

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

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

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER UNDER 11 U.S.C.
§§ 105(A) AND 366 (I) PROHIBITING UTILITIES FROM DISCONTINUING,
ALTERING, OR REFUSING SERVICE, (II) ESTABLISHING PROCEDURES
FOR DETERMINING ADEQUATE ASSURANCES OF PAYMENT, AND
(III) ESTABLISHING PROCEDURES FOR UTILITIES TO OPT OUT
OF THE DEBTORS’ PROPOSED PROCEDURES FOR ADEQUATE ASSURANCE**

(“MOTION TO ESTABLISH ADEQUATE ASSURANCE FOR UTILITIES”)

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), hereby move this Court (the “**Motion**”) for entry of interim and final orders (respectively, the “**Interim Order**” and the “**Final Order**”), in substantially the forms attached hereto as Exhibit B and Exhibit C, respectively (i) prohibiting utilities from altering, refusing, or discontinuing service to, or discriminating against, the Debtors, (ii) establishing procedures for determining adequate assurance of payment, and (iii) establishing procedures for utilities to opt out of the Debtors’ proposed procedures for adequate assurance. In support of this Motion, the Debtors respectfully state:²

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.

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.

2. The statutory bases for the relief requested herein are Sections 105(a) and 366 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**”).

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.

RELIEF REQUESTED

10. Section 366(b) of the Bankruptcy Code prevents utility companies from discontinuing, altering or refusing service to a debtor during the first twenty days of a bankruptcy case. However, thirty days from the Petition Date, a utility company may discontinue its services, pursuant to Section 366(c)(2) of the Bankruptcy Code, if a debtor has not furnished adequate assurance of payment.

11. By this Motion, the Debtors seek entry of interim and final orders: (a) determining that their Utility Providers (as defined below) have been provided with adequate assurance of payment within the meaning of Section 366 of the Bankruptcy Code; (b) approving the Debtors' proposed procedures for Utility Providers to request additional or different adequate assurance; (c) prohibiting the Utility Providers from altering, refusing or discontinuing services to, or discriminating against, the Debtors on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance or the commencement of these Chapter 11 Cases; (d) establishing procedures for the Utility Providers to seek to opt out of the Debtors' proposed adequate assurance procedures; and (e) determining that the Debtors are not required to provide any additional adequate assurance, beyond what is proposed by this Motion.

THE UTILITY PROVIDERS

12. In the operation of their facilities, the Debtors incur utility expenses for, among other things, water, sewer service, electricity, natural gas, and telephone service in the ordinary course of business. These utility services are provided by approximately 17 providers (collectively, the "**Utility Providers**"), including those listed on Exhibit A (the "**Utility Service List**").³ On average, the Debtors spend approximately \$224,000 each month on utility costs. As of the Petition Date, approximately \$560,000 in utility costs were outstanding. In light of the minimal amount of outstanding utility costs, the Debtors believe that the proposed Adequate Assurance Deposit (as defined below) is more than sufficient to provide the Utility Providers with adequate assurance of payment.

³ Although the Debtors believe that Exhibit A encompasses all entities that could qualify as a Utility Provider, the Debtors reserve the right, without further order of this Court, to supplement the list if any Utility Provider has been omitted. Additionally, the listing of an entity on Exhibit A is not an admission that any particular entity is a utility within the meaning of Section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

13. Uninterrupted utility services are essential to the Debtors' ongoing business operations and, therefore, to the success of their chapter 11 efforts. Should the Utility Providers refuse or discontinue service to the Debtors' manufacturing, distribution, or administrative facilities, even for a brief period, the Debtors' business operations would be severely disrupted.

14. Simply put, without utility service, the Debtors' operations will shut down. Continuity of services is particularly critical in this case because the Debtors have substantial manufacturing facilities that rely on various utilities for continued operation. Failure to maintain continuously operating facilities will inevitably harm customer relations. Indeed, an interruption of utility services would negatively impact the Debtors' business operations, customer relationships, revenue, and profits, seriously jeopardizing the Debtors' chapter 11 efforts. It is, therefore, critical that utility services continue uninterrupted.

PROPOSED ADEQUATE ASSURANCE

15. The Debtors fully intend to pay all postpetition obligations owed to the Utility Providers in a timely manner. Further, the Debtors expect that cash collateral and borrowings under the Debtors' proposed debtor-in-possession financing facility will be more than sufficient to pay the Debtors' postpetition obligations, including all postpetition utility obligations.

16. Nevertheless, the Debtors propose to provide adequate assurance to the Utility Providers by making a deposit equal to two weeks of utility service, calculated as a historical average over the past twelve months, to all Utility Providers as adequate assurance (the "**Adequate Assurance Deposit**") within five (5) business days of this Court's entry of the Interim Order, provided that such Utility Provider is not currently paid in advance for its services and/or does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit). As a condition of accepting an Adequate Assurance Deposit, the requesting Utility Provider shall be deemed to

have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Provider within the meaning of Section 366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during these Chapter 11 Cases, unless the Utility Provider makes an additional adequate assurance request at least five (5) business days prior to the final hearing date on this Motion as set by this Court (the “**Final Hearing Date**”). Finally, the Utility Provider will be required to return the Adequate Assurance Deposit to the Debtors within the earlier of fifteen days of the effective date of any confirmed plan of reorganization or liquidation or the closing of a sale of substantially all of the Debtors assets, if not returned or applied sooner.

17. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future utility services in the ordinary course of business (collectively, the “**Proposed Adequate Assurance**”), constitutes sufficient adequate assurance to the Utility Providers. If any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

PROPOSED ADEQUATE ASSURANCE PROCEDURES

18. Section 366(a) of the Bankruptcy Code recognizes the necessity of continuous utility services and prohibits Utility Providers from altering, refusing or discontinuing utility services to, or discriminating against, a debtor due to either its bankruptcy filing or any outstanding prepetition obligations for a period of 30 days after the filing.⁴ At the conclusion of

⁴ There is an apparent discrepancy between subsections (b) and (c) of Section 366 of the Bankruptcy Code because these two subsections set forth different time periods during which a utility is prohibited from altering, refusing or discontinuing utility service. Specifically, Section 366(b) of the Bankruptcy Code allows a utility to alter, refuse or discontinue service “if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment,” while Section 366(c)(2) of the Bankruptcy Code allows a utility in “a case filed under chapter 11 “to alter, refuse or discontinue service to a chapter 11 debtor “if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service....” (emphases added).

that 30 days, however, a utility company may discontinue services if a debtor has not furnished adequate assurance of payment. 11 U.S.C. § 366(c)(2). In this case, and absent the procedures proposed in this Motion, Utility Providers may discontinue service, without warning, on the date that is 30 days following the Petition Date, if they claim they have not yet received a “satisfactory” adequate assurance payment (at least from their subjective point of view). Although the Debtors could contest this action - or pay a Utility Provider’s late demand - by the time that they did so, irreparable damage will have already been done to the Debtors’ operations and customer relations.

19. In light of the severe consequences to the Debtors of any interruption in utility services, but recognizing the right of Utility Providers to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors are proposing procedures that will enable them to cooperatively work with the Utility Providers in a coordinated manner to consensually resolve adequate assurance issues. If the Debtors and a Utility Provider cannot consensually resolve such issues, this Court should determine first whether an additional adequate assurance payment is necessary (in view of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) and, if so, how much it should be before the Utility Provider may cease performance for failure of adequate assurance. The procedures the Debtors propose to effectuate this result are as follows (the “**Adequate Assurance Procedures**”):

- a. The Debtors will fax, email, serve by overnight mail or otherwise expeditiously send a copy of this Motion, together with the proposed Interim and Final Orders, which Motion includes the proposed procedures,

Under the statutory construction canon *lex specialis derogat legi generali* (“specific language controls over general”), the language of Section 366(c)(2) controls here because the Debtors are chapter 11 debtors. See 3 Collier on Bankruptcy ¶ 366.03121 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2006) (“It is unclear how the 30-day period [in Section 366(c)(2) of the Bankruptcy Code] meshes with the normal 20-day period in Section 366(b). The better view is that, because Section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in Section 366(b), should apply.”).

to each Utility Provider within three (3) business days after the entry of the proposed Interim Order.

- b. The Debtors will pay each Utility Provider an Adequate Assurance Deposit within five (5) business days of entry of the Interim Order by this Court; provided that such Utility Provider is not currently paid in advance for its services and/or does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit).
- c. A Utility Provider desiring additional assurances of payment in the form of deposits, security or otherwise must serve a request (an “**Additional Assurance Request**”) upon the Debtors at the following addresses: (i) Global Fastening Solutions, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Cliff Mentrup, Esq. and SENCORP, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Marie Boyle, Esq.; (ii) counsel to the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Attn: Josef A. Athanas and Stephen R. Tetro II and Frost Brown Todd LLP, 2200 PNC Center 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald Gold, Esq. and Beth Buchanan, Esq., and (iii) the Office of the United States Trustee for the Southern District of Ohio, 36 East Seventh Street, Suite 2030, Cincinnati, Ohio 45202 (collectively, the “**Service Parties**”). The Additional Assurance Request must be sent to all of the above notice parties to be deemed valid.
- d. The Additional Assurance Request must be made and **actually received** by all the Service Parties listed above by no later than five (5) business days prior to the Final Hearing Date. If a Utility Company fails to timely file and serve its request, it shall be: (i) forbidden to discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases, or require additional adequate assurance of payment other than the two-week Proposed Adequate Assurance described above; and (ii) deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code.
- e. In addition, Additional Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits; and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Upon the Debtors’ and other required parties’ receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (a) fourteen (14) days from the receipt of any such

Additional Assurance Request or (b) thirty (30) days from the Petition Date (collectively, the “**Resolution Period**”) to negotiate with the Utility Provider to endeavor to resolve that Utility Provider’s request for additional assurance of payment. During this period, Utility Providers may not discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.

- g. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable.
- h. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to Section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or the Debtors’ bankruptcy filing.

