

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 11
)	
MOLL INDUSTRIES, INC., <i>et al.</i> ¹)	Case No. 10- <u>11371</u> ()
)	
Debtors.)	Joint Administration Pending

DEBTORS' MOTION FOR ORDER AUTHORIZING DEBTORS TO (A) CONTINUE AND MAINTAIN CONSOLIDATED CASH MANAGEMENT SYSTEM AND EXISTING BANK ACCOUNTS; (B) CONTINUE USE OF EXISTING BUSINESS FORMS; AND (C) GRANTING INTERIM AND FINAL WAIVER OF SECTION 345 REQUIREMENTS

Moll Industries, Inc. and its affiliated debtors (the "Debtors"), debtors and debtors-in-possession in the above captioned Chapter 11 cases, hereby move this Honorable Court (the "Motion"), pursuant to Sections 105(a), 345 and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), for the entry of an order authorizing the Debtors to continue and maintain their existing cash management system and existing bank accounts, continue using their existing business forms, and waive the requirements of section 345 of the Bankruptcy Code initially on an interim basis, and after a final hearing, on a final basis. In support of the Motion, the Debtors rely on and incorporate by reference the Declaration of Jeffrey C. Merritt in Support of First Day Motions and Applications (the "Merritt Declaration"), filed with Court concurrently herewith. In further support of this Motion, the Debtors, by and through their undersigned counsel, state the following:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹The Debtors are the following entities: Moll Industries, Inc.; Moll Holdings, Inc.; Moll Europe Holdings, LLC; and Moll Latin America Holdings, LLC.

Docket No. Lo
Date 4-27-10

Background

2. On April 27, 2010 (the "Petition Date"), each of the Debtors filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code commencing the above captioned cases, which the Debtors have requested be jointly administered for procedural purposes. The Debtors are operating as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. No committee has yet been appointed or designated.

4. The Debtors are a significant provider of global injection molding and full-service contract manufacturing solutions for the medical, appliance, industrial, consumer and automotive markets. They are also specialists in drug delivery, surgical devices, enclosures and fluid delivery products, and are considered one of the most experienced full-service contract manufacturer of custom injection molded components and assemblies to the appliance industry in North America. They have registered medical device establishment with the FDA in their manufacturing facilities in Seagrove, North Carolina and Donegal, Ireland.

5. As additional background and support for this Motion, the Debtors refer this Court to the Merritt Declaration, filed contemporaneously herewith and incorporated herein by reference.

Debtors' Prepetition Cash Management System

6. The Debtors' cash management system (the "Cash Management System") consists of eight separate bank accounts with four different banks (the "Bank Accounts"), as set forth on Exhibit A. The Debtors' primary accounts are an accounts receivable depository account (the "Depository Account") and an operating account (the "Operating Account"), both with Wells Fargo Bank. All accounts receivable are deposited in the Depository Account and the funds are swept daily into the Operating Account. Funds then are swept as needed into five controlled disbursement accounts: one for the payment of health claims, one for the payment of accounts receivable, a local checking account for the Seagrove, North Carolina, facility, and two

manual payroll check accounts. The Debtors are no longer using the manual payroll accounts and will be closing them in the near future as soon as all checks written on the accounts clear.

7. The Debtors also have a money market account with NexBank, SSB. Excess cash from the operating account is manually transferred to this money market account from time to time.

8. The Bank Accounts do not contain funds of any non-debtor entities and no funds from the Bank Accounts are used to fund the operations of non-debtor affiliates other than through documented inter-company loans.

Relief Requested

9. By this Motion, the Debtors seek a waiver of the requirement that new bank accounts be opened to replace all of the Bank Accounts because such a requirement would unnecessarily disrupt their businesses and would not provide any significant benefit to the Debtors' estates, their creditors or other parties in interest.

