

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re) Chapter 11
)
) Case No. 09-12869 (JVA)
SENCORP, et al.,¹) (Joint Administration Requested)
)
) Honorable J. Vincent Aug, Jr.
Debtors.)
)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS (A) TO MAINTAIN POSTPETITION
FINANCING OF INSURANCE PREMIUMS AND RENEWALS THEREOF
AND (B) TO PAY PREPETITION PREMIUMS NECESSARY TO
MAINTAIN INSURANCE COVERAGE IN CURRENT EFFECT**

(“INSURANCE PREMIUM FINANCING MOTION”)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit A, authorizing Debtors (A) to maintain postpetition financing of insurance premiums and renewals thereof and (B) to pay prepetition premiums necessary to maintain insurance coverage in current effect. In support, the Debtors respectfully state:²

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 this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these Chapter 11 cases are: SENCORP, Senco Products, Inc., Senco Export, Inc., SenSource Global Sourcing, LLC, TyRex, LLC, Global Fastening Solutions, LLC, Agrifast, LLC, Nexicor, LLC, Omnifast, LLC, S C FINANCIAL, INC., Senco International, Inc., Sentron Medical, Inc., and Gregg Laboratories, Inc.

² The facts and circumstances supporting this Motion are set forth in the Affidavit of David T. Fyffe, Vice President-Corporate Financial Operations and Treasurer of SENCORP, in Support of First Day Motions (the “**First Day Affidavit**”), filed contemporaneously herewith.

2. The statutory bases for the relief requested herein are Sections 105(a), 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “**Bankruptcy Code**”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

3. The Debtors commenced these above-captioned cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code on May 8, 2009 (the “**Petition Date**”). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their businesses and managing their affairs as debtors-in-possession. As of the date hereof, no creditors’ committee, trustee or examiner has been appointed in any of these Chapter 11 Cases.

4. The Debtors are a group of privately-held companies that collectively constitute a leading designer, manufacturer and distributor of branded pneumatic and battery powered staplers, nailers and screw systems and collated staples, nails and screws. The Debtors’ brand names are well-known in the industry for quality, reliability and service. The Debtors sell to a diversified customer base, including pro trades, industrial, consumer, international and commercial customer segments. Certain aspects of the Debtors’ businesses, including the SENCO name, have existed for over 50 years. As further evidence of the Debtors’ long-term success, most of the Debtors’ top ten customers have purchase products from the Debtors for more than 20 years.

5. Despite the Debtors' historical strength, the Debtors have not been immune to the recent widespread economic downturn. Over the past several years, the Debtors' sales volume and profitability have been negatively impacted by several economic factors, including (a) the sharp rise in the price of steel rod (the Debtors' primary raw material) to historic levels in 2008, (b) a severe decline in residential and commercial construction (the Debtors' primary customer segments) and (c) the deteriorating economic conditions leading to the current recession.

6. In response to these economic challenges, the Debtors implemented several critical initiatives in 2008 and early 2009. Among other things, the Debtors have implemented significant workforce reductions, as well as significant pay reductions for all of the Debtors' remaining employees, including senior management. The Debtors have also consolidated domestic manufacturing operations from two facilities to one, and have closed three of their six distribution centers. The Debtors have also implemented several moves designed to increase efficiency in inventory, supply and international operations.

7. Despite these efforts, it has recently become clear that the Debtors do not have sufficient liquidity to survive the current economic downturn in their current state. As a result, the Debtors engaged Mesirow Financial, Inc. ("**Mesirow**") on March 9, 2009 to serve as investment bankers for the Debtors to assist the Debtors in exploring possible sale transactions. Mesirow contacted over 100 financial and strategic parties, and after an intense, expedited marketing period the Debtors determined that the highest and best offer presently available to the Debtors was an offer from Wynnchurch Capital, Ltd. ("**Wynnchurch**") to serve as a stalking

horse bidder in a sale of substantially all of the Debtors' assets under Section 363 of the Bankruptcy Code.

8. On April 10, 2009, the Debtors executed a Letter of Intent (the "**LOI**") with Wynnchurch representing Wynnchurch's stalking horse bid for substantially all of the Debtors' assets. Thereafter, on May 7, 2009, the Debtors entered into a binding asset purchase agreement (the "**APA**") with Wynnchurch and Wynnchurch's affiliate Senco Holdings, Inc. for the purchase of substantially all of the Debtors' assets for \$41 million in cash, plus the assumption of certain liabilities. The APA requires the Debtors, among other things, to commence these Chapter 11 Cases by May 11, 2009, obtain by May 28, 2009 an order from this Court approving bidding procedures for the sale of the Debtors' assets, and to obtain an order from this Court by July 7, 2009 approving the sale of substantially all of the Debtors' assets to Wynnchurch (or its affiliates) or such other successful bidder as may be selected at the auction in accordance with the bidding procedures. The Debtors are proceeding with a proposed sale process on those timelines.

