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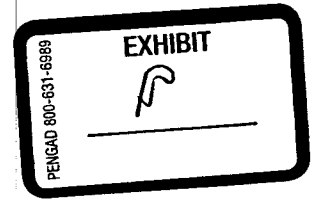
**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	Chapter 11
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ONEIDA LTD., et al.,	:	Case No. 06 – _____ ()
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Debtors.	:	(Jointly Administered)
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**MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS PURSUANT TO 11
 U.S.C. §§ 105(a), 363, 503(b)(9), 1107 AND 1108 AND FED. R. BANKR. P. 6004
 AUTHORIZING (I) DEBTORS TO PAY (A) PREPETITION CLAIMS OF CERTAIN
 UNSECURED ESSENTIAL SUPPLIERS AND (B) PREPETITION CLAIMS OF
 CERTAIN SUPPLIERS OF GOODS ENTITLED TO ADMINISTRATIVE EXPENSE
 PRIORITY AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

Oneida Ltd. (“Oneida”) and certain of its direct and indirect domestic subsidiaries,¹ as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby submit this motion (this “Motion”) for interim and final orders pursuant to 11 U.S.C. §§ 105(a), 363, 503(b)(9), 1107 and 1108 and Fed R. Bankr. P. 6004 authorizing (i) the Debtors to pay, in their sole discretion (a) the prepetition claims of certain unsecured essential suppliers and (b) the prepetition claims of certain suppliers of goods entitled to administrative

¹ In addition to Oneida Ltd., the following entities are debtors in these related cases: Sakura, Inc.; Buffalo China, Inc.; Delco International, Ltd.; Kenwood Silver Company, Inc.; Oneida Food Service, Inc.; Oneida International Inc.; Oneida Silversmiths Inc.; and THC Systems, Inc.



expense priority and (ii) financial institutions to honor and process related checks and transfers.

In support of this Motion, the Debtors submit the Affidavit of Terry G. Westbrook in Support of Chapter 11 Petitions and First Day Motions and Applications, sworn to March 17, 2006. In further support of this Motion, the Debtors respectfully represent as follows:

Background

A. The Chapter 11 Filings

1. On March 19, 2006 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code").

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No trustee, examiner or statutory committee has been appointed in the Debtors' cases.

4. Concurrently herewith, the Debtors have filed, among other things, (i) their proposed Joint Prenegotiated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as may be amended, supplemented or otherwise modified from time to time, the "Plan"), which comports with the terms and conditions set forth in the Plan Support Agreement (defined below), (ii) a disclosure statement with respect to the Plan (as may be amended, supplemented or otherwise modified from time to time, the "Disclosure Statement") and (iii) a motion seeking, among other things, authority to commence solicitation of votes to accept or reject the Plan. As discussed below in more detail, of the two classes of creditors eligible to vote to accept or reject the Plan, 100% of the holders of the Tranche B Loan (defined

below), which represents one such class of creditors, already have agreed to support confirmation of the Plan (subject to the terms of the Plan Support Agreement (defined below)).

B. Current Business Operations of the Debtors

5. Oneida is a publicly traded company with approximately 23 direct and indirect domestic and foreign subsidiaries (Oneida and its subsidiaries collectively are referred to herein as the “Company”). The Company operates domestically and in certain foreign jurisdictions, including Canada, Mexico, the United Kingdom and Australia. The Company’s non-U.S. subsidiaries (the “Non-Debtor Foreign Subsidiaries”) are not chapter 11 debtors.

6. The Company recorded consolidated revenue of approximately \$351,269,000 for the fiscal year ended January 28, 2006. As of the Petition Date, the Debtors had approximately 690 employees in the aggregate, and the Non-Debtor Foreign Subsidiaries had approximately 215 employees.

7. Since its inception in 1880, Oneida has been a leading designer and manufacturer of flatware and, over the years, has developed into a “total tabletop” provider. The “ONEIDA” brand is among the most recognizable in the tabletop industry. End users of the Company’s products include both individual consumers and institutions, such as restaurants, hotels and airlines. Over the past two decades, the Company has experienced a number of significant business challenges as a result of external factors, such as increased competition from foreign manufacturers and a shift in consumer preferences. The Company responded to these challenges by transforming its business from a principally manufacturing-based business model to a model based exclusively on sourcing and distribution.