10. The Debtors' ability to continue and maintain the Cash Management System and Bank Accounts is important to the efficient administration of the Debtors' estates and is necessary to prevent inordinate disruption to the Debtors' operations. Indeed, any disruption in the means by which the Debtors manage their financial affairs and satisfy their ordinary course post-petition obligations could lead to overall operational paralysis, thereby jeopardizing the Debtors' business operations at the outset of the bankruptcy process.

11. In addition, the Debtors request authority to continue to use their current payroll and operating checks, existing stationery and business forms (collectively, the "Business Forms") during the pendency of these Chapter 11 cases. The Debtors' ability to use the Business Forms without alteration or change will prevent inordinate and unnecessary disruption and expense and,

thus, is in the best interests of the Debtors' estates and creditors. The Debtors also seek a waiver of the requirement that the legend "debtor-in-possession" be imprinted on any existing Business Forms, including checks, and request that their banks be permitted to honor pre-petition checks as they are presented consistent with other orders of this Court.

12. In conjunction with the maintenance of the Debtors' Cash Management System and Bank Accounts, and pursuant to section 345(a) of the Bankruptcy Code, the Debtors seek the Court's approval for a waiver of the investment and bonding requirements of section 345(b) of the Bankruptcy Code, first on an interim basis, and after a final hearing on a final basis. The Debtors seek this authorization to insure the orderly entry into bankruptcy and to help efficiently administer their businesses and avoid the disruptions and distractions that may divert the Debtors' attention from urgent matters during the initial stages of these Chapter 11 cases.

13. The Debtors will continue to maintain records respecting all transfers among the Bank Accounts so that all transactions can be tracked and monitored after they have occurred. The Debtors will instruct their banks to add the designation "Debtor-in-Possession" or "DIP" to all checks ordered in the future, will treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession, and will maintain records that recognize the distinction between post-petition and pre-petition activities.

Basis For Relief Requested

A. Maintenance of Cash Management System

14. The Debtors respectfully submit that maintenance of the Cash Management System and Bank Accounts is necessary to preserve business continuity and avoid the operational and administrative paralysis of the Debtors' ongoing post-petition operations. The continued

maintenance and use of the Bank Accounts will greatly facilitate the Debtors' transition to post-petition operations.

15. Bankruptcy courts routinely grant Chapter 11 debtors authority to continue utilizing existing cash management systems, treating requests for such authority as relatively "simple matters." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *In re UNR Industries, Inc.*, 46 B.R. 25, 27 (Bankr. N.D. 111. 1984). Courts in this District have routinely granted relief similar to that sought herein. See *In re Sharper Image Corporation*, Ch. 11 Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); *In re Linens Holding Co.*, Ch. 11 Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); *In re Hancock Fabrics, Inc.*, Ch. 11 Case No. 07-10353 (BLS) (Bankr. D, Del. March 22, 2007); *In re Holley Performance Prods., Inc.*, Ch. 11 Case No. 08-10256 (PJW) (Bankr. D. Del. Feb. 12, 2008); *In re Tweeter Opco, LLC*, Ch. 11 Case No. 08-12646 (MFW) (Bankr. D. Del. Nov.73, 2008); *In re Pecus ARG Holding, Inc.*, Ch. 11 Case No. 09-10170 (KJC) (Bankr. D. Del. Jan. 16, 2009).

B. Maintenance of the Debtors' Current Business Forms

16. The Debtors also seek permission to continue the use of existing Business Forms. The nature and scope of the Debtors' business requires that the Debtors be permitted to continue to use these existing forms, such as checks, letterhead, invoices and other such business forms, without alteration or change. Replacement of the Business Forms would be substantially duplicative and place an undue burden on the Debtors estates. However, the Debtors propose to designate their checks as checks of a "debtor-in-possession" after exhausting their existing supply.