9. Subject to the approval of this Court, the Debtors have obtained a proposed debtor-in-possession financing facility (the "**DIP Facility**") from the Debtors' prepetition secured lenders, led by Bank of America, NA, as administrative agent (the "**DIP Agent**") and as a lender, which the Debtors believe will provide the Debtors with sufficient liquidity through the above-described sale process.

SUMMARY OF INSURANCE POLICIES

10. In the ordinary course of the Debtors' businesses, the Debtors retain and maintain numerous insurance policies providing coverage for, among other things, property, general liability, workers' compensation, automobile liability and damage, commercial crime coverage, directors' and officers' liability, outside directors' liability, fiduciary liability, products liability, motor truck cargo, ocean cargo and non-US property (collectively, the "**Policies**"). A detailed list of the Policies that are currently held by the Debtors is attached hereto as Exhibit B. The Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in many cases, such coverage is required by various regulations, laws, and contracts that govern the Debtors' commercial activity.

11. The annual premiums for the policies total approximately \$1.1 million. It is not always economically advantageous for the Debtors to pay these premiums on a lump-sum basis. Accordingly, in the ordinary course of the Debtors' business, the Debtors finance the premiums on certain of their Policies (the "**Financed Policies**")³ pursuant to premium financing agreements (the "**PFA**s") with third-party lenders. Copies of the current PFAs dated January 21, 2009, February 11, 2009 and April 8, 2009, respectively, are attached hereto as Exhibit C (collectively, the "**Existing PFAs**").

12. The Existing PFAs can be described as follows:

- (i) For the Existing PFA dated January 21, 2009 ("**January 2009 PFA**"), the Debtors made down payments totaling \$25,715.94 and financed the remaining \$236,748.06 of premiums. The January 2009 PFA requires ten monthly installments of \$24,561.24 and

³ Not all of the Debtors Policies are financed pursuant to PFAs. For example, the Debtors' pay their general liability, auto liability and non-Ohio workers compensation insurance to their insurer on a monthly basis without any financing charge.

bears a total finance charge of \$8,864.34 on the total financed amount of \$245,612.40. The annual interest rate under the January 2009 PFA is 6.83%.

- (ii) For the Existing PFA dated February 11, 2009 (“**February 2009 PFA**”), the Debtors made down payments totaling \$13,574.31 and financed the remaining \$146,034.69 of premiums. The February 2009 PFA requires eleven monthly installments of \$13,574.31 and bears a total finance charge of \$3,282.72 on the total financed amount of \$149,317.41. The annual interest rate under the February 2009 PFA is 4.443%.
- (iii) For the Existing PFA dated April 8, 2009 (“**April 2009 PFA**”), the Debtors made down payments totaling \$43,420.67 and financed the remaining \$467,460.33 of premiums. The April 2009 PFA requires eleven monthly installments of \$43,420.67 and bears a total finance charge of \$10,167.04 on the total financed amount of \$477,627.37. The annual interest rate under the April 2009 PFA is 4.324%.

13. If the Debtors are unable to continue making payments on the Existing PFAs, the lenders may be permitted to terminate the Financed Policies to recoup their losses. The Debtors would then be required to obtain replacement insurance on an expedited basis and pay a lump-sum premium for the replacement insurance policies in advance, and this payment would be likely greater than the premiums currently paid by the Debtors under the existing policies. Even if the lenders were not permitted to terminate the Financed Policies, any interruption of payment would have a severe, adverse effect on the Debtors’ ability to finance premiums for future policies.

RELIEF REQUESTED

14. By this Motion, the Debtors propose to continue to finance the premiums for the Policies throughout these Chapter 11 Cases by continuing the Existing PFAs, renewing

the Existing PFAs in the ordinary course of business, and/or entering into new PFAs, each without the need for further authority or approval of the Court.

15. Moreover, because the Existing PFAs expire on a periodic basis related directly to the underlying insurance policies' expiration dates, the Debtors seek authority to renew their Existing PFAs or enter into new PFAs on competitive terms and conditions without further Court approval. The Debtors will need to continue their insurance coverage throughout the entire duration of these Chapter 11 Cases. The Debtors respectfully submit that the renewal of the PFAs falls squarely within their ordinary course of business but have filed this Motion out of an abundance of caution. To reduce the administrative burden on these Chapter 11 Cases, as well as the expense of operating as debtors in possession, the Debtors seek the Court's authority now to renew their Existing PFAs and to enter into new PFAs.

