

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
J.L. FRENCH AUTOMOTIVE CASTINGS,) Case No. 09-12445 ()
INC., *et al.*,)
) (Jointly Administered)
Debtors.¹)
)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING, BUT
NOT REQUIRING, THE DEBTORS TO PAY IN THE ORDINARY COURSE OF
BUSINESS THE PREPETITION CLAIMS OF ESSENTIAL TRADE CREDITORS**

J.L. French Automotive Castings, Inc. and its affiliated chapter 11 debtors, debtors and debtors in possession (collectively, the “Debtors” or the “Company”), move the Court for entry of an order authorizing, but not requiring, the Debtors, to pay in the ordinary course of business the prepetition claims of certain essential trade creditors and other suppliers of goods and services. In support of this motion, the Debtors respectfully state as follows:

Jurisdiction

1. This 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 these proceedings and this motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these cases along with the last four digits of each of the Debtors’ federal tax identification numbers are: J.L. French Automotive Castings, Inc., (3670); French Holdings LLC, (0518); Nelson Metal Products LLC (4939); Allotech International LLC (5832); J.L. French LLC (8901); J.L. French Automotive, LLC (7075); Central Die, LLC (7793). The Debtors’ headquarters and mailing address is: 3101 South Taylor Drive, Sheboygan, WI 53082.

2. The statutory bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”).

Background

3. On July 13, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has yet been appointed in these Chapter 11 Cases.

4. The Debtors are designers and producers of high-pressure aluminum die-castings, specializing in automotive powertrain components. In 2008, 95% of the Debtors’ sales went to four principal customers: Ford Motor Company (“Ford”), General Motors Corporation (“General Motors”), Magna International, Inc. (“Magna”), and Chrysler LLC (“Chrysler”).

5. The Debtors corporate headquarters are in Sheboygan, Wisconsin, and their principal manufacturing facilities are in Wisconsin and Kentucky. Debtor J.L. French Automotive Castings, Inc. is a Delaware corporation that owns, directly or indirectly, 100% of the equity interests in the other Debtors.

6. The other facts and circumstances further supporting this motion are more fully set forth in the Declaration of Thomas Musgrave in Support of First Day Motions, filed contemporaneously herewith and which is incorporated herein by reference.

The Essential Trade Creditors

7. The Debtors are primary suppliers of certain aluminum die-cast automotive powertrain components (the “Components”) for several automobile original equipment manufacturers (the “OEMs”), including Ford, General Motors, Magna and Chrysler

(which together account for nearly 95% of the Debtors' business), as well as a number of first tier automotive parts suppliers (collectively, the "Customers"). OEMs directly utilize the Debtors' Components to manufacture their automobiles. The first-tier automotive parts suppliers use the Debtors' Components to manufacture parts that they, in turn, sell to OEMs. In both cases, the Debtors' Customers depend upon the Debtors to supply a constant and steady supply of Components, and would be severely impacted if the Debtors were forced to suddenly cease producing Components for any reason, including an unplanned interruption in their supply of goods, materials or services.

8. If the Company is unable to continuously supply goods to its Customers, the consequences to both itself and its Customers would be dire, indeed. The Debtors' Customers would, in all likelihood, be unable to obtain the necessary Components elsewhere in the market on a short-term basis. This would inevitably affect their production -- particularly in light of the automotive industry's just-in-time inventory practices -- with attendant consequences reverberating throughout the industry. Additionally, the Debtors themselves would likely be faced with substantial (and otherwise unnecessary) breach of contract damages, thereby diminishing the value of the Debtors' estates and creditors' recoveries.

9. It is essential, therefore, that the Debtors be able to continue producing and supplying Components in the ordinary course of business at the greatest possible profit. In order to do so, the Debtors will need to continue purchasing goods and services from a broad range of unaffiliated, third-party vendors (the "Essential Trade Creditors") on payment and other terms that equal or exceed those terms available to them prior to the Petition Date.