20. The Debtors do not anticipate any problems in honoring their utility obligations.

The Debtors have secured a debtor-in-possession financing facility that will allow them access to sufficient cash to timely satisfy all of their postpetition utility services obligations. Accordingly, the Debtors believe that additional adequate assurance payments will ultimately prove unnecessary and, if forced to bring this matter before this Court, would argue the same.

PROCESS FOR OPTING OUT OF ADEQUATE ASSURANCE PROCEDURES

21. Historically, chapter 11 debtors were able to put the onus on Utility Providers, under Section 366 of the Bankruptcy Code, to argue that whatever form of adequate assurance proposed by the debtor was insufficient. The recent modifications to Section 366 of the

Bankruptcy Code arguably shift the burden onto debtors to provide adequate assurance the utility provider finds satisfactory, and to seek court review if the utility provider does not accept the proposed adequate assurance. Under this reading of revised Section 366, a Utility Provider could, on the 30th day following the Petition Date, announce that the proposed adequate assurance is not acceptable, demand an unprecedented deposit or prepayment in any amount it deems fit and threaten to terminate utility service the next day unless the Debtors complied with the demand. While the Debtors do not concede that the foregoing scenario reflects a correct interpretation of revised Section 366, the Debtors nonetheless believe it is prudent to require Utility Providers to raise any objections to the Adequate Assurance Procedures so that such objections may be heard by this Court before the running of the 30-day period following the Petition Date.

22. To avoid this type of situation, the Debtors propose the following procedures:
 - a. Any Utility Provider who objects to the Adequate Assurance Procedures outlined above must file an objection to such procedures (a “**Procedure Objection**”) so that it is actually received at least five business days prior to the Final Hearing Date by the Debtors at the following addresses: (i) Global Fastening Solutions, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Cliff Mentrup and SENCORP, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Marie Boyle; (ii) counsel to the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Attn: Josef S. Athanas and Stephen R. Tetro II and Frost Brown Todd LLP, 2200 PNC Center 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald Gold, Esq. and Beth Buchanan, Esq., and (iii) the Office of the United States Trustee, for the Southern District of Ohio, 36 East Seventh Street, Suite 2030, Cincinnati, Ohio 45202.
 - b. In addition, any Procedure Objection must (i) be made in writing; (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) set forth why the Utility Provider believes it should be exempted from the Adequate Assurance Procedures.

- c. The Debtors may, in their discretion, resolve any Procedure Objection by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.
- d. If the Debtors determine that the Procedure Objection is not reasonable and are not able to reach a prompt alternative resolution with the Utility Provider, the Procedure Objection will be heard at the Final Hearing Date. During this period, Utility Providers may not discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.
- e. All Utility Providers that do not timely file a Procedure Objection are deemed to consent to the Adequate Assurance Procedures and shall be bound by the Adequate Assurance Procedures. The sole recourse of all Utility Providers that do not timely file a Procedure Objection shall be to submit an Additional Assurance Request pursuant to the Adequate Assurance Procedures, and such Utility Providers shall be enjoined from altering, refusing, or discontinuing service to, or discriminating against, the Debtors pending any Determination Hearing that may be conducted pursuant to the Adequate Assurance Procedures.

SUBSEQUENT MODIFICATIONS OF UTILITY SERVICE LIST

23. The Debtors have made an extensive and good faith effort to identify their Utility Providers and include them on the Utility Service List. Nonetheless, it is possible that the Debtors have not yet identified or included certain Utility Providers on the Utility Service List. To the extent that the Debtors identify additional Utility Providers (the “**Additional Utility Providers**”), the Debtors will file with this Court amendments to the Utility Service List, and shall serve a copy of the Interim and Final Orders on such Additional Utility Providers. The Debtors request that the Orders be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Service List.

BASIS FOR RELIEF

24. Congress enacted Section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, provide utility companies with adequate assurance that the debtors will pay for postpetition services. See H.R. REP. NO. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Accordingly, Section 366 protects debtors by enjoining utilities from altering, refusing or discontinuing services solely on account of unpaid prepetition amounts or commencement of a bankruptcy case for a period of 30 days after the bankruptcy filing. And it protects utilities by permitting them to alter, refuse or discontinue service after 30 days if the debtor has not furnished “adequate assurance” of payment in a form “satisfactory” to the utility.

25. Section 366(c) of the Bankruptcy Code, which was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“**BAPCPA**”), significantly modified the existing statutory framework. It has two primary purposes: first, it permits a utility to alter, refuse or discontinue utility service if a debtor has not provided “satisfactory” adequate assurance within 30 days of its bankruptcy filing, subject to this court’s ability to modify the amount of adequate assurance. It also restricts the factors that a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts may no longer consider (i) the absence of a security deposit before the debtor’s petition date, (ii) the debtor’s history of timely payments or (iii) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these noteworthy changes, it does not appear that Congress intended to — or did — abrogate the bankruptcy court’s right to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment must simply be “adequate.”

