

**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 TO (I) PAY IN THE ORDINARY COURSE OF BUSINESS PREPETITION CLAIMS OF SHIPPERS AND WAREHOUSEMEN AND (II) SATISFY THE UNITED STATES CUSTOMS DUTIES IMPOSED ON SHIPMENTS FROM FOREIGN SUPPLIERS AND PREPETITION OBLIGATIONS OF SERVICE PROVIDERS IN THE DEBTORS’ FOREIGN SUPPLY CHAIN

(“MOTION TO PAY SHIPPERS, WAREHOUSEMEN, AND FOREIGN SUPPLIERS”)

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 the Debtors to (i) pay certain prepetition claims of Shippers and Warehousemen (each as defined below) in the ordinary course of business and (ii) to satisfy United States Customs Duties imposed on shipments from foreign suppliers and to otherwise satisfy prepetition obligations of suppliers in the Debtors’ foreign supply chain. 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), 363, and 507(a) 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.

RELIEF REQUESTED

10. By this Motion the Debtors seek the authority to continue to pay, in the ordinary course of business, prepetition claims of shippers and warehouseman who have (or may have) state law remedies available to secure payment of their claims. Additionally, the Debtors seek authorization, pursuant to Sections 105(a) and 507(a)(8)(F) of the Bankruptcy Code, to pay prepetition obligations related to the foreign duties, freight forwarders, ocean cargo, foreign inspection and inland freight for shipments and to vendors that may have remedies to secure

such payments. The Debtors propose payment of such claims when, in the Debtors' sole discretion, a creditors' exercise of such remedies would unduly disrupt the Debtors' business. The Debtors further seek authorization that all banks and other financial institutions on which checks were drawn or electronic payment requests made with respect to prepetition Shipping, Warehousing, and Foreign Supply Charges (as defined below) may honor all such checks and payment requests when presented for payment; provided that sufficient funds are available in the Debtors' bank accounts to cover such payments; and provided, further, that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved under the Order. The Debtors also seek authority to reissue any check, electronic payment, or otherwise, which was drawn in payment of any prepetition Shipping, Warehousing, and Foreign Supply Charge (as defined below).

11. In order to maintain the value of the Company, the Debtors must be deemed reliable and dependable among their customers. Indeed, many of the Debtors' contractual obligations, pricing policies, and marketing strategies revolve around that reliability and dependability. Maintaining this reputation depends in substantial part on the timely delivery of product to the Debtors' customers. In turn, the Debtors' ability to make such timely deliveries depends on a successful and efficient system for the shipment and warehousing of the Debtors raw materials and finished goods. The Debtors' supply and delivery system depends upon the use of reputable common carriers, shippers, and truckers (collectively, the "**Shippers**"), a network of third-party warehouses to store goods in transit (the "**Warehousemen**"), and a foreign supply chain that permits the Debtors to import materials and export materials and goods.

12. It is essential for the Debtors' businesses, and their efforts to maximize value for all creditors, that they maintain a reliable and efficient supply and distribution system. Because

the Debtors are in many cases dependent on third parties, it is essential that their bankruptcy cases not be a reason or excuse for any third party to cease performing timely services or to retain products or goods. For example, if the Debtors are unable to provide finished goods to customers on a timely basis, the Debtors will likely suffer, at a minimum, a significant loss of credibility and customer goodwill, thereby causing substantial harm to the value of the Debtors' businesses and their chapter 11 efforts.

13. Furthermore, the Debtors seek to undertake appropriate efforts to cause Shippers and Warehousemen to acknowledge in writing that payment of such claims is conditioned upon the Shipper and Warehouseman continuing to supply goods and services to the Debtors on trade terms that, at a minimum, such Shipper or Warehouseman provided to the Debtors on a historical basis prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect during such time. The Debtors reserve the right to negotiate new trade terms with any Shipper or Warehouseman as a condition to payment of any such claim.

14. The Debtors reserve the right to contest, without prejudice, in their sole discretion, the validity and amounts of the Shipping and Warehousing Charges (as defined below) owed to Shippers and Warehousemen. The Debtors also expressly reserve the right to contest the validity, extent, perfection, or possible avoidance of any liens alleged by Shippers or Warehousemen, whether contractual, common law, statutory, or otherwise, even to the extent the Debtors pay such liens pursuant to the Order. Nothing contained in this Motion shall be deemed to constitute the postpetition assumption of any executory contracts between the Debtors and the Shippers or Warehousemen.