10. Many of the Essential Trade Creditors are the sole source for certain goods and services necessary for the manufacture of the Debtors' products. In some cases this is

because certain suppliers possess patents, technical know-how or other capabilities that are simply not available elsewhere. In other cases, to ensure consistent quality, the Debtors often require their potential suppliers to complete a lengthy research, testing and quality control process with respect to their individual parts and products (the “Qualification Process”). As a result of the Qualification Process, the Debtors can be sure that a vendor is qualified to supply them with quality goods. As a result, vendors develop certain capabilities specific to the Debtors’ needs that cannot be easily – if at all – replaced. Accordingly, many suppliers who have gone through the Qualification Process are also, at least for the near to medium term, the sole source for certain goods. Also, many service providers, while perhaps not the sole source for their respective services, have developed particular expertise and familiarity with the Company. This expertise and familiarity is valuable to the Company and would be lost if the Company were forced to seek services elsewhere.

11. In addition, due to the current state of the automobile manufacturing industry, many of the Essential Trade Creditors rely on the Company’s continued payments for goods and services simply to stay in business and would be unable to do so unless the Company satisfied all or part of their prepetition invoices. The Debtors’ failure to pay the prepetition claims of the Essential Trade Creditors would have catastrophic consequences beyond the Debtors’ bankruptcy cases.

12. As of the Petition Date, the Debtors owe approximately \$5.5 million to the Essential Trade Creditors--\$5.0 million to providers of goods and \$500,000 to providers of services.

13. The Debtors have carefully examined the market to determine whether they can obtain the goods and services the Essential Trade Creditors currently provide from any

other source. In many cases, they have found no other source. And often where other sources do exist, the Debtors believe that these sources would charge the Debtors substantially more for their goods and services than the Essential Trade Creditors currently charge. If the Debtors are forced to obtain goods and services on less favorable terms, their profit margins would be severely impacted, leading to lower creditor recoveries and jeopardizing the success of the Debtors' reorganization. Finally, the Debtors have identified certain other Essential Trade Creditors who rely on the Debtors' continued payments for goods and services simply to stay in business. In these cases, even if these vendors wished to continue supplying the Debtors on a post-petition basis, they would be unable to do so unless the Debtors satisfied all or part of their prepetition invoices.

14. Because of the combination of the Debtors' relationship with the Essential Trade Creditors, the specialized nature of the goods produced by these vendors and the difficulty the Debtors would have replacing these vendors, even a short-term disruption of this relationship could jeopardize the Debtors' ability to service their Customers going forward. The Debtors must ensure that there is no disruption in their ability to service their Customers, because even a short disruption will generate uncertainty and seriously impair the Debtors' ability to reorganize successfully. Thus, it is essential that the Debtors be permitted to pay the prepetition claims of the Essential Trade Creditors (the "Essential Trade Creditor Claims") in order to continue the Debtors' business and to honor the Debtors' contractual commitments to its Customers.

Relief Requested; Proposed Trade Terms

15. By this motion, the Debtors request authority, but not the obligation, to pay Essential Trade Creditor Claims up to \$5.5 million in the aggregate (excluding tooling, freight and utilities), as determined by the Debtors in the exercise of their reasonable business judgment, in order to continue receiving the vital goods and services provided by the Essential

Trade Creditors. The Debtors propose to condition the payment of Essential Trade Creditor Claims on the agreement of individual Essential Trade Creditors to supply goods and services to the Debtors on credit terms agreed to by the Debtors in their reasonable business judgment (the “Required Trade Terms”).

16. To ensure that Essential Trade Creditors deal with the Debtors on the Required Trade Terms, the Debtors propose (a) to send to each Essential Trade Creditor a letter substantially in the form of the letter attached hereto as Exhibit A (the “Essential Trade Agreement”) along with a copy of the Order, and (b) that any checks used to pay Essential Trade Creditors contain a legend substantially in the following form:

Acceptance of this check is subject to the Order
Authorizing Payment of Prepetition Essential Trade
Creditor Claims, dated _____, 2009,
Case No. 09-12445 ([]) (Jointly Administered).