C. 2004 Financial Restructuring

8. In addition to its operational transformation, the Company also completed an out-of-court financial restructuring on August 9, 2004 (the “2004 Financial Restructuring”).

Pursuant to the 2004 Financial Restructuring, Oneida's senior lenders agreed to (i) exchange approximately \$30 million of secured debt for approximately 62% of Oneida's common stock and (ii) restructure Oneida's remaining outstanding secured debt pursuant to that certain Second Amended and Restated Credit Agreement (as amended, the "Prepetition Credit Agreement") dated as of August 9, 2004 among Oneida, the lenders thereto (collectively, the "Prepetition Lenders") and JPMorgan Chase Bank, N.A. (f/k/a JPMorgan Chase Bank), as administrative agent and collateral agent (the "Prepetition Agent"). The Prepetition Credit Agreement provided, among other things, for a \$30 million revolving credit facility, which includes availability for the issuance of letters of credit up to \$11 million (the "Prepetition Revolver"), and two term loans, a \$125 million tranche A term loan (the "Tranche A Loan") and an approximately \$80 million tranche B term loan (the "Tranche B Loan," and together with the Prepetition Revolver and the Tranche A Loan, the "Prepetition Loans"). The Prepetition Loans are secured by a first-priority lien on substantially all of the assets of Oneida and its domestic subsidiaries. Among the Prepetition Loans, the Prepetition Revolver ranks first with respect to the collateral secured by the Prepetition Loans, the Tranche A Loan ranks second and the Tranche B Loan ranks third.

D. Events Leading to Chapter 11 Filings

9. The 2004 Financial Restructuring did not sufficiently deleverage the Company. Moreover, the Company's projected minimum pension contribution amounts ultimately will exceed the Debtors' projected earnings over the next three years. Accordingly, faced with the prospect that the Company would be unable to satisfy the financial covenants contained in the Prepetition Credit Agreement, or repay or refinance that debt, the Company initiated a dialogue in November 2005 with the Prepetition Agent and the Prepetition Lenders to discuss its options. Following numerous meetings with the Prepetition Agent and the Prepetition

Lenders, in which the Company discussed the constructs of a recapitalization plan, the Company met with the Pension Benefit Guaranty Corporation (the "PBGC") to update it as to the Company's precarious financial position, inform it of the Company's discussions with the Prepetition Lenders and discuss effectuating a distress termination of one or more of the Company's three defined benefit plans.

10. Following extensive negotiations with the Prepetition Agent and the Prepetition Lenders, on March 9, 2006 the Company announced that it had entered into a plan support agreement (the "Plan Support Agreement") with 94% of the Prepetition Lenders holding Tranche A Loans and 100% of the Prepetition Lenders holding Tranche B Loans (a copy of the Plan Support Agreement is attached as Exhibit B to the Disclosure Statement). Pursuant to the terms of the Plan Support Agreement, the Prepetition Lenders party thereto agreed to support the Plan upon the satisfaction of certain conditions. Based on the number and percentage of Prepetition Lenders that have executed the Plan Support Agreement, the Debtors believe that they have received commitments to support the Plan from a sufficient number of Prepetition Lenders to confirm the Plan. Moreover, the Debtors believe that the Plan provides for appropriate treatment of all classes of claims and equity interest holders, taking into account the valuation of the Company, the differing natures and priorities of the claims and equity interests, and the fact that the outstanding amount owed to the holders of the Tranche B Loan, which is secured by a first priority lien (junior only to the liens in favor of the holders of the Prepetition Revolver and the Tranche A Loan) on all of the Debtors' assets (other than (x) limited property of the Debtors' over which the PBGC has an unsubordinated first priority tax lien and (y) certain customary permitted liens set forth in the Prepetition Credit Agreement), substantially exceeds the value of the Debtors' assets.

11. Specifically, the Plan provides for, among other things, (i) repayment in full of the Debtors' then-outstanding debt in possession financing and the Tranche A Loan, pursuant to an exit financing facility for which the Debtors have received a firm commitment, (ii) conversion of the Tranche B Loan into 100% of the issued and outstanding equity of reorganized Oneida as of the effective date of the Plan, (iii) a distribution to the PBGC of a \$3 million promissory note that (x) has a variable rate of interest if the PBGC votes to accept and does not object to the Plan and (y) is not interest bearing in the event that the PBGC votes to reject or objects to the Plan, (iv) payment in full of all other allowed general unsecured claims of the Debtors and (v) cancellation of all of Oneida's existing equity interests.

