In the alternative, section 363(b) of the Bankruptcy Code authorizes a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts generally hold that a debtor's decision to enter into a transaction outside of the ordinary course of business is governed by the business judgment standard. *See, e.g., Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) of the Bankruptcy Code is whether the debtor has "an articulated business justification") (citation omitted).

29. The Debtor, as a debtor in possession, is a fiduciary "holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners." *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in these duties is the duty to protect and preserve the estate. *Id.* In some instances, a debtor in possession can fulfill its fiduciary duty only "by the preplan satisfaction of a prepetition claim" when payment of the same "is the only means to effect a substantial enhancement of the estate." *Id.*

30. A debtor's business judgment is entitled to great deference. *See, e.g., Pitt v. First Wellington Canyon Assoc. (In re First Wellington Canyon Assoc.)*, No. 89 C 593, 1989 WL 165028, at *1 (N.D. Ill. Dec. 28, 1989); *see also, e.g., Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311-12 (5th Cir. 1985); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.

1983). Where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004) (recognizing that payment of prepetition claims may be permitted under section 363 of the Bankruptcy Code, but holding the evidentiary record did not support such payments); *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (recognizing that section 363 of the Bankruptcy Code is a source of authority to pay certain prepetition payments); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (Bankr. S.D.N.Y. 1983) (authorizing contractor to pay the prepetition claims of suppliers who were potential lien claimants under section 363).

31. Any failure by the Debtor to pay the Taxes and Fees could affect the Debtor’s ability to conduct business in a particular jurisdiction, and could also have wide-ranging and adverse effects on the Debtor’s operations as a whole. Among other things, Taxing Authorities could attempt to suspend the Debtor’s operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the estate. Furthermore, certain directors and officers might be subject to personal liability – even if the failure to pay such Taxes and Fees was not a result of malfeasance on their parts. Accordingly, in the Debtor’s business judgment, the Debtor must continue to pay the Taxes and Fees as they become due to ensure that it is able to continue its business operations and that its directors and officers remain focused on operating the business and maintaining and maximizing value for creditors.

32. Because the Taxes and Fees likely are (a) not property of the estate, (b) secured claims or claims otherwise entitled to priority under section 507(a)(8), and/or (c) because non-payment of such Taxes and Fees may subject the Debtor to audits and its directors and officers to potential liability, paying Taxes and Fees is a reasonable exercise of the Debtor's business judgment. *See, e.g., In re Glazed Invs., LLC*, No. 06-00932 (PSH) (Bankr. N.D. Ill. Feb. 7, 2006) (authorizing debtors to pay prepetition taxes under section 363(b)(1) of the Bankruptcy Code); *In re McLeodUSA Inc.*, No. 05-63230 (JHS) (Bank. N.D. Ill. Oct. 31, 2005) (same); *In re JII Liquidating Inc. (f/k/a/ Jernberg Indus., Inc.)*, No. 05-25909 (JHS) (Bankr. N.D. Ill. July 5, 2005) (same); *In re FV Steel & Wire Co.*, No. 04-22421 (SVK) (Bankr. E.D. Wis. Feb. 27, 2004) (same).

33. Courts in this and other Districts have routinely authorized debtors to pay similar taxes and fees in other chapter 11 cases. *See, e.g., In re Caesars Entertainment Operating Co., Inc., et al.*, No. 15-01145 (ABG) (Bankr. N.D. Ill. Mar. 4, 2015) [Docket No. 621]; *In re ALCO Stores, Inc.*, No. 14-3491 (SGJ) (Bankr. N.D. Tex. Nov. 14, 2014) [Docket No. 322]; *In re ITR Concession Co.*, No. 14-34284 (PSH) (Bankr. N.D. Ill. Oct. 28, 2014); *In re Sbarro, LLC*, No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014). The Debtor respectfully submits that similar relief is appropriate in this chapter 11 case.

II. Cause Exists to Authorize the Debtor's Financial Institutions to Honor Checks and Electronic Fund Transfers

34. The Debtor has sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. However, as a result of the commencement of the Debtor's chapter 11 proceeding, and in the absence of a Court Order providing otherwise, banks may dishonor or reject the Debtor's checks and electronic fund transfers with respect to the

Taxes and Fees. Therefore, the Debtor respectfully requests that the Court authorize the Debtor's banks to process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic funds transfers requested or to be requested, by the Debtor with respect to the Taxes and Fees, to the extent of funds on deposit. The Debtor also seeks authority to issue new postpetition checks or effect new electronic fund transfers with respect to the Taxes and Fees to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected.

35. Nothing in this Motion should be construed as a waiver of any of the Debtor's rights, including to contest the amount, classification, priority, allowance or timing of payment of any Taxes or Fees that may be due to any Taxing Authorities. The Debtor reserves all rights in that regard.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

36. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtor respectfully submits that granting the relief requested herein is integral to the Debtor's ability to transition its operations into chapter 11, and that denying this Motion could severely disrupt the Debtor's operations at this critical juncture. As stated earlier, the Debtor only owes approximately \$40,000 for prepetition Sales and Use Taxes. The Debtor seeks authority to pay up to \$50,000 of Sales and Use Taxes in case the amounts actually owing slightly exceed the \$40,000 estimate. The relief requested herein is necessary in order for the Debtor to operate its business in the ordinary course and preserve the ongoing value of the Debtor's operations and maximize the value of its estate for the benefit of all stakeholders. Accordingly, the Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003.