26. First, while Section 366(c) of the Bankruptcy Code does limit the factors a court can consider when determining whether a debtor has provided adequate assurance of payment, it does not limit this court's ability to determine the amount of payment necessary, if any, to provide such adequate assurance. Instead, Section 366(c) of the Bankruptcy Code gives courts the same discretion in determining the amount of payment necessary for adequate assurance as they previously had under Section 366(b) of the Bankruptcy Code. Compare 11 U.S.C. § 366(b) (2005) ("On request of a party-in-interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance") with 11 U.S.C. § 366(c)(3)(A)(2005) ("On request of a party-in-interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2)"); see also Richard Levin & Alesia Ranney-Marinelli, The Creeping Repeal of Chapter 11: The Significant Business Provisions of the Bankruptcy Abuse Protection and Consumer Protection Act of 2005, 79 Am. Bankr. L.J. 603, 608-09 (2005) (stating that Courts would likely continue to determine the amount and form of adequate protection after the implementation of the BAPCPA). And it is well established that Section 366(b) of the Bankruptcy Code permits a court to find that no adequate assurance payment at all is necessary to provide a utility with adequate assurance of payment. See Virginia Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under § 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'"). This may be particularly true in cases where the debtor has made prepetition deposits or prepayments for services that utilities will ultimately render

postpetition. 11 U.S.C. § 366(c)(1)(A)(v) (recognizing a prepayment for postpetition services as adequate assurance). Accordingly, courts continue to have discretion to determine the amount of adequate assurance payments and, where appropriate, to determine that no such payment is necessary.

27. Additionally, Section 366(c) of the Bankruptcy Code, like Section 366(b), simply requires that a utility's assurance of payment be "adequate." Courts have long recognized that adequate assurance of performance does not require an absolute guarantee of a debtor's ability to pay. See Hennen v. Dayton Power & Light Co. (In re Hennen), 17 B.R. 720, 724 (Bankr. S.D. Ohio 1983) ("Adequate assurance does not require an absolute guarantee of payment, and is largely a factual determination."); In re Adelpia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002); In re Caldor, 199 B.R. 1, 3 (S.D.N.Y. 1996) (Section 366(b) of the Bankruptcy Code "does not require an 'absolute guarantee of payment'"') aff'd by Virginia Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646 (2nd Cir. 1997); In re Steinebach, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance . . . all § 366(b) requires is that a utility receive only such assurance of payment as is necessary to protect its interests given the facts of the debtor's financial circumstances"). Courts have also recognized that in determining the amount of adequate assurance, bankruptcy courts should focus "on the need of the utility for assurance, and to require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources." In re Caldor, 117 F.3d at 665 (emphasis in original); see also In re Penn. Cent. Transp. Co., 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court's ruling that no utility deposits were necessary where such deposits would likely "jeopardize the continuing operating of the [debtor] merely to give further security to suppliers who are already reasonably

protected”). Accordingly, demands by a utility for a guarantee of payment when they already have adequate assurance of payment in light of the Debtors’ specific circumstances should be refused.

28. Based upon the foregoing, the Debtors believe that most, if not all, of their Utility Providers have adequate assurance of payment without any additional adequate assurance provisions. As previously discussed, the Debtors are seeking approval of the debtor-in-possession financing facility and use of cash collateral that will enable them to pay their operating costs, including utility costs, as they come due. The Debtors have a powerful incentive to stay current on their utility obligations because of their significant reliance on utility services for their manufacturing operations. Without utility services, particularly electrical power, the Debtors will be unable to operate at all. These factors, which this Court may (and should) consider when considering the amount of any adequate assurance payments, justify a finding that no adequate assurance payment is required at all. In light of the foregoing, the Debtors submit that the Proposed Adequate Assurance Deposit is more than sufficient to assure the Utility Providers of future payment.

29. If the Utility Providers disagree with the Debtors’ analysis, however, the procedures proposed in this Motion will enable the parties to negotiate and, if necessary, seek Court intervention without jeopardizing the Debtors’ continuing operations. This Court has authority to approve the proposed procedures under Section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of Section 105(a) of the Bankruptcy Code is “to assure the bankruptcy courts [sic] power to take

whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01, at 105-5 to 105-6 (15th ed. rev. 2003).

30. The proposed procedures are necessary for the Debtors to carry out their reorganization efforts. If this Court does not approve the proposed procedures, the Debtors could be forced to address numerous requests by their Utility Providers in a disorganized manner at a critical point in their reorganization. Moreover, the Debtors could be blindsided by a Utility Provider unilaterally deciding — on the thirty-first day — that it is not adequately protected and discontinuing service or making an exorbitant demand for payment to continue service. As set forth above, discontinuation of service, particularly electricity, would essentially halt the Debtors’ operations, putting the Debtors’ reorganization efforts in extreme jeopardy. The proposed procedures set forth a fair process that will enable all parties to negotiate their respective positions and, where necessary, seek Court intervention without jeopardizing the Debtors’ chapter 11 efforts. In fact, this Court and many other courts have approved similar procedures in other chapter 11 cases filed after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 became effective. See, e.g. In re Milacron Inc., Case No. 09-111235 (JVA) (Bankr. S.D. Ohio, March 10, 2009); In re The Antioch Company, Case No. 08-35741 (GRH) (Bankr. S.D. Ohio); In re The Wornick Company, Case No. 08-16054 (JVA) (Bankr. S.D. Ohio); In re Dana Corporation, Case No. 06-10.354 (Bankr. S.D.N.Y.); In re J.L. French Automotive Castings, Inc., Case No. 06-10119 (Bankr. D. Del.); In re Romacorp, Inc., Case No. 86818-B (Bankr. N.D. Tex.); In re McLeod USA Inc., Case No. 05-63229 (Bankr. N.D. Ill.). Accordingly, the Debtors believe that the proposed procedures should be approved.