17. The Debtors further propose that they be authorized to reserve their rights to obtain written acknowledgment of the Required Trade Terms of an Essential Trade Creditor, substantially in the form of Exhibit B attached hereto, before paying any prepetition amounts to such vendor. If the Debtors request such an acknowledgment, they may rely upon a confirming memorandum setting forth the Required Trade Terms, whether received by facsimile, electronic mail, express mail, or by other customary modes of delivery. The Debtors also reserve their right to contest any invoice of any Essential Trade Creditor under applicable non-bankruptcy law.

18. Some of the Essential Trade Creditors may have obtained mechanics’ liens, possessory liens, or similar state law trade liens (the “Trade Liens”) on the Debtors’ assets. As a further condition of receiving payment on account of Essential Trade Creditor Claims, the

Debtors propose that an Essential Trade Creditor must agree to take whatever action is necessary to remove the Trade Lien at such Essential Trade Creditor's sole cost and expense. In addition, the Essential Trade Creditor must agree not to contest the assumption of any purchase order issued by the Debtors to such Essential Trade Creditor on the grounds that such purchase order is not an executory contract or any other grounds.

19. If an Essential Trade Creditor refuses to supply goods and/or services to the Debtors on Required Trade Terms following receipt of payment on its Essential Trade Creditor Claim, or fails to comply with any Essential Trade Agreement entered into between such Essential Trade Creditor and the Debtors, then any payments made to such Essential Trade Creditor on account of its Essential Trade Creditor Claim shall be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (a) recover from the Essential Trade Creditor in cash or goods or (b) at the Debtors' option, declare to have been in payment of then-outstanding postpetition claims of such vendor and require that the Essential Trade Creditor immediately repay to the Debtors any such payments to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise.

Basis For Relief

A. The Court May Rely on Section 363(b) of Bankruptcy Code to Grant Motion.

20. The Court may authorize the Debtors to pay Essential Trade Creditor Claims under section 363(b) of the Bankruptcy Code. Section 363(b) provides, in pertinent part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98

B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); In re UAL Corp., Case No. 02-48191, (ERW) (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-ordinary-course transaction). In order to do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” In re Ionosphere Clubs, Inc., 98 B.R. at 175. As discussed more fully herein, the Debtors’ request to pay the Essential Trade Creditors meets this standard because, given the nature of the Debtors’ industry, the failure to satisfy the Essential Trade Creditor Claims would have a material adverse impact on the day-to-day operations of the Debtors’ businesses (as well as the businesses of the Essential Trade Creditors).

21. Courts have authorized payment of prepetition claims of trade creditors under the authority of Bankruptcy Code Section 363. See, e.g., In re Tropical Sportswear Int’l Corp., 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005 (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”))’ Armstrong World Indus., Inc. v. James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (pursuant to section 363, court authorized debtor to pay prepetition supplier claims to free up funds owed by third parties to debtor).

22. In In re CoServe, L.L.C., 273 B.R. 487, 498 (Bankr. N.D. Tex. 2002), the court discussed three considerations for determining whether a payment of the prepetition claim was a valid exercise of a debtor’s fiduciary duty to maximize the value of the estate:

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 [harm] is disproportionate to 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.

B. The Court May Rely On Its General Equitable Powers To Grant Motion.

23. Section 105(a) of the Bankruptcy Code grants the Court broad authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable common law doctrines. See 11 U.S.C § 105(a) (“[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title”); In re Just For Feet, Inc., 242 B.R. 821, 824 (Bankr. D. Del. 1999) (acknowledging that “[c]ertain pre-petition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of pre-petition claims”); In re Ionosphere Clubs, Inc., 98 B.R. at 175 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”).

24. Continuation of the Debtors' positive relationship with Essential Trade Creditors is imperative to the Debtors' continued operation and ability to restructure. The payment of the prepetition Essential Trade Creditor Claims is essential to assure the value of the Debtors' estates is maintained. Therefore, the Court should exercise its equitable power to grant the relief requested in this motion.

C. The Court May Rely On “Necessity Of Payment” Doctrine.

25. The “necessity of payment” doctrine further supports the relief requested in this motion. In a long line of well-established cases, federal courts have permitted under the “doctrine of necessity” or the “necessity of payment doctrine” postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors or essential to the continued operation of the debtor. See, e.g., Miltenberger v. Logansport, C. & S.W. Ry. Co., 106 U.S. 286, 311 (1882) (articulating legal theory later termed “doctrine of necessity” or “necessity of payment rule” and holding that payment of pre-receivership claim prior to reorganization permitted to prevent stoppage of crucial business relations); In re Lehigh & New Eng. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (under necessity of payment doctrine prepetition claims may be paid if essential to the continued operation of the business during reorganization); In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’ continued operation); S. Ry. Co. v. Flournoy, 301 F.2d 847, 852 (4th Cir. 1962) (“The principle of necessity of payment has since been carried into different factual surroundings as the basis for granting superiority to business-operating accounts.”); Just For Feet, 242 B.R. at 824 (granting approval to pay prepetition claims of certain trade vendors which were critical to debtors’ reorganization); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business); In re Ionosphere Clubs, Inc., 98 B.R. at 176 (“necessity of payment” 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”).

26. The doctrine of necessity is frequently invoked early in reorganization cases when preservation of the estate is most critical and often extremely difficult. For that reason, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims under the doctrine of necessity where failure to make such payments threatens to disrupt a debtor's efforts to reorganize. See, e.g., In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that "to justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the [c]hapter 11 process"). Indeed, the Third Circuit stated that "the *sine qua non* for the application of the 'necessity of payment' doctrine is the possibility that the creditor will employ an immediate economic sanction, failing such payment." In re Lehigh & New Eng. Ry. Co., 657 F.2d at 581.

27. As stated more fully above, the payment of the Essential Trade Creditor Claims is vital to the uninterrupted operation of the Debtors' business. In turn, the maintenance of the Debtors' business during these Chapter 11 Cases is crucial to the Debtors' ability to rehabilitate for the benefit of all stakeholders. Instituting normal automotive industry trade credit terms will improve the Debtors' chances of successfully reorganizing by, among other things, allowing the Debtors to continue purchasing goods and services on credit, preserving the Debtors' working capital and liquidity and enabling the Debtors to maintain their competitiveness. Hence, allowing the Debtors to selectively pay the prepetition claims of Essential Trade Creditors, in exchange for favorable credit terms, will serve the purposes of facilitating the Debtors' reorganization and maximizing value for creditors. Accordingly, the Debtors submit the relief requested is necessary and in the best interests of the Debtors' estates and creditors.

28. Courts have consistently authorized automotive component manufacturing debtors to pay prepetition trade claims where the payment of such claims is essential to the debtor's continued operations. See e.g., In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Nov. 20, 2006) (order authorizing debtors to pay up to \$29 million in prepetition claims of critical vendors); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006) (order authorizing debtors to pay \$52.1 million in prepetition claims of essential suppliers); In re J.L. French Auto. Castings, Inc., No. 06-10119 (MFW) (Bankr. D. Del. Mar. 6, 2006) (order authorizing debtors to pay up to \$10.6 million in prepetition claims of critical trade creditors); In re Pliant Corp., No. 06-10001 (MFW) (Bankr. D. Del. Jan. 4, 2006) (order authorizing debtors to pay \$18.2 million in prepetition critical vendor claims); In re Delphi Corp., No. 05-44481 (RDD) (Bankr. S.D.N.Y., Oct. 13, 2005) (order authorizing debtors to continue vendor rescue program and payment of \$90 million in prepetition claims of financially distressed sole source suppliers and vendors without contracts); In re Tower Auto., Inc., No. 05-10578 (ALG) (Bankr. S.D.N.Y. Mar. 14, 2005) (order authorizing debtors to pay \$40 million in prepetition claims of essential suppliers). The Debtors respectfully submit that similar relief is warranted in these Chapter 11 Cases.