16. Finally, by this Motion, the Debtors propose to pay any prepetition premiums related to the Policies or to the Existing PFAs, to the extent that the Debtors determine in their discretion that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Policies. The Debtors estimate that as of the Petition Date, no such prepetition premiums were due and owing, but the Debtors nonetheless seek this relief out of an abundance of caution.

BASIS FOR RELIEF

17. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor-in-possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes

a debtor-in-possession operating its business pursuant to Section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or hearing. The Debtors submit that to the extent that it does not require or involve payment of prepetition claims, the Debtors' continued performance under, or the exercise of their rights pursuant to, the Existing PFAs in the ordinary course of business is permitted by Sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without the need for further application to the Court. Notwithstanding the foregoing, out of an abundance of caution, the Debtors also are seeking the Court's authorization, but not direction, to do so.

18. Moreover, the Operating Guidelines of the Office of the United States Trustee for the Southern District of Ohio require that debtors obtain and maintain insurance following the Petition Date. See Section 5, Chapter 11 Operating Instructions and Reporting Requirements, Office of the United States Trustee for Region 9 (Revised March 2008). In fact, under section 1112(b)(4)(C) of the Bankruptcy Code, failure to maintain insurance may be grounds for conversion or dismissal of a chapter 11 case.

19. To the extent the Debtors' obligations under or relating to any of the Existing PFAs constitute pre-petition obligations, the Debtors should be authorized, but not directed, to pay those obligations pursuant to Section 105(a) of the Bankruptcy Code, which states, in part, "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Courts have previously recognized the need for debtors in possession to pay prepetition obligations to protect the value and assets of the estate and to ensure a smooth continuation of the debtor's business, and courts have authorized

such payments pursuant to 11 U.S.C. § 105(a) under the “doctrine of necessity.” See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (noting that bankruptcy courts commonly use their equitable powers to authorize the payment of prepetition debts when such payment is needed for the debtor’s restructuring).

20. A statutory basis for this Court to authorize the Debtors to pay prepetition premiums to maintain insurance coverage may also be found in 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, such as prepetition PFA amounts. See Ionosphere Clubs, 98 B.R. at 175 (affirming lower court order authorizing payment of prepetition wages pursuant to Section 363(b) of the Bankruptcy Code). In order to do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983).

21. Further, pursuant to Section 364 of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured or unsecured debt if the borrowing is in the best interests of the estate. See In re Ames Dep’t Stores, Inc., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”); In re Simasko Production Co., 47 B.R. 444, 448-49 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s

best business judgment indicated that financing was necessary and reasonable for benefit of estate).

22. As set forth above, maintaining the Existing PFAs is critical to the Debtors' further business operations and the success of the Chapter 11 Cases. First, if the Debtors are unable to continue making payments on the Existing PFAs, the lenders may be permitted to terminate the Financed Policies to recoup their losses. The Debtors would then be required to obtain replacement insurance on an expedited basis and pay a lump-sum premium for the insurance policy in advance, and this payment would be likely greater than the existing policy premiums currently paid by the Debtors. Even if the lenders were not permitted to terminate the Financed Policies, any interruption of payment would have a severe, adverse affect on the Debtors' ability to finance premiums for future policies when the current Policies expire. Second, the Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in many cases, such coverage is required by various regulations, laws, and contracts that govern the Debtors' commercial activity. Accordingly, the detrimental effect on the Debtors' business resulting from cessation of the Policies or interruptions under the Existing PFAs would greatly outweigh the costs associated with honoring the Debtors' pre-petition obligations under the Policies and the Existing PFAs.

23. Without the potential to offer such relief as is requested here, the potential disruption to the Debtors' businesses would be significant. Indeed, this Court and other courts routinely grant the relief requested herein. See In re Milacron Inc., Case No. 09-11235 (JVA) (Bankr. S.D. Ohio March 12, 2009); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787

(PJW) (Bankr. D. Del. June 13, 2007); In re Curative Health Services, Inc., Case No. 06-10552 (SMB) (Bankr. S.D.N.Y. March 27, 2006); In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Jan. 18, 2006); In re Delta Air Lines, Inc., Case No. 05-17923 (ASH) (Bankr. S.D.N.Y. Sept. 15, 2005).

24. The Debtors also request that all applicable banks and other financial institutions be authorized and directed to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized and directed to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

25. Pursuant to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 20 days after the Petition Date if such relief is necessary to avoid immediate and irreparable harm. As explained above, continuing the Policies and the PFAs and satisfying any prepetition amounts owed thereunder is essential to the continued, uninterrupted operation of the Debtors' businesses. Without satisfaction of these amounts, the Debtors insurance coverage could be disrupted, to the potential great detriment of the Debtors' estates. For the foregoing reasons, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and accordingly, the Court should grant the relief requested herein.