15. Accordingly, by this Motion, the Debtors seek to prevent the breakdown of their supply and delivery network. They request authority to pay certain prepetition claims relating to shipping and warehousing in amounts, in their business judgment, the Debtors determine necessary or appropriate to: (a) obtain release of critical or valuable goods that may be subject to liens, (b) maintain a reliable, efficient and smooth distribution system, (c) induce critical Shippers and Warehouseman to continue to carry goods and make timely deliveries, and (d) be able to import and export goods as necessary in the ordinary course of business. The Debtors propose payment of such claims, when, in the Debtors' sole discretion, a creditor's exercise of such state law rights would unduly disrupt the Debtors' businesses.

A. Shipping and Warehousing Claimants

16. As a general rule, the Debtors operate a "just-in-time" inventory system, which means that the Debtors' ability to produce goods depends on the frequent, and often daily, deliveries of materials and goods. As a result, the Debtors employ third parties to ensure that their supply and delivery system runs smoothly, and their inventory and shipments arrive on time, including Shippers and Warehousemen.

17. The Shippers are contracted by the Debtors, and ship, transport, store, and deliver raw materials as well as finished product to the Debtors and their customers. Further, the Debtors contract with independent Warehousemen to store goods which are in transit. Generally, the Debtors pay the Shippers and Warehousemen upon agreed upon terms.

18. Under some state laws, a Shipper or a Warehouseman may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the

transportation or storage of the goods.³ In addition, pursuant to Section 363(e) of the Bankruptcy Code, the Shippers or Warehousemen, as bailers, may be entitled to adequate protection of a valid possessory lien.

19. The Debtors expect that, as of the Petition Date, certain of the Shippers and Warehousemen will have outstanding invoices or have accrued but unbilled charges for goods that were delivered to the Debtors or the Debtors' customers prior to the Petition Date (the "**Shipping and Warehousing Charges**"). As a result, the Shippers and Warehousemen could argue that they are entitled to possessory liens for transportation and storage, as applicable, on the goods in their possession and may refuse to deliver or release such goods before their claims have been satisfied and their liens redeemed. Indeed, even if the Shippers and Warehousemen did not have a valid lien, their possession (and retention) of the Debtors' goods and materials would severely disrupt, and potentially cripple, the Debtors' operations because of the Debtors' "just-in-time" inventory policy.

20. The value of the goods in the possession of the Shippers and Warehousemen and the potential injury to the Debtors if the goods are not released, is likely to greatly exceed the amount of the Shipping and Warehousing Charges. The Debtors, thus, believe that it is necessary and essential to the value of their estates that they be permitted to make payments on account of certain Shipping and Warehousing Charges.

21. Accordingly, by this Motion, the Debtors seek an order authorizing them, *inter alia*, to make non-disputed prepetition payments to the Shippers and Warehousemen relating to the Shipping and Warehousing Charges as the Debtors, in their business judgment, determine is

³ For example, Section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7-307(1)(2003).

necessary or appropriate in order to obtain the release of goods held by such Shippers and Warehousemen. Such payments are not expected to exceed \$1 million (which includes amounts for both domestic and foreign supply charges, as described below (collectively, the “**Shipping, Warehousing, and Foreign Supply Charges**”). The Debtors represent that they will only pay Shipping and Warehousing Charges where they believe, in their business judgment, benefits to their estates and creditors from making such payments would exceed (a) the costs that their estates would incur by bringing an action to compel the turnover of such goods, and (b) the delays associated with such actions.

22. The Debtors submit that the total amount to be paid to the Shippers and Warehousemen if the requested relief is granted is minimal compared to the importance and necessity of the Shippers and Warehousemen and the losses the Debtors may suffer if their operations are disrupted. Moreover, the Debtors do not believe that there are viable timely alternatives to the Shippers or the Warehousemen they have used prior to the Petition Date.

B. Foreign Supply Chain

23. In connection with the operation of their businesses, the Debtors receive products from a number of foreign suppliers. After their manufacture, the products are processed and moved through the Debtors’ supply chain by a number of different entities (the “**Foreign Supply Chain Service Providers**”). Each of these Foreign Supply Chain Service Providers performs a vital service in connection with the products ultimate delivery from the manufacturing facility in the foreign country to the Debtors in the United States. Each service performed by a Foreign Supply Chain Service Provider is necessary and critical to the Debtors’ continued receipt of the products, which itself is critical to the continued operation of the Debtors’ businesses.