Jurisdiction

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363, 503(b)(9), 1107 and 1108 of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure, as amended by this Court's General Order M-308, dated October 11, 2005 (the "Bankruptcy Rules").

Relief Requested

13. By this Motion, the Debtors seek entry of an interim order (the "Interim Order") pursuant to sections 105(a), 363, 503(b)(9), 1107 and 1108 of the Bankruptcy Code (i) authorizing but not directing the Debtors to pay (a) in an amount not to exceed \$500,000, the prepetition claims of those domestic vendors, suppliers and service providers (collectively, the "Essential Suppliers," and the prepetition claims of such Essential Suppliers being the "Essential Supplier Claims") that provide goods and services to the Debtors that the Debtors deem, in the exercise of their business judgment, to be essential to the uninterrupted functioning of the

Debtors' business operations (the "Essential Goods and Services") and (b) the prepetition claims of certain suppliers of goods to the Debtors (collectively, the "Administrative Expense Vendors") to the extent that such claims are entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code (the "Administrative Expense Vendor Claims") and (ii) scheduling a final hearing to determine whether the relief requested herein should be granted on a final basis (the "Final Hearing").

14. As a condition to any such payments, however, unless otherwise waived by the Debtors, in their sole discretion, the Debtors propose to require that any Essential Supplier or Administrative Expense Vendor agree to provide the Debtors with goods or services on credit, pricing or payment terms and order limits that are substantially equal to, or better than, those that they provided to the Debtors on a historical basis prepetition.

15. The Debtors typically pay their Essential Suppliers and Administrative Expense Vendors with funds drawn by checks or by means of electronic funds transfers. Accordingly, to implement the relief sought herein, the Debtors also request that their banks and other financial institutions (collectively, the "Debtors' Banks") be authorized and directed to receive, process, honor and pay all checks presented for payment of, and to honor all electronic transfers requested to be made by the Debtors in payment of, the Essential Supplier Claims and the Administrative Expense Vendor Claims, regardless of whether such checks were presented or such electronic transfer requests were submitted prior to or after the Petition Date; provided, however, that (i) funds are available in the Debtors' accounts to cover such checks and electronic transfers and (ii) the Debtors' Banks are authorized to rely on the Debtors' designation of any particular check or electronic transfer as being approved by the order granting the relief sought herein.

Basis for Relief

A. Essential Suppliers

16. In the ordinary course of business, the Debtors purchase Essential Goods and Services from the Essential Suppliers. The continued provision of these goods and services is essential to the Debtors if they are to continue to meet the expectations of their customers during the pendency of these chapter 11 cases.

17. In determining the universe of Essential Suppliers, the Debtors considered, among others, the following criteria: (i) the likelihood that failure to pay prepetition claims would result in the creditor's refusal to ship goods, provide services or do business with the Debtors; (ii) whether the enforcement of a contract with a creditor that refuses to ship goods or provide services could be accomplished in a timely and cost-efficient manner without unduly disrupting the Debtors' operations; (iii) whether the goods or services the creditor provides could be replaced on a timely basis and on equivalent or better terms; (iv) whether failure to pay the creditor's prepetition trade claims would disrupt the Debtors' operations, at significant cost to the Debtors; (v) whether failure to pay the creditor's prepetition trade claims would reduce the Debtors' sales or future revenue; and (vi) whether failure to pay the creditor's prepetition trade claims would prevent the Debtors from meeting commitments to their customers, thereby eroding goodwill and potentially giving rise to significant damage claims.

18. In the Debtors' business judgment, failure to pay the Essential Supplier Claims likely would cause the Essential Suppliers to cease providing goods and services to the Debtors which, in turn, would impair the Debtors' ability to generate revenue and weaken the Debtors' ability to recapitalize. In some cases, no other vendor or supplier is able to supply the required goods or services. In other cases, substitute goods or services from other potential vendors or suppliers theoretically may be available, but these alternative vendors or suppliers

cannot provide goods or services that meet the Debtors' (and, more importantly, the Debtors' customers') requirements for quality, quantity, price and design, or cannot ensure reliable delivery on a cost-efficient and timely basis in the locations required by the Debtors.