17. Rule 2015-2(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") provides

authority for a debtor to exhaust their existing supply of checks before adding a “DIP” designation. *See also In re Gold-Standard Banking*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill.1995) (requirement prohibiting issuance of any checks without “debtor-in-possession” designation unenforceable). However, as Local Rule 2015-2(a) is silent as to the other business forms being used by the Debtors, the Debtors request this relief herein to ensure that they may exhaust all of their existing Business Forms. The granting of the relief requested in this Motion will facilitate a smooth and orderly transition of the Debtors into Chapter 11 and minimize the disruption of the business and the operations of the Debtors without violating either the policies of Chapter 11 or the Local Rules.

C. Interim and Final Waivers of Section 345(a) of the Bankruptcy Code

18. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of estates, such as the Debtors’ cash, only in a manner that will yield the maximum reasonable net return on such funds, taking into account the safety of each deposit or investment. If deposits or investments are not insured or guaranteed by the United States or backed by the full faith and credit of the United States, section 345(b) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the estate must require from the entity with which the money is deposited or invested the issuance of a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety. *See* 11 U.S.C. § 345(b).

19. By this Motion, the Debtors seek a waiver of these requirements first on an interim basis, and then on a final basis. Waiver is justified in this case. *See* 140 Cong. Rec. H 10,767 (October 4, 1994) (“Section 345(b) allows the court to approve investments other than those permitted by section 345(b) for just cause.”).

20. In this case, the Debtors' estates and their creditors will not be harmed by the maintenance of the Debtors' current deposit practices because of the prudent deposit guidelines that the Debtors already utilize. The Debtors currently have deposits in an amount of approximately \$117,000.00 in the Bank Accounts. Given the Debtors' financial situation, most of those funds are needed for immediate operational expenses. The Banks are all well-established banks. Thus, while the Bank Accounts may not technically be in compliance with the requirements of Section 345 of the Bankruptcy Code because they may exceed the Federally insured limits, to the extent that such deposits are not insured or guaranteed by, or backed by the full faith and credit of, the United States, or by a department agent or instrumentality of the United States, such deposits are nevertheless safe, prudent, commercially reasonable and satisfy the goal of protecting principal.

21. Requiring the Debtors to change their deposit and other procedures could result in irreparable harm to the operations of the Debtors' ability to manage their operations because it would disrupt the Cash Management System. Because the Debtors' estates and their creditors will not be harmed by the maintenance of the Debtors' current deposit practices because of the prudent deposit guidelines that the Debtors already utilize, a waiver of the requirements of Section 345 of the Bankruptcy Code on an interim and final basis is warranted.

Notice

22. Notice of this Motion has been served on (i) the Office of the United States Trustee for the District of Delaware; (ii) each of the Debtors' twenty largest unsecured creditors and/or their counsel; (iii) counsel for NexBank, SSB, as Administrative Agent and Collateral Agent for the Debtors' pre-petition secured lenders; (iv) the United States Department of Justice; (v) the Internal Revenue Service, (vi) the United States Environmental Protection Agency, (vii)

the Banks; and (viii) all parties that have requested special notice pursuant to Bankruptcy Rule 2002. Notice of the Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested, the Debtors respectfully submit that no further notice of this Motion is required.

Conclusion

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 27, 2010
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



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*Proposed Attorneys for the Debtors and
Debtors-in-Possession*

Exhibit A

<u>Bank</u>	<u>Account Name</u>	<u>Account No.</u>
Wells Fargo	Accounts Receivable Depository Account	412-1142376
Wells Fargo	Operating Account	412-1142384
Wells Fargo	Health Claims Account	412-1251458
Wells Fargo	Accounts Payable account	960-0056455
Wells Fargo	Manual Payroll Check Account	960-0056474
Community One	Seagrove, NC Local Checking Account	117994
Wachovia Bank, N.A.	Seagrove, NC Manual Payroll Account	2003960027131
NexBank	Money Market Account	1604115

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
MOLL INDUSTRIES, INC., *et al.*,¹) Case No. 10-____ ()
)
Debtors.) Joint Administration Pending