24. The foreign supply chain for the Debtors' products operates substantially as follows. After the products are manufactured they are stored in the foreign jurisdiction until delivered by the various shippers to the port in the country of origin, to be shipped to the United States.⁴ At such port, the freight forwarder prepares the necessary paperwork for shipment of the products from the country of origin to the United States. The products then are forwarded to the ocean freight companies which ship the products to the United States as ocean freight. Before the Debtors take possession of the products from their country of origin, however, the shipment must be reviewed for United States customs and duties. For products not being delivered to a foreign trade zone, the products must comply with the United States Customs Service ("**U.S. Customs**"). The Debtors retain brokers to process the documentation needed to clear U.S. Customs and to pay the necessary duties and other fees. The brokers invoice the Debtors on a daily basis for the amount of the duties and other fees. The products are then released from U.S. Customs to be moved to the Debtors' distribution centers or other third party warehouses within the United States.

25. Upon arrival at the Debtors' distribution centers, or such other third parties warehouses, the products are unloaded from the ocean containers, and are then stored, packed and inventory is taken. Finally, upon receipt of an order from the Debtors' customer, the products are routed for shipment by the Debtors via inland freight carriers pursuant to the purchase orders received from the Debtors' customers.

26. The Debtors also receive shipments of smaller products by air freight. The process for receiving shipments via air freight is substantially similar to the process for receiving

⁴ The parties involved in the Foreign Supply Chain often overlap with the domestic shippers and warehousemen. By this Motion, the Debtors seek permission to pay, as necessary, all parties necessary for the proper shipment of goods, whether foreign or domestic.

shipments via ocean freight, except that the U.S. Customs clearing process is expedited for air freight shipments. The U.S. Customs clearance process begins when the air carrier departs from the country of origin, and is completed by the time the air carrier arrives in the United States. The Debtors retain the same brokers to satisfy U.S. Customs requirements for air freight.

27. The services provided by each Foreign Supply Chain Service Provider are critical to the continued operation of the Debtors' business. If any of the Foreign Supply Chain Service Providers were to refuse service to the Debtors, the resulting disruption to the Debtors' business would be devastating and seriously threaten if not prevent the Debtors' chapter 11 efforts.

28. It is essential to the Debtors' chapter 11 efforts that the Debtors be permitted to continue to receive the product shipments without interruption. Any disruption in the flow of these products to the Debtors will significantly diminish the going concern value of the Debtors' businesses to the detriment of all the Debtors' stakeholders. Each Foreign Supply Chain Service Provider is a vital link in the chain supplying the Debtors with these products.

29. Consequently, the Debtors assert that the expense of satisfying the unpaid Shipping, Warehousing, and Foreign Supply Charges is justified in order to avoid the potential harm that could befall the Debtors' businesses due to disruption in product shipments. Thus, entry of an order granting the relief requested herein is appropriate and, moreover, the Debtors believe, necessary for the Debtors' successful chapter 11 efforts.

30. In furtherance of their obligations related to bond the payment of their customs duties, the Debtors maintain several customs import bonds which secure duty payments on imported goods and allow the goods to leave the port upon arrival (collectively, the "**U.S. Customs Bonds**"). Specifically, the Debtors maintain the following U.S. Customs Bonds: \$60,000 of coverage for Senco Products, Inc., \$50,000 of coverage for Global Fastening

Solutions, LLC, \$50,000 of coverage for Omnifast, LLC, \$50,000 of coverage for Senco International, Inc., and \$500,000 of coverage for TyRex, LLC. The Debtors also maintain a \$10,000 transportation bond. In view of the importance of securing such payment, the Debtors believe it is in their best interest, and the best interest of the parties in interest to maintain the U.S. Customs Bonds and honor all obligations they supports.

BASIS FOR RELIEF

A Section 363(b) Permits the Payment of the Shipping and Warehousing Charges.

31. This Court may authorize the Debtors to pay Shipping and Warehousing Charges under Section 363(b) of the Bankruptcy Code. That Section provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this Section, a court may authorize a debtor to pay certain prepetition claims. See In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (Bankr. D. Del. 1999) (a debtor’s use of estate property pursuant to Section 363 must be supported by a sound business purpose); In re Weatherly Frozen Food Group, Inc., 149 B.R. 480, 482-83 (Bankr. N.D. Ohio 1992) (a Section 363 sale may be authorized when a sound business purpose dictates such action); In re Del. & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (a debtor’s decision to use estate property pursuant to Section 363 must be supported by a “sound business purpose”); In re Federated Department Stores, Inc., 1990 Bankr. LEXIS 122 (Bankr. S.D. Ohio 1990) (authorizing payment of prepetition claims under Section 363 of the Bankruptcy Code to employees, customers, and department lessees); In re Ionosphere Clubs, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to Section 363(b) of the Bankruptcy Code). In order to pay prepetition claims, “the debtor must articulate some business justification, other than the mere appeasement of major

creditors.” In re Ionosphere Clubs, 98 B.R. at 175. As discussed more fully herein, the Debtors’ request to pay the Shippers and Warehousemen easily meets this standard because the failure to satisfy the Shipping and Warehousing Charges could have a material adverse impact on the day to day operations of their businesses.