26. Nothing in this Motion should be construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claims; or (c) an approval or assumption of any agreement, contract or lease pursuant to Section 365 of the Bankruptcy Code.

WAIVER OF MEMORANDUM OF LAW

27. This Motion includes citations to the applicable authorities and a discussion of their application to this Motion. Accordingly, the Debtors respectfully submit that such citations and discussion satisfy the requirement that the Debtors submit a separate memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule 9013-1(a).

NOTICE

28. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee for the Southern District of Ohio; (ii) counsel to the administrative agent for the Debtors' prepetition lenders; (iii) counsel to the administrative agent for the Debtors' proposed debtor-in-possession lenders; (iv) counsel to Wynnchurch; (v) the creditors listed on the Debtors' consolidated list of thirty largest unsecured creditors, as filed with the chapter 11 petitions; (vi) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; and (vii) any governmental unit listed in LBR 5003-1(d). In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances. **Please take notice that the Debtors have filed a Motion for an Expedited Hearing to consider First Day Motions and Applications, including the**

foregoing. The Debtors shall serve notice of the objection deadline and expedited hearing date pursuant to further order(s) of this Court.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors, in their discretion, to maintain postpetition financing of insurance premiums and renewals thereof; (b) authorizing the Debtors, in their discretion, to pay prepetition premiums necessary to maintain insurance coverage currently in effect; and (c) granting such other and further relief as this Court deems appropriate.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

LATHAM & WATKINS LLP

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- and -

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**PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS-IN-POSSESSION**

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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|-------------------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| SENCORP , <u>et al.</u> |) | Case No. 09-12869 (JVA) |
| |) | |
| Debtors. |) | Jointly Administered |
| |) | |

**ORDER AUTHORIZING THE DEBTORS (A) TO MAINTAIN POSTPETITION
FINANCING OF INSURANCE PREMIUMS AND RENEWALS THEREOF
AND (B) TO PAY PREPETITION PREMIUMS NECESSARY TO
MAINTAIN INSURANCE COVERAGE IN CURRENT EFFECT**

Upon consideration of the motion (the “Motion”)¹ of the Debtors² for entry of an order authorizing the Debtors (a) to maintain postpetition financing of insurance premiums and

¹ Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

² The Debtors in these Chapter 11 cases are: SENCORP, Senco Products, Inc., Senco Export, Inc., SenSource Global Sourcing, LLC, TyRex, LLC, Global Fastening Solutions, LLC, Agrifast, LLC, Nexicor, LLC, Omnifast, LLC, S C FINANCIAL, INC., Senco International, Inc., Sentron Medical, Inc., and Gregg Laboratories, Inc.

renewals thereof and (b) to pay prepetition premiums necessary to maintain insurance coverage currently in effect; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given, with no objections or requests for hearing having been filed, or all objections having been overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby:

1. ORDERED that the Motion is granted; and it is further
2. ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to continue and honor the terms of their Existing PFAs, and to renew the Existing PFAs or enter into new PFAs in the ordinary course of business as set forth in the Motion; and it is further
3. ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay any prepetition premiums related to Policies or the Existing PFAs as are necessary to avoid cancellation, default, alteration, assignment, attachment, lapse or any form of impairment to the coverage, benefits or proceeds provided under such Policies and to maintain the Policies in current force and effect; and it is further
4. ORDERED that all banks and other financial institutions on which checks were drawn or electronic payment requests made in payment of such prepetition premiums approved herein are authorized and directed to (i) receive, process, honor, and pay all such checks and electronic payment requests when presented for payment (assuming that sufficient funds are then available in the Debtors' bank accounts to cover such payments), and (ii) rely on

the Debtors' designation of any particular check or electronic payment request as approved by this Order; and it is further

5. ORDERED that the Debtors are authorized to reissue any check, electronic payment or other transfer, which was drawn in payment of any such prepetition premiums that is not cleared by a depository; and it is further

6. ORDERED that nothing herein, nor the payment of any claims authorized herein, shall prejudice or impair the Debtors' ability to contest, in their sole discretion, the validity and amounts of any claim owing to any party or be deemed a waiver of any rights or remedies of the Debtors; and it is further

7. ORDERED that nothing herein shall be deemed to constitute the postpetition assumption of any executory contracts by the Debtors and all rights of the Debtors under Section 365 of the Bankruptcy Code are hereby preserved; and it is further

8. ORDERED that the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm; and it is further

9. ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

10. ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

11. ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SO ORDERED.

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