WAIVER OF MEMORANDUM OF LAW

31. 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

32. No trustee, examiner or creditors' committee has been appointed in these 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; (vii) any governmental unit listed in LBR 5003-1(d); and (viii) all utilities as identified on the List of Utilities attached hereto as Exhibit A. 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

33. 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 interim and final orders, substantially in the form attached hereto as Exhibit B and Exhibit C, respectively, (i) determining that Utility Providers have been provided with adequate assurance of payment within the meaning of Section 366 of the Bankruptcy Code, (ii) approving the Debtors' Proposed Adequate Assurance and the Adequate Assurance Procedures, (iii) prohibiting Utility Providers from discontinuing, altering, or refusing service to, or discriminating against, the Debtors, (iv) establishing procedures for Utility Providers to opt out of the proposed Adequate Assurance Procedures, (v) determining that the Debtors are not required to provide any additional adequate assurance, beyond what is proposed by this Motion, and (vi) granting such other and further relief as this Court deems appropriate.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

LATHAM & WATKINS LLP

Josef S. Athanas (pro hac vice motion pending)
Stephen R. Tetro II (pro hac vice motion pending)
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, Illinois 60606-6401
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

- and -

FROST BROWN TODD LLC

By: /s/ Ronald E. Gold

Ronald E. Gold, Esq. (0061351)

Beth A. Buchanan, Esq. (0068430)

2200 PNC Center

201 East Fifth Street

Cincinnati, Ohio 45202

Telephone: (513) 651-6800

Facsimile: (513) 651-6981

Email: rgold@fbtlaw.com

Email: bbuchanan@fbtlaw.com

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

EXHIBIT A

List of Utilities

Utility Type	Account Number	Vendor Name & Address	Debtor Holding Account	Adequate Assurance Payments
Telephone	66284110523470596	AT&T PO Box 105262 Atlanta, GA 30348-5262	Senco Products, Inc.	\$129.19
Telephone	9726603133258	AT&T PO Box 5001 Carol Stream, IL 60197-5001	Senco Products, Inc.	\$172.93
Telephone	513L138985390	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$132.68
Telephone	513V133233842	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$2,421.89
Telephone	513D133234234	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$2,569.21
Telephone	513L134476378	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$15.20
Telephone	5133882000500	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$1,239.49
Telephone	5139470012061	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	Senco Products, Inc.	\$88.48
Telephone	513-752-6678 030	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	TyRex, LLC	\$311.85
Telephone	513-752-7501 951	Cincinnati Bell PO Box 748003 Cincinnati, OH 45274-8003	SENCORP	\$23.40
Sewer	0135000421	Clermont County Sewer District 4400 Haskell Lane Batavia, OH 45103	Tyrex, LLC	\$29.92
Gas & Electric	38693287	Constellation New Energy-Gas PO Box 2059 Carol Stream, IL 60132-2059	Senco Products, Inc.	\$22,987.50
Waste Disposal	3010 13 002726 0	CSI Waste Service PO Box 9001835 Louisville, KY 40290-1835	TyRex, LLC	\$53.43
Water	7730158590	Cucamonga Valley Water District PO Box 51788 Los Angeles, CA 90051-6088	Senco Products, Inc.	\$72.65

Utility Type	Account Number	Vendor Name & Address	Debtor Holding Account	Adequate Assurance Payments
Electric	72203679018	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	Senco Products, Inc.	\$3,247.97
Electric	42803680021	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	Senco Products, Inc.	\$2,283.13
Electric	32802128010	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	Senco Products, Inc.	\$53,600.75
Electric	69402093013	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	Senco Products, Inc.	\$2,013.85
Electricity	68200848229	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	TyRex, LLC	\$0*
Electricity	58200848223	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	TyRex, LLC	\$0*
Electricity	96700852226	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	TyRex, LLC	\$0*
Electricity	96800853238	Duke Energy PO Box 9001076 Louisville, KY 40290-1076	TyRex, LLC	\$196.05
Water	3043721289489	Greater Cincinnati Water Works PO Box 742505 Cincinnati, OH 45274-2505	Senco Products, Inc.	\$1,977.99
Water	5084131289488	Greater Cincinnati Water Works PO Box 742505 Cincinnati, OH 45274-2505	Senco Products, Inc.	\$309.01
Electric	272831	NW Natural PO Box 6017 Portland, OR 97228-6017	Senco Products, Inc.	\$472.60
Electric	0005316826227718	PGE PO Box 4438 Portland, OR 97208-4438	Senco Products, Inc.	\$321.92
Waste Disposal	930539	Pride Disposal Company PO Box 820 Sherwood, OR 97140	Senco Products, Inc.	\$95.06
Waste Disposal	04CR162476	Rancho Disposal Services, Inc. PO Box 6766 Buena Park, CA 90622-6766	Senco Products, Inc.	\$218.34

* Duke Energy holds a deposit in excess of the Proposed Adequate Assurance amount for this account.