19. The tableware industry has a limited number of major suppliers that are capable of meeting the Debtors' high standards. Many of the Essential Suppliers possess custom tooling, in the form of equipment, molds and dies, that is necessary for the production of the Debtors' uniquely designed products. Replacing those Essential Suppliers, therefore, would require significant investment of money and time as new suppliers reproduce existing tooling and commence production. The process of qualifying replacement suppliers would require extensive testing and evaluation – particularly in those instances in which the Debtors' standards are customer-specific and highly specialized – which would cause delay in meeting the demands of customers and consume management resources. Finally, even if the Debtors could replace the Essential Suppliers with minimal delay, it is probable that the Debtors would be compelled to accept higher prices than those the Debtors currently pay to their Essential Suppliers.

20. Delayed and uncertain delivery schedules, resulting from damaged relations with Essential Suppliers, would result in customer dissatisfaction, especially if accompanied by declines in product quality and price increases. Changes in suppliers also could affect the Debtors' ability to provide customers with replacement pieces. Moreover, customers could assert damage claims for non-delivery of the Debtors' products, which, if valid, could dilute stakeholder recoveries substantially. The long-term damage caused by such disruptions to the Debtors' businesses would be extraordinary and difficult to repair.

21. The Debtors therefore believe that it is in the best interests of their estates, their creditors and other parties-in-interest to ensure the continued availability of the Essential Goods and Services by satisfying the Essential Supplier Claims. The Debtors are current with

respect to their obligations to the Essential Suppliers and have been making payments in the ordinary course. Thus, the Debtors are not seeking authority to pay long-outstanding payables but, rather, to continue making ordinary course payments, including those on obligations incurred prepetition to Essential Suppliers. The Debtors estimate that the aggregate amount of Essential Supplier Claims will not exceed \$500,000 (the "Essential Supplier Claims Cap"). The Essential Supplier Claims Cap represents approximately 12.7% of the Debtors' average monthly disbursement to trade creditors in 2005, which is estimated to be approximately \$3.94 million.² The Debtors submit that the cap represents an immaterial portion of the aggregate obligations of the Debtors, especially in light of the importance of the Essential Suppliers to the Debtors' ongoing operations. Moreover, given that the Debtors' proposed Plan (which, as previously stated, is supported overwhelmingly by the Prepetition Lenders) provides for the payment in full of all general unsecured non-priority claims in Class 6, the immediate payment of the Essential Supplier Claims likely would affect the timing, but not the amount, of such payments.

B. Administrative Expense Vendors

22. Pursuant to section 503(b)(9) of the Bankruptcy Code, payment obligations on account of goods received by the Debtors in the ordinary course of business within 20 days of the Petition Date are entitled to administrative expense priority. As the Debtors are required to pay administrative expense claims in full, pursuant to a confirmed plan of reorganization, payment of the Administrative Expense Vendor Claims will not deplete the pool of assets generally available to other unsecured creditors but, rather, will affect only the timing of such payments. In addition, some of the Administrative Expense Vendors also are Essential Suppliers; but for the administrative expense priority found in section 503(b)(9), the Debtors would seek to pay such Administrative Expense Vendor Claims as Essential Supplier Claims.

² The Debtors reserve the right to later seek Court authority to increase the Essential Supplier Claims Cap.

The Debtors estimate that the aggregate amount of Administrative Expense Vendor Claims is approximately \$5.75 million, which the Debtors submit is immaterial relative to the aggregate amount of the Debtors' outstanding obligations.

C. Continuation of Customary Trade Terms

23. In return for payment of the prepetition Essential Supplier Claims and the Administrative Expense Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtors in their sole discretion, the Debtors propose that each Essential Supplier and Administrative Expense Vendor be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Essential Supplier or Administrative Expense Vendor and the Debtors prior to the Petition Date (the "Customary Trade Terms"), or on such other terms as mutually agreed. The Debtors further propose that if any Essential Supplier or Administrative Expense Vendor accepts payment on account of a prepetition obligation of the Debtors and thereafter does not continue to provide services to the Debtors on Customary Trade Terms, or on such other terms as mutually agreed, such payment will be deemed an avoidable postpetition transfer pursuant to section 549 of the Bankruptcy Code and, therefore, will be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the claim will be reinstated as a prepetition claim in the amount so recovered. The Debtors also seek authorization but not direction to obtain written verification, before issuing payment to any Essential Supplier or Administrative Expense Vendor, that such Essential Supplier or Administrative Expense Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms, or on such other terms as mutually agreed; provided, however, that the absence of such written verification will not limit the Debtors' rights sought hereunder.