B This Court’s Equitable Powers Under Section 105(a) Permits the Payment of Shipping and Warehousing Charges.

32. This Court’s general equitable powers are codified in Section 105(a) of the Bankruptcy Code. Section 105(a) empowers this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. at 175. Under Section 105(a), a court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing In re Ionosphere Clubs, 98 B.R. at 177).

33. The Debtors strongly believe that continuation of their positive relationship with the Shippers, Warehousemen and Foreign Supply Chain is imperative to their continued operation and successful chapter 11 efforts, and that the payment of the prepetition Shipping, Warehousing, and Foreign Supply Charges is essential to assure the maintenance of the value of their estates in the context of the proposed plan of reorganization or sale of assets, as the case may be. Therefore, this Court should exercise its equitable power to grant the relief requested in this Motion.

C The “Necessity of Payment Doctrine” Permits the Payment of the Shipping and Warehousing Charges.

34. The “necessity of payment” doctrine further supports the relief requested in this Motion. The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re Ionosphere Clubs, 98 B.R. at 176; see also In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (bankruptcy court may authorize payment of prepetition claims where such payment is necessary to the survival of the debtor); In re SIS Corp., 108 B.R. 608, 609-10 (Bankr. N.D. Ohio 1989) (agreeing with “principle that a bankruptcy court may exercise its equitable powers under Section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); In re Lehigh & New England Railway Co., 657 F.2d 570, 581 (3rd Cir. 1981) (the “necessity of payment” doctrine “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus”). This doctrine is consistent with the paramount goal of chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor.” Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2nd Cir.), cert. denied, 325 U.S. 813 (1945) (“let [the debtor] once shut down, and it will lose much of its value . . . Some priority to [the debtor’s prepetition suppliers] may be essential to preservation of the business”).

35. Indeed, it is not uncommon for courts in this District and elsewhere to authorize the payment of prepetition claims where such payment is essential to the continued operations of the debtor, and in particular claims of shippers and warehousemen. See e.g., In re Structurelight

Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (the court embraced “the principle that a bankruptcy court may exercise its equity powers under Section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor”); see also In re Milacron Inc., Case No. 09-11235 (JVA) (Bankr. S.D. Ohio March 10, 2009); In re Huff Corporation, Case. No. 04-39148 (LSW) (Bankr. S.D. Ohio Nov. 18, 2004); In re Teligent, Inc., et al., Case No. 01-12974 (SMB) (Bankr. S.D.N.Y. June 13, 2001); In re Cornerstone Propane, L.P., et al., Case No. 04-13856 (RDD) (Bankr. S.D.N.Y. June 10, 2004); In re Acme Steel Company, et al., Case No. 98-2179 (MFW) (Bankr. D. Del. Sept. 29, 1998) (authorizing payment of shippers and warehousing charges).

36. The Debtors submit that paying the Shipping and Warehousing Charges that accrued before the Petition Date is critical to their efforts in these Chapter 11 Cases. In order to maximize the value of the Debtors’ business and maintain operations, the Debtors must be able to maintain their highly effective supply and delivery system in which each of the Shippers and Warehousemen are a vital link. Indeed, if this Motion is not granted, the Debtors’ supply and delivery system would be drastically disrupted and their chapter 11 efforts jeopardized.

37. Additionally, if the unpaid Shipping, Warehousing, and Foreign Supply Charges are not satisfied, a strong likelihood exists that the Debtors may not be able to take possession upon arrival in the United States of the products that are currently in transit to the Debtors. The Debtors would have no recourse to demand the turnover of such products from the ocean freight carriers if such ocean freight carriers refused to deliver the products unless paid. The Debtors’ Shippers and Warehousemen may allege that they are entitled to possessory liens for transportation and storage, as applicable, of the products in their possession as of the Petition Date, and may refuse to deliver or release such products until their claims have been satisfied

and their liens redeemed. Moreover, pursuant to Section 363(e) of the Bankruptcy Code, a carrier, as bailee, may be entitled to adequate protection of a valid possessory lien. Finally, if the Foreign Supply Chain Service Providers remain unpaid they could refuse to continue to conduct business with the Debtors, thereby critically impairing and disrupting the Debtors' supply of product.

38. The unpaid customs duties which the Debtors seek authority to pay are entitled to priority (see 11 U.S.C. § 507(a)(8)(F)) and are necessary to preserve the Debtors' operations and the value of the Debtors' estates; consequently, the Debtors' payments of those claims should be non-controversial.

D The Court Should Authorize the Debtors to Satisfy the Shippers, Warehousemen and Foreign Supply Chain Providers Claims Within Twenty Days After the Commencement Date as Requested

39. Pursuant to the recent revisions 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, the Debtors must be deemed reliable and dependable among their customers in order to maintain the value of the Company. The Debtors' supply and delivery system depends upon the use of reputable Shippers, Warehousemen, and Foreign Supply Chain Service Providers to import materials and export materials and goods.

40. 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.

WAIVER OF MEMORANDUM OF LAW

41. 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

42. 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; 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

43. 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, authorizing, but not directing, the Debtors to (i) pay certain prepetition claims of Shippers and Warehousemen in the ordinary course of business; (ii) to satisfy United States Customs Duties imposed on shipments from foreign suppliers and to otherwise satisfy prepetition obligations of suppliers in the Debtors' foreign supply chain; and (iii) granting such other and further relief as this Court deems appropriate.

Dated: May 8, 2009
Cincinnati, OH

Respectfully submitted,

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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**

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

**ORDER AUTHORIZING THE DEBTORS TO (I) PAY IN THE ORDINARY COURSE
CLAIMS OF SHIPPERS AND WAREHOUSEMAN AND (II) SATISFY THE UNITED
STATES CUSTOMS DUTIES IMPOSED ON SHIPMENTS FROM FOREIGN
SUPPLIERS AND PREPETITION OBLIGATIONS OF SERVICE PROVIDERS IN THE
DEBTORS' FOREIGN SUPPLY CHAIN**

Upon consideration of the motion (the “Motion”)¹ of the Debtors² for entry of an order authorizing the Debtors to (i) pay certain prepetition claims of Shippers and Warehousemen in

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.

the ordinary course of business and (ii) to satisfy United States Customs Duties imposed on shipments from foreign suppliers and to otherwise satisfy prepetition obligations of suppliers in the Debtors' foreign supply chain; 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 pay in the ordinary course of business prepetition Shipping and Warehousing Charges in an amount not to exceed \$1 million (which amount includes both foreign and domestic charges) without further Court order; and it is further
3. ORDERED that the Debtors, in their sole discretion, shall undertake appropriate efforts to cause Shippers and Warehousemen to acknowledge in writing that payment of such claims is conditioned upon the Shipper and Warehouseman continuing to supply goods and services to the Debtors on trade terms that, at a minimum, such Shipper or Warehouseman provided to the Debtors on a historical basis prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect during such time, and the Debtors reserve the right to negotiate new trade terms with any Shipper or Warehouseman as a condition to payment of any such claim; and it is further

4. ORDERED that the Debtors are authorized, but not directed, to satisfy (i) the United States customs duties imposed upon shipments from foreign suppliers and (ii) the prepetition obligations of Foreign Supply Chain Providers in the Debtors' Foreign Supply Chain; and it is further

5. ORDERED that the Debtors are authorized, but not directed, to maintain the U.S. Customs Bonds, as described in the Motion; and it is further

6. ORDERED that nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid to the Shippers and Warehouseman hereunder; and it is further

7. ORDERED that all banks and other financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition Shipping and/or Warehousing Charges approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment; provided, however, that sufficient funds are available in the Debtors' bank accounts to cover such payments; provided, further, that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order; and it is further

8. ORDERED that the Debtors are authorized to reissue any check, electronic payment, or otherwise, which was drawn in payment of any prepetition Shipping, Warehousing, and Foreign Supply Charges that is not cleared by a depository; and it is further

9. ORDERED that nothing herein shall impair the Debtors' ability to contest, without prejudice, in their sole discretion, the validity and amounts of the Shipping and Warehousing Charges owing to the Shippers and Warehouseman; and it is further

10. ORDERED that the Debtors do not concede that any liens (contractual, common law, statutory, or otherwise) alleged by Shippers or Warehousemen or paid pursuant to this Order are valid, and the Debtors expressly reserve the right to contest the extent, validity, perfection, or possible avoidance of all such liens; and it is further

11. 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

12. ORDERED that nothing herein shall be deemed to constitute the postpetition assumption of any executory contracts between the Debtors and the Shippers or Warehousemen; and it is further

13. 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

14. ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

SO ORDERED.

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