WAIVER OF BANKRUPTCY RULE 6004(H)

37. The Debtor requests that the Court waive the fourteen (14) day stay period contained in Bankruptcy Rule 6004(h).

NOTICE

38. Notice of this Motion has been provided to (i) the office of the United States Trustee for the Northern District of Illinois, (ii) the holders of the twenty (20) largest unsecured claims against the Debtor, (iii) counsel to FCC, (iv) the Taxing Authorities, (v) MMB, and (vi) all other parties requesting notice in this chapter 11 case. The Debtor respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

39. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested herein and granting such other relief as is just and proper.

Respectfully submitted this 29th day of April, 2015.

FRANKGECKER LLP

/s/ Joseph D. Frank

Joseph D. Frank
Frances Gecker
325 N. LaSalle Street, Suite 625
Chicago, Illinois 60654
Telephone: (312) 276-1400
Facsimile: (312) 276-0035
Email: jfrank@fgllp.com
fgecker@fgllp.com

-and-

GRAY REED & MCGRAW, P.C.

Jason S. Brookner (pro hac vice pending)
Micheal W. Bishop (pro hac vice pending)
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
mbishop@grayreed.com

PROPOSED COUNSEL TO THE DEBTOR

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
GULF PACKAGING, INC., ¹)	
	)	Case No. 15- ____ (____)
Debtor.)	

INTERIM ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF

Upon the Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Taxes and Fees, and (II) Granting Related Relief (the “Motion”), filed by Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor”); and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court finding that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and it appearing that due and sufficient notice of the Motion has been provided by the Debtor under the circumstances and that no other or further notice is required; and upon the hearing on the Motion conducted on April __, 2015 and the record made thereat; and after due deliberation and good cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.²
2. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2015, at __:__ [a/p].m., prevailing Central Time. Objections, if any, to the relief

¹ The last four digits of the Debtor’s tax identification number are 5030.
² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

requested in the Motion and entry of the Final Order shall be filed with the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, and served on the following parties, such as to be actually received no later than _____, 2015 at __:__.m. prevailing Central Time: (i) Gray Reed & McGraw, P.C., 1601 Elm Street, Suite 4600, Dallas, Texas 75201 Attention: Jason S. Brookner and FrankGecker LLP, 325 N. LaSalle Street, Suite 625, Chicago, Illinois, 60654, Attention: Joseph D. Frank, Counsel to the Debtor; (ii) Goldberg Kohn Ltd., 55 East Monroe Street, Suite 3300, Chicago Illinois 60603, Attention Dimitri G. Karcazes, Counsel to FCC; (iii) the Office of the United States Trustee for the Northern District of Illinois, 219 S. Dearborn Street, Room 873, Chicago, Illinois 60604; (iv) counsel to any statutory committee appointed in this chapter 11 case; and (v) any party that has filed a notice of appearance and request for service of pleadings in this case. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtor is authorized, but not directed, to pay and remit the Taxes and Fees to the Taxing Authorities in the ordinary course of its business, without regard to whether such obligations accrued or arose before or after the Petition Date.

4. Nothing in the Motion or this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved by this Interim Order.

6. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of this chapter 11 case with respect to prepetition amounts owed in connection with any Taxes and Fees.

7. Notwithstanding anything to the contrary contained herein, the relief granted in this Interim Order and any payment to be made, or any authorization contained, hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in this chapter 11 case, including with respect to any budgets governing or relating to such use (collectively, the "Cash Collateral Order"), and to the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

10. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or

related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2015
Chicago, Illinois

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
GULF PACKAGING, INC., ¹)	
	)	Case No. 15- ____ ()
Debtor.)	

FINAL ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND FEES, AND (II) GRANTING RELATED RELIEF

Upon the Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Taxes and Fees, and (II) Granting Related Relief (the “Motion”), filed by Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor”); and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court finding that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and it appearing that due and sufficient notice of the Motion has been provided by the Debtor under the circumstances and that no other or further notice is required; and upon the hearing on the Motion conducted on _____, 2015 and the record made thereat; and after due deliberation and good cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.²
2. The Debtor is authorized, but not directed, to pay and remit the Taxes and Fees to the Taxing Authorities in the ordinary course of its business, without regard to whether such

¹ The last four digits of the Debtor’s tax identification number are 5030.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

obligations accrued or arose before or after the Petition Date.

3. Nothing in the Motion or this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved by this Final Order.

5. The Debtor is authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of this chapter 11 case with respect to prepetition amounts owed in connection with any Taxes and Fees.

6. Notwithstanding anything to the contrary contained herein, the relief granted in this Final Order and any payment to be made, or any authorization contained, hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in this chapter 11 case, including with respect to any budgets governing or relating to such use (collectively, the "Cash Collateral Order"), and to the extent there is any inconsistency between

the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control..

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

8. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2015
Chicago, Illinois

UNITED STATES BANKRUPTCY JUDGE