D. Relief from Bankruptcy Rule 6004(h)

24. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As discussed above, the Debtors’ operations would face significant disruptions if delivery of Essential Goods and Services were interrupted as a result of the stay. Thus, the Debtors respectfully submit that the immediate need for the relief sought herein renders a ten-day stay untenable and justifies its waiver.

E. Final Hearing Date

25. The Debtors propose that the Final Hearing be scheduled not less than 20 days after entry of the Interim Order. The Debtors will serve copies of the Interim Order on (i) the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”), (ii) the Debtors’ 30 largest unsecured creditors, (iii) counsel for the Prepetition Agent, (iv) counsel for the agent under the Debtors’ proposed postpetition credit facility, (v) the PBGC, (vi) the Internal Revenue Service and (vii) any statutory committee appointed in these chapter 11 cases.

26. Objections must be received no later than seven days prior to the Final Hearing and must also (i) be in writing, (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, as amended (the “Local Rules”), (iii) be filed with this Court in accordance with General Order M-242, as amended (registered users of this Court’s case filing system must file electronically and all other parties-in-interest must file on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format), (iv) be submitted in hard-copy form directly to chambers and (v) be served upon (a) the Debtors at Oneida Ltd., 163-181 Kenwood Avenue, Oneida, NY 13421 (Att’n:

General Counsel), (b) counsel to the Debtors, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022 (Att'n: Douglas P. Bartner, Esq. and Michael H. Torkin, Esq.), (c) the U.S. Trustee, 33 Whitehall Street, Suite 2100, New York, New York 10044 (Att'n: Deirdre A. Martini, Esq.), (d) counsel to the Prepetition Agent and the agent under the Debtors' proposed postpetition credit facility, Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178 (Att'n: Richard S. Toder, Esq. and Leonard Klingbaum, Esq.) and (e) any statutory committee that may be appointed in these chapter 11 cases.

27. Nothing in this Motion or any interim or final order sought from this Court approving this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of an Essential Supplier or Administrative Expense Vendor under applicable non-bankruptcy law.

Applicable Authority

28. The relief requested in this Motion is supported by several provisions of the Bankruptcy Code that authorize a debtor to honor prepetition obligations in certain circumstances. Courts have recognized each of these statutory provisions as valid authority for such payments. First, courts have found a basis for allowing debtors to make payments to creditors under section 363 of the Bankruptcy Code. See, e.g., In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002). Second, authority for such payments also may be found in sections 1107(a) and 1108 of the Bankruptcy Code, which vest debtors in possession with the duty and authority to continue operating their businesses. Sometimes this duty, and the accompanying fiduciary duty to maximize estate value, can be fulfilled only through the preplan payment of certain unsecured claims. See, e.g., In re Mirant Corp., 296 B.R. 427 (Bankr. N.D. Tex. 2003); In re CoServ, L.L.C., 273 B.R. 487, 498 (Bankr. N.D. Tex. 2002). Finally, courts have authorized payment of prepetition obligations pursuant to section 105(a) of the Bankruptcy

Code, which allows a bankruptcy court to enter any order “necessary or appropriate” to carry out the provisions of the Bankruptcy Code. See, e.g., In re Just for Feet, Inc., 242 B.R. 821 (D. Del. 1999).

A. This Court May Authorize Payment of the Essential Supplier Claims Pursuant to Section 363 of the Bankruptcy Code

29. The relief requested in this Motion is authorized pursuant to section 363(b) of the Bankruptcy Code, which provides 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, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); FV Steel and Wire Co., Case No. 04-22421 (Bankr. E.D. Wis. 2004) (authorizing the continuation of customer programs and the payment of prepetition claims under section 363 of the Bankruptcy Code); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-the-ordinary-course transaction). To do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” In re Ionosphere Clubs, 98 B.R. at 175.