Utility Type	Account Number	Vendor Name & Address	Debtor Holding Account	Adequate Assurance Payments
Electric	2038432407	Southern California Edison Co PO Box 300 Rosemead, CA 91772-0001	Senco Products, Inc.	\$628.81
Telephone	925689255	SPRINT PO Box 219100 Kansas City, MO 64121-9100	Omnifast, LLC	\$40.37
Telephone	925445000	SPRINT PO Box 219100 Kansas City, MO 64121-9100	TyRex, LLC	\$62.21
Gas	7060223201	Tiger Inc. Department 2192 Tulsa, OK 74182	Senco Products, Inc	\$12,827.50
Telephone	9099804812830120	Verizon California PO Box 9688 Mission Hills, CA 91346-9688	Senco Products, Inc.	\$176.62
Telephone	5036206415830304	Verizon California PO Box 9688 Mission Hills, CA 91346-9688	Senco Products, Inc.	\$141.01
Telephone	98175888800001	Verizon Wireless PO Box 25505 Lehigh Valley, PA 18002-5505	Senco Products, Inc.	\$538.09

EXHIBIT B

Proposed Interim Order

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

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

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 366
(I) PROHIBITING UTILITIES FROM DISCONTINUING, ALTERING,
OR REFUSING SERVICE, (II) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCES OF PAYMENT, AND
(III) ESTABLISHING PROCEDURES FOR THE UTILITIES TO OPT OUT
OF THE DEBTORS' PROPOSED ADEQUATE ASSURANCE PROCEDURES**

Upon consideration of the motion (the “**Motion**”)¹ of the Debtors² for entry of an order authorizing (i) prohibiting utilities from altering, refusing, or discontinuing service to, or

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.

discriminating against, the Debtors, (ii) establishing procedures for determining adequate assurance of payment, and (iii) establishing procedures for utilities to opt out of the Debtors' proposed procedures for adequate assurance; 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 on an interim basis until such time as this Court conducts a final hearing on this matter (the "**Final Hearing Date**"); and it is further

2. ORDERED that, absent compliance with the procedures set forth in the Motion and this Order, the Utility Providers are (i) forbidden and prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or the Debtors' bankruptcy filing and (ii) deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code; and it is further

3. ORDERED that any Utility Provider who has accepted an Adequate Assurance Deposit and did not make an Additional Assurance Request at least five (5) business days prior to the Final Hearing Date, will be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Provider, and such Utility Provider is further deemed to have waived any right to seek additional adequate assurance during the course of these Chapter 11 Cases; and it is further

4. ORDERED that any Utility Provider who accepted an Adequate Assurance Deposit shall be required to return the Adequate Assurance Deposit to the Debtors within the earlier of 15 days of the effective date of any confirmed plan of reorganization or liquidation or the closing of a sale of substantially all of the Debtors assets, if not returned or applied sooner; and it is further

5. ORDERED that the following Adequate Assurance Procedures are approved in full and in all respects:

- a. The Debtors will fax, email, serve by overnight mail or otherwise expeditiously send a copy of this Motion, together with the proposed utility order, which Motion includes the proposed procedures, to each Utility Provider within three (3) business days after this Court enters the proposed Interim Order.
- b. The Debtors will pay each Utility Provider an Adequate Assurance Deposit within five (5) business days of entry of this Order by this Court; provided that such Utility Provider is not currently paid in advance for its services and/or does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit).
- c. A Utility Provider desiring additional assurances of payment in the form of deposits, security or otherwise must serve a request (an “**Additional Assurance Request**”) upon the Debtors at the following addresses: (i) Global Fastening Solutions, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Cliff Mentrup and SENCORP, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Marie Boyle; (ii) counsel to the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Attn: Josef A. Athanas and Stephen R. Tetro II and Frost Brown Todd LLP, 2200 PNC Center 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald Gold, Esq. and Beth Buchanan, Esq., and (iii) the Office of the United States Trustee for the Southern District of Ohio, 36 East Seventh Street, Suite 2030, Cincinnati, Ohio 45202 (collectively, the “**Service Parties**”). The Additional Assurance Request must be sent to all of the above notice parties to be deemed valid.
- d. The Additional Assurance Request must be made and **actually received** by all the Service Parties listed above by no later than five (5) business days prior to the Final Hearing Date. If a Utility Company fails to timely file and serve its request, it shall be: (i) forbidden to discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any

unpaid prepetition charges or the commencement of these Chapter 11 Cases, or require additional adequate assurance of payment other than the two-week Proposed Adequate Assurance described above; and (ii) deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code.