29. Likewise, bankruptcy courts in this district have granted the same or similar relief in other cases. See, e.g., In re SemCrude, L.P., No. 08-11525 (BLS) (Bankr. D. Del. July 23, 2008) (order authorizing debtors to pay up to \$50 million in prepetition claims of critical providers, suppliers, and transporters of products and services); In re Syntax-Brilliant Corp., No. 08-11407 (BLS) (Bankr. D. Del. July 8, 2008); In re JHT Holdings, Inc., No. 08-11267 (BLS) (Bankr. D. Del. June 24, 2008); In re Am. Home Mortgage Holdings, Inc., No. 07-11047 (CSS) (Bankr. D. Del. Aug. 6, 2007); In re Werner Holding Co. (DE), Inc., No. 06-10578

(KJC) (Bankr. D. Del. June 12, 2006); In re Pliant Corp., No. 06-10001 (MFW) (Bankr. D. Del. Jan. 3, 2006); In re Meridian Auto. Sys.-Composites Operations, Inc., No. 05-11168 (MFW) (Bankr. D. Del. April 26, 2005); In re Maxide Acquisition, Inc., No. 05-10429 (MFW) (Bankr. D. Del. Feb. 14, 2005); In re Fleming Cos., Inc., No. 03-10945 (MFW) (Bankr. D. Del. April 1, 2003); In re Maxim Medical Group, Inc., No. 03-10438 (PJW) (Bankr. D. Del. Feb. 11, 2003).

Reservation Of Rights

30. To the extent that any contract or agreement with an Essential Trade Creditor is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute postpetition assumption or adoption of such contract of agreement as an executory contract pursuant to section 365 of the Bankruptcy Code. The Debtors are currently in the process of reviewing all of their agreements and contracts and reserve all of their rights with respect thereto.

Satisfaction Of Bankruptcy Rule 6003 And Waiver Of Bankruptcy Rule 6004

31. The Debtors further submit that, because the relief requested in this motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

32. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable.

Notice

33. Notice of this motion has been provided to the following parties or, in lieu thereof, to their counsel, if known: (i) Office of the United States Trustee; (ii) the administrative

agent for the Debtors' proposed postpetition lenders; (iii) the administrative agents for the Debtors' prepetition secured lenders; and (iv) counsel to certain of the prepetition secured lenders. Following the first day hearing in this case, notice of the motion and any order entered on the motion will be given to: (a) creditors holding the consolidated forty largest unsecured claims against the Debtors as identified in the Debtors' petitions; (b) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; and (c) any other persons as required by Del. Bankr. LR 9013-1(m). The Debtors submit that, in light of the relief requested, no other or further notice need be provided.

No Previous Request

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

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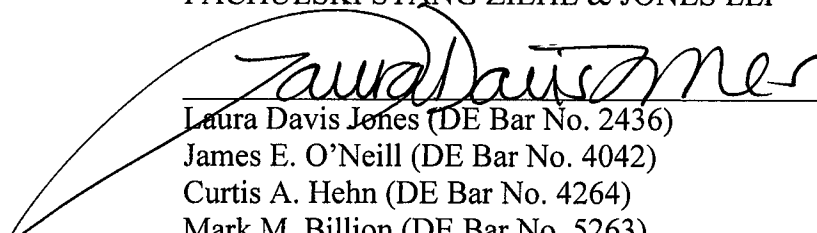
WHEREFORE, the Debtors respectfully request the entry of an order (i) authorizing the Debtors to pay prepetition claims of Essential Trade Creditors, and (ii) granting such other further relief as the Court deems appropriate.

Dated: July 13, 2009

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