30. The justification for the relief requested in this Motion easily satisfies this standard. As described above, the Debtors have determined that if the Essential Supplier Claims are not paid, the Essential Suppliers likely will cease providing goods and services to the Debtors. The consequences of such a cessation would be extraordinary and difficult to repair. In some cases, no other vendor or supplier other than the Essential Supplier can supply the required goods or services. In other cases, the substitution of goods or services from other potential vendors or suppliers is impractical, since these alternative vendors or suppliers either would not

be able to provide goods or services that meet the Debtors', and their customers', high standards and requirements for quality, quantity, price and design, or cannot ensure availability on a cost-efficient and timely basis. As a result, the Debtors cannot rely on these alternative sources to supply these goods and services. Interruptions in the supply of Essential Goods and Services therefore would disrupt the Debtors' ability to deliver superior products on time, frustrating customer expectations and eroding customer loyalty and goodwill.

31. Moreover, not only would such an outcome negatively affect the Debtors' revenues, cash flows and profitability, but it could cause the Debtors' customers to assert damage claims against the Debtors' estates. The Debtors believe that the proposed payment of Essential Supplier Claims – in an amount no greater than \$500,000 – is immaterial when compared to the amount of damage that the Debtors' businesses likely would suffer should the relief requested herein not be granted. For the reasons discussed above, the Debtors' estates, their creditors and other parties-in-interest would benefit from the requested relief, which will help ensure a smooth transition into bankruptcy with minimal impairment of the Debtors' ongoing operations and enterprise value. The Debtors therefore submit that the relief requested herein is justified by sound business reasons.

B. This Court May Authorize Payment of the Essential Supplier Claims as a Valid Exercise of the Debtors' Fiduciary Duties

32. The Debtors, operating their businesses as debtors in possession pursuant to 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*, 273 B.R. at 497. 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.*

33. 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.* at 497.

34. Payment of the Essential Supplier Claims is necessary to preserve the Debtors’ going-concern value. The harm and economic disadvantage that would result from the failure of the Essential Suppliers to provide Essential Goods and Services to the Debtors in a timely manner is disproportionate to the total amount of prepetition claims that would be paid to ensure the continued supply of these critical goods and services. In addition, with respect to each Essential Supplier, the Debtors have examined other legal options short of payment of such creditor’s prepetition claims and have determined that, to avoid significant disruption to the Debtors’ businesses, there exists no practical or legal alternative to payment of the Essential Supplier Claims. Therefore, the Debtors can best meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Essential Supplier Claims.

C. This Court May Rely on the “Necessity of Payment” Doctrine and Its General Equitable Powers to Grant the Motion

35. The traditional source of authority for preplan payments of prepetition debts is the “doctrine of necessity” or “necessity of payment” rule first recognized by the Supreme Court more than 120 years ago in *Miltenberger v. Logansport, C. & S. Ry. Co.*, 106 U.S. 286 (1882). In *Miltenberger*, the Supreme Court acknowledged the basic duty of an equity receiver “to protect and preserve the trust funds in its hands.” *Id.* at 310 (quoting *Wallace v. Loomis*, 97 U.S. 146, 162-63 (1878)). More importantly, the Court held that, consistent with this duty, “[m]any circumstances may exist which may make it necessary and indispensable to the

business . . . and the preservation of the property, for the receiver to pay pre-existing debts . . . out of the earnings of the [debtor] . . . under the order of the court” Id. at 311-12.

36. This 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.” In re Ionosphere Clubs, 98 B.R. at 176; see also In re UNR Indus., Inc., 143 B.R. 506, 519-20 (Bankr. N.D. Ill. 1992), rev’d on other grounds, 173 B.R. 149, 158-59 (N.D. Ill. 1994); see also In re Lehigh & N.E. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors’ claims authorized under “necessity of payment” doctrine); In re CAF Bindery, Inc., 199 B.R. 828 (Bankr. S.D.N.Y. 1996) (payment of prepetition claims warranted when critical to debtor’s reorganization). This doctrine is consistent with the paramount goal of chapter 11 – “facilitating the continued operation and rehabilitation of the debtor.” In re Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (“Let it [(a hotel)] once shut down, and it will lose much of its value. . . . Some priority [to the hotel’s prepetition suppliers] may be as essential to preservation of the business.”).

37. The court’s general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the court 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). A bankruptcy court’s use of its equitable powers 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.” In re Ionosphere Clubs, Inc., 98 B.R. at 175 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court “can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992). Maintaining access to the goods and services supplied by the Essential Suppliers is critical to the Debtors’ operations and is in the best interests of the

Debtors' estates, creditors and other parties-in-interest. This Court therefore should exercise its equitable powers to grant the relief requested in this Motion.

38. It is not uncommon for courts in this district and other jurisdictions to authorize the payment of critical trade claims where the payment of such claims is essential to the debtor's continued operations. See, e.g., In re Delphi Corp., Case No. 05-44481 (Bankr. S.D.N.Y. Oct. 13, 2005); In re Tower Auto, Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Mar. 14, 2005); In re Spiegel Inc., Case No. 03-11540 (Bankr. S.D.N.Y. Mar. 18, 2003); In re WorldCom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y. July 22, 2002); In re Enron Corp., Case No. 01-16034 (Bankr. S.D.N.Y. Dec. 3, 2001); see also In re Meridian Auto. Sys. – Composites Operations Inc., Case No. 05-11168 (Bankr. D. Del. Apr. 27, 2005 and May 26, 2005). Accordingly, ample authority exists to support the Debtors' request to make payments to Essential Suppliers as set forth herein.

D. Payment of Administrative Expense Vendor Claims Is Justified to the Extent Such Claims Are Entitled to Administrative Expense Priority

39. Because, pursuant to section 503(b)(9) of the Bankruptcy Code, Administrative Expense Vendor Claims must be paid in full prior to the receipt by other general unsecured creditors of any distribution, the immediate payment of such claims likely would affect the timing, but not the amount, of such payments. In addition, some of the Administrative Expense Vendors also are Essential Suppliers and, therefore, the payment of their Administrative Expense Vendor Claims is supported by the argument set forth above with regard to the payment of the Essential Supplier Claims. Furthermore, by reserving their right to require, as a condition to any payments to Essential Suppliers or Administrative Expense Vendors, that each Essential Supplier or Administrative Expense Vendor agree to provide credit, pricing or payment terms and order limits equal to, or better than, those that it provided to the Debtors prepetition, the

Debtors anticipate they will be able to enhance their liquidity during these chapter 11 cases to the benefit of their estates, their creditors and other parties-in-interest.

E. This Court Should Authorize and Direct Financial Institutions to Honor and Process Checks and Transfers Related to Essential Supplier Payments

40. The Debtors pay their Essential Suppliers and Administrative Expense Vendors with funds drawn by checks or by means of electronic funds transfers. Before the Petition Date, the Debtors remitted checks or electronic transfers, on account of certain Essential Supplier Claims and Administrative Expense Vendor Claims, that may not have cleared as of the Petition Date. To the extent any of these checks or electronic transfers have not cleared the Debtors' Banks as of the Petition Date, the Debtors request that this Court authorize and direct the Debtors' Banks to receive, process, honor and pay the checks and electronic transfers without the need for further Court approval. If the Essential Suppliers and Administrative Expense Vendors have not received payment for amounts in connection with the Essential Supplier Claims or Administrative Expense Vendor Claims, respectively, the Debtors seek authority, in the Debtors' sole discretion, to issue replacement checks, resubmit electronic transfers or otherwise make payment to such Essential Suppliers or Administrative Expense Vendors without the need for further Court approval.

41. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' rights to dispute any claim on any grounds, (iii) a promise to pay any claim, (iv) an implication or admission that any particular claim against the Debtors would constitute an Essential Supplier Claim or an Administrative Expense Vendor Claim or (v) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

Notice

42. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery or hand delivery to (i) the U.S. Trustee, (ii) the Debtors' 30 largest unsecured creditors, (iii) counsel for the Prepetition Agent, (iv) counsel for the agent under the Debtors' proposed postpetition credit facility, (v) the PBGC and (vi) the Internal Revenue Service. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum of Law

43. Because the legal points and authorities upon which this Motion relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law pursuant to Local Rule 9013-1(b) be deemed satisfied.

No Prior Request

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

[Remainder of page has been left blank by intention]

WHEREFORE the Debtors respectfully request that this Court enter interim and final orders in the forms attached hereto granting the relief requested herein and such other and further relief as may be warranted and just.

Dated: New York, New York
March 19, 2006

By: /s/ Douglas P. Bartner
Douglas P. Bartner (DB-2301)
Michael H. Torkin (MT-5511)
Bryan R. Kaplan (BK-2627)

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