- e. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits; and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Upon the Debtors' and other required parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (a) fourteen (14) days from the receipt of any such Additional Assurance Request or (b) thirty (30) days from the Petition Date (collectively, the "**Resolution Period**") to negotiate with the Utility Provider to endeavor to resolve that Utility Provider's request for additional assurance of payment. During this period, Utility Providers may not discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.
- g. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable.
- h. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to Section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or the Debtors' bankruptcy filing.

and it is further

6. ORDERED that the following opt-out procedures are approved in full and in all respects:

- a. Any Utility Provider who objects to the Adequate Assurance Procedures outlined above must file an objection to such procedures (a “**Procedure Objection**”) so that it is actually received at least five business days prior to the Final Hearing Date by the Debtors at the following addresses: (i) Global Fastening Solutions, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Cliff Mentrup and SENCORP, 4270 Ivy Pointe Boulevard, Cincinnati, Ohio 45245, Attn: Marie Boyle; (ii) counsel to the Debtors, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Attn: Josef S. Athanas and Stephen R. Tetro II and Frost Brown Todd LLP, 2200 PNC Center 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald Gold, Esq. and Beth Buchanan, Esq., and (iii) the Office of the United States Trustee, for the Southern District of Ohio, 36 East Seventh Street, Suite 2030, Cincinnati, Ohio 45202.
- b. Any Procedure Objection must (i) be made in writing; (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) set forth why the Utility Provider believes it should be exempted from the Adequate Assurance Procedures.
- c. The Debtors may, in their discretion, resolve any Procedure Objection by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.
- d. If the Debtors determine that the Procedure Objection is not reasonable and are not able to reach a prompt alternative resolution with the Utility Provider, the Procedure Objection will be heard at the Final Hearing Date. During this period, Utility Providers may not discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.
- e. All Utility Providers that do not timely file a Procedure Objection are deemed to consent to the Adequate Assurance Procedures and shall be bound by the Adequate Assurance Procedures. The sole recourse of all Utility Providers that do not timely file a Procedure Objection shall be to submit an Additional Assurance Request pursuant to the Adequate

Assurance Procedures, and such Utility Providers shall be enjoined from altering, refusing, or discontinuing service to, or discriminating against, the Debtors pending any Determination Hearing that may be conducted pursuant to the Adequate Assurance Procedures.

and it is further

7. ORDERED that the Debtors are authorized, in their discretion, to amend the List of Utilities set forth on Exhibit A to the Motion to add or delete any Utility Provider, and this Order shall apply as of the Petition Date to any such Utility Provider that is subsequently added to the Utility Service List; provided that, with respect to any Additional Utility Provider, the thirty (30) day Resolution Period described in paragraphs 5(f) of the above procedures shall commence as of the Debtors' service of this Order on such Additional Utility Provider. Any request for adequate assurance, or opt-out request, by such Additional Utility Provider must otherwise comply with the requirements set forth in the Motion and this Order or shall be deemed an invalid adequate assurance and opt-out request; and it is further

8. ORDERED that nothing herein or in the Utility Service List constitutes a finding that any entity is or is not a Utility Provider hereunder or under Section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List; and it is further

9. ORDERED that this Order shall be deemed a final order with respect to any Utility Provider that does not file a timely Procedures Objection as described herein;

10. ORDERED that any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or waiver of any other rights or remedies of the Debtors, or an approval or assumption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code; and it is further

11. ORDERED that, notwithstanding anything to the contrary contained herein, (a) any payment to be made, or authorization contained hereunder, shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing facility (the "**DIP Facility**"), or budget in connection therewith, or any order regarding the use of cash collateral, and (b) to the extent that any payment to be made pursuant to this Order is treated as an administrative expense of the Debtors' chapter 11 estates, such claim shall be subject and subordinate to the priorities, liens, claims and security interests, if any, of the lenders under the DIP Facility; and it is further

12. 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

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

14. ORDERED that **The Final Hearing Date for the relief requested in the Motion shall be _____, 2009 at _____ .m. prevailing Eastern Time, and any objections or responses to this Motion shall be filed with the Clerk of the United States Bankruptcy Court for the Southern District of Ohio on or before five business days prior to the Final Hearing Date and served on** (i) Latham & Watkins LLP, Counsel for the Debtors, Sears Tower, Suite 5800, 233 S. Wacker Drive, Chicago, IL 60606, Attn: Josef S. Athanas and Stephen R. Tetro II; (ii) Frost Brown Todd LLP, Counsel for the Debtors, 2200 PNC Center 201 East Fifth Street, Cincinnati, Ohio 45202, Attn: Ronald Gold, Esq. and Beth Buchanan, Esq., (iii) Office of the United States Trustee for the Southern District of Ohio, 36 East Seventh Street, Suite 2030, Cincinnati, Ohio 45202; and (iv) those parties who have filed a notice of appearance and request for service of pleadings in these Chapter 11 Cases; and it is further

15. 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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EXHIBIT C

Proposed Final Order

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

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

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 366
(I) PROHIBITING UTILITIES FROM DISCONTINUING, ALTERING,
OR REFUSING SERVICE, (II) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCES OF PAYMENT, AND
(III) ESTABLISHING PROCEDURES FOR THE UTILITIES TO OPT OUT
OF THE DEBTORS' PROPOSED ADEQUATE ASSURANCE PROCEDURES**

Upon consideration of the motion (the “**Motion**”)¹ of the Debtors² for entry of an order authorizing (i) prohibiting utilities from altering, refusing, or discontinuing service to, or

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.

discriminating against, the Debtors, (ii) establishing procedures for determining adequate assurance of payment, and (iii) establishing procedures for utilities to opt out of the Debtors' proposed procedures for adequate assurance; 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 in its entirety; and it is further
2. ORDERED that absent compliance with the procedures set forth in the Motion, the Utility Providers are: (i) forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges and (ii) deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code; and it is further
3. ORDERED that any Utility Provider who has accepted an Adequate Assurance Deposit and did not make an Additional Assurance Request at least five (5) business days prior to the Final Hearing Date, is hereby deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Provider, and such Utility Provider is further deemed to have waived any right to seek additional adequate assurance during the course of these chapter 11 cases; and it is further
4. ORDERED that any Utility Provider who accepted an Adequate Assurance Deposit shall be required to return the Adequate Assurance Deposit to the Debtors within the

earlier of fifteen (15) days of the effective date of any confirmed plan of reorganization or liquidation or the closing of a sale of substantially all of the Debtors assets pursuant to Section 363 of the Bankruptcy Code; and it is further

5. ORDERED that the procedures for determining additional adequate assurances, as provided in the Motion, are hereby approved; and it is further

6. ORDERED that any Utility Company who failed to timely file its Adequate Assurance Request, is hereby: (i) forbidden to discontinue, alter, or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance described in the Motion; and (ii) deemed to have received adequate assurance of payment in compliance with Section 366 of the Bankruptcy Code; and it is further

7. ORDERED that in the event that the Debtors receive any Additional Assurance Request in compliance with the procedures in the Motion, the Debtors shall have the greater of (a) fourteen (14) days from the receipt of any such Additional Assurance Request or (b) thirty (30) days from the Commencement Date (collectively, the “**Resolution Period**”) to negotiate with the Utility Provider to endeavor to resolve that Utility Provider’s request for additional assurance of payment. During this period, Utility Providers may not terminate any of the services they provide to the Debtors on account of the bankruptcy filing or any unpaid charges for prepetition services; and it is further

8. ORDERED that the Debtors may resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court. In connection with any such agreement, as necessary, the Debtors may provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits,

prepayments, and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable; and it is further

9. ORDERED that if the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to Section 366(c)(3) of the Bankruptcy Code; and it is further

10. ORDERED that pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or the Debtors’ bankruptcy filing; and it is further

11. ORDERED that a Utility Provider shall be deemed to have adequate assurance of payment unless and until: (i) the Debtors agree, to an Additional Assurance Request or agree to an alternative assurance of payment with the Utility Provider during the Resolution Period or (ii) this Court enters an order requiring that additional adequate assurance of payment be provided to such Utility Provider; and it is further

12. ORDERED that any Utility Provider who failed to timely file a Procedure Objection is deemed to consent to the Adequate Assurance Procedures and shall be bound by the Adequate Assurance Procedures. The sole recourse of all Utility Providers that do not timely file a Procedure Objection shall be to submit an Additional Assurance Request pursuant to the Adequate Assurance Procedures, and such Utility Providers shall be enjoined from ceasing

performance pending any Determination Hearing that may be conducted pursuant to the Adequate Assurance Procedures; and it is further

13. ORDERED that the Debtors are authorized, in their discretion, to amend the List of Utilities set forth on Exhibit A to the Motion to add or delete any Utility Provider, and this Order shall apply as of the Petition Date to any such Utility Provider that is subsequently added to the Utility Service List; provided that, with respect to any Additional Utility Provider, the thirty (30) day Resolution Period described in paragraph 7 of this Order shall commence as of the Debtors' service of this Order on such Additional Utility Provider. Any request for adequate assurance, or opt-out request, by such Additional Utility Provider must otherwise comply with the requirements set forth in the Motion and this Order or shall be deemed an invalid adequate assurance and opt-out request; and it is further

14. ORDERED that any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or waiver of any other rights or remedies of the Debtors, or an approval or assumption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code; and it is further

15. 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

16. ORDERED that, notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, and 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

17. ORDERED that, notwithstanding anything to the contrary contained herein, (a) any payment to be made, or authorization contained hereunder, shall be subject to the

requirements imposed on the Debtors under the Debtors' postpetition financing facility (the "DIP Facility"), or budget in connection therewith, or any order regarding the use of cash collateral, and (b) to the extent that any payment to be made pursuant to this Order is treated as an administrative expense of the Debtors' chapter 11 estates, such claim shall be subject and subordinate to the priorities, liens, claims and security interests, if any, of the lenders under the DIP Facility and it is further

18. 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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