**INTERIM ORDER GRANTING DEBTORS' MOTION FOR ORDER
AUTHORIZING DEBTORS TO (A) CONTINUE AND MAINTAIN
CONSOLIDATED CASH MANAGEMENT SYSTEM AND EXISTING
BANK ACCOUNTS; (B) CONTINUE USE OF EXISTING BUSINESS
FORMS; AND (C) GRANTING INTERIM WAIVER OF SECTION 345**

Upon the Motion² of Moll Industries, Inc. and its affiliated debtors, as debtors and debtors-ins-possession (the "Debtors"), pursuant to Sections 105(a), 345 and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), for an order authorizing the Debtors to continue and maintain their existing cash management system and existing bank accounts, continue using their existing business forms, and granting a waiver the requirements of Section 345 of the Bankruptcy Code; and upon consideration of the Declaration of Jeffrey C. Merritt in Support of First Day Motions and Applications; and the Court finding that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

¹ The Debtors are the following entities: Moll Industries, Inc.; Moll Holdings, Inc.; Moll Europe Holdings, LLC; and Moll Latin America Holdings, LLC.

² Unless it is plainly apparent from the context that another meaning is intended, all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Motion.

2. The Debtors are hereby authorized to continue to use their Cash Management System and consolidate the management of their cash and cash equivalents including, without limitation, the transfer of funds in the ordinary course of business, when and in the amounts determined by the Debtors to be necessary to maintain the various aspects of their business operations.

3. The Debtors are hereby authorized to maintain and continue to use the Bank Accounts, and any other accounts of the Debtors maintained with the Banks, with the same account numbers, provided, however, that the Debtors shall be required to maintain their books and records so that intercompany transfers can be readily ascertained.

4. The Bank Accounts and any other accounts of the Debtors shall be treated for all purposes as accounts of the Debtors as debtors-in-possession.

5. The Debtors are hereby authorized to use, in their present form, existing Business Forms provided, however, that the Debtors shall add a "DIP" designation to its checks and other Business Forms when and if their currently-existing supply of checks and Business Forms is exhausted.

6. The requirements of Section 345 of the Bankruptcy Code shall be waived with respect to the Bank Accounts and any other accounts of the Debtors with the Banks for an interim period of 45 days.

7. For any of the Banks that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors are directed to contact such Banks, within fifteen (15) days from the date of entry of this Order, to internally code each of the Debtors' Bank Accounts as "Debtor-In-Possession" accounts to ensure compliance with section 345 of the Bankruptcy Code, and the Debtors are also directed to

provide any such correspondence and any response thereto to the U.S. Trustee.

8. For any of the Banks that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good-faith efforts to cause such Banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of entry of this Order.

9. A final hearing will be held on _____, 2010 at __:__.m. prevailing Eastern time to consider the Debtors' request for a waiver of the requirements of Section 345 on a final basis.

10. In the absence of objection, the Court may further extend such waiver for an appropriate period without further hearing.

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

12. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

13. This Court retains jurisdiction with respect to all matters arising from or related to implementation of this Order.

Dated: _____, 2010
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

File a First Day Motion:

10-11371 Moll Industries, Inc.

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Case Flag: PlnDue, DsclsDue

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from William A. Hazeltine entered on 4/27/2010 at 3:52 PM EDT and filed on 4/27/2010

Case Name: Moll Industries, Inc.

Case Number: 10-11371

Document Number: 6

Docket Text:

Motion to Maintain Bank Accounts Filed By Moll Industries, Inc. (Hazeltine, William)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Cash Management Motion.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=4/27/2010] [FileNumber=8394996-0]
[7f401aa0562c90d33128eef7c9e981476c9c3aeb5ef47ee6ad85da34b5e7165ad7e0
da2d7758856e7d956e757188efc7907c3ac098d8a9e445164df4bf6642f7]]

10-11371 Notice will be electronically mailed to:

William A. Hazeltine on behalf of Debtor Moll Industries, Inc.
Bankruptcy001@sha-llc.com

United States Trustee
USTPREGION03.WL.ECF@USDOJ.GOV

10-11371 Notice will not be electronically mailed to: