

**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

**MOTION OF DEBTORS PURSUANT TO
SECTIONS 105, 363, 364, 1107 AND 1108 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 6003 AND 6004 FOR AUTHORIZATION TO PAY
THE PRE-PETITION CLAIMS OF CERTAIN CRITICAL PROVIDERS**

Moll Industries, Inc. and its affiliated debtors (the “Debtors”), debtors and debtors-in-possession in the above captioned Chapter 11 cases, hereby request, pursuant to Sections 105(a) and 363(b), 364, and 1107 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 6003 and 6004, that this Honorable Court enter an order authorizing, but not requiring, the Debtors to pay, in their sole discretion, the pre-petition claims of certain critical vendors and other critical providers (the “Motion”). 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

1. This Court has jurisdiction to consider this matter 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

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

Docket No. 11
Date 4.27.10

Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the requested relief are Sections 105, 363, 364, 1107 and 1108 of the Bankruptcy Code.

Background

2. On or about 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.

Relief Requested

6. By this Motion, the Debtors request the entry of an Order authorizing them, in their sole discretion and exercise of their business judgment, to pay certain pre-petition claims (the "Critical Pre-Petition Claims"), consisting of (I) the pre-petition fixed, liquidated, and

undisputed claims (the “Critical Vendor Claims”) of certain of the Debtors’ critical suppliers and vendors of supplies, materiel, and services (collectively, the “Critical Vendors”) on the terms and conditions set forth herein, and (II) other critical pre-petition claims (the “Other Critical Claims”).

7. To satisfy the Critical Pre-Petition Claims, the Debtors seek an Order authorizing but not obligating them to pay, in their sole discretion, up to \$200,000 in cash or in kind (at the Debtors’ election), subject to approval by the Court of the Debtors’ motion to authorize use of cash collateral, filed contemporaneously herewith.

I. Obligations to Critical Vendors

8. In connection with the normal operation of their businesses, the Debtors rely heavily on their suppliers as well as service vendors. The ability of the Debtors to continue their operations on a going-forward basis will depend largely upon uninterrupted, continued access to the products and services provided by the Critical Vendors. At this critical stage, an interruption in the provision of such products and services by the Critical Vendors would be severely detrimental to the Debtors’ efforts to sell their assets as a going concern, and would significantly impair the value of the Debtors’ estates.

9. Therefore, the goods and services provided by the Critical Vendors must continue unabated during the pendency of these Chapter 11 cases in order to avoid substantial harm and loss of enterprise value to the Debtors’ businesses. Accordingly, the interests of the Debtors and their estates and creditors will be best served if the Debtors are authorized to pay the Critical Vendor Claims.

II. Obligations on Account of Other Critical Provider Claims

10. In addition to the Critical Vendors, the Debtors rely heavily on the services of other providers in the operation of their businesses including, without limitation, common carriers, delivery services, IT services, tooling services and insurance carriers (the “Other Critical Providers” and, together with the Critical Vendors, the “Critical Providers”). The services provided by the Other Critical Providers are essential to the continued seamless operation of the Debtors’ businesses. Accordingly, in order to ensure the continuation of these services, the Debtors need authority to pay the pre-petition claims of the Other Critical Provider Claims.

Basis for Relief Requested

11. The Debtors have carefully examined whether the payment of the Critical Pre-Petition Claims is necessary and have determined that the supplies, material, and services provided by the Critical Providers are essential to the continuation of the Debtors’ operations on a going-forward basis because: (i) certain of the Critical Providers are the only source for such goods or services, (ii) certain of the Critical Providers provide goods or services on advantageous terms, (iii) failure to pay the pre-petition claims of the Critical Providers would, in the Debtors’ business judgment, result in a substantial risk that such Critical Providers may refuse to provide goods or services to the Debtors, which would have a detrimental impact on the Debtors’ business, and/or (iv) certain of the Critical Providers may have the ability to assert possessory rights against property of the Debtors.

12. Accordingly, the Debtors’ have determined that making payments on account of the Critical Pre-Petition Claims of the Critical Providers is essential to the continuation of the Debtors’ businesses. The Debtors, in their discretion, will make such payments only if the value

to their estates is equal to or greater than the amount necessary to maintain or restore the flow of essential goods and services.

The Ability to Pay the Pre-Petition Claims Owed to the Critical Providers is Essential to the Debtors' Reorganization

13. Applying the criteria set forth above, the Debtors have determined that the authority to pay the claims of the Critical Providers is critical to their efforts to continue their businesses. Without a seamless continuation of the provision of goods and services by the Critical Providers after the Petition Date the Debtors may experience a serious disruption (and possible immediate shutdown) of their businesses. The payment of the Critical Pre-Petition Claims as requested herein is intended to ensure that there is no disruption in the Debtors' ability to obtain the products and services necessary to the operation of their businesses and the preservation of the value of their assets as a going concern.

14. The Debtors are concerned that the Critical Providers may, among other things, refuse to provide products or services or refuse to provide them on reasonable credit terms absent payment of the Critical Pre-Petition Claims. Accordingly, the Debtors seek to pay the Critical Pre-Petition Claims only where, in the Debtors' business judgment, nonpayment of such claims would threaten the Debtors' ability to obtain the delivery of essential products and/or the provision of essential services, which could result in a shutdown of all or a portion of the Debtors' operations. Thus, the Debtors submit that the relief requested is narrowly tailored to facilitate the Debtors' sale process.

15. In addition, some of the Critical Providers may be entitled, pursuant to applicable state law, to assert liens or other possessory rights against the Debtors' property. To the extent these suppliers may have such possessory rights, paying their Critical Pre-Petition Claims will result in the reduction of secured claims against the Debtors, which may ultimately need to be

paid in any event. Furthermore, by paying these claims now, the Debtors will maintain access to their Critical Providers and the essential products and services they provide. Paying these claims may also eliminate the fees and expenses the Debtors would otherwise incur in removing the liens and prosecuting and defending motions to lift the automatic stay.

16. Moreover, certain of the Critical Providers may provide supplies or services to the Debtors pursuant to contracts that purport to reserve to the Critical Providers certain termination rights. All of these facts demonstrate the vital need for the ability to make expeditious payment of the claims of these Critical Providers.

17. Under these circumstances, the Debtors should be able to exercise their discretion and business judgment to pay Critical Pre-Petition Claims.

**Proposed Terms and Conditions of
Payment of Critical Provider Claims**

18. The Debtors propose, in their discretion, to condition payment of each Critical Pre-Petition Claim on that Critical Provider's binding agreement to continue supplying its products or services to the Debtors on Customary Trade Terms (as defined below, the "Customary Trade Terms").

19. To facilitate this process, the Debtors propose to use a letter agreement (a "Supplier Protection Agreement"), substantially in the form attached hereto as Exhibit A, for execution by those Critical Providers interested in taking part in the critical provider program (the "Supplier Protection Program") and will remain subject to the Debtors' acceptance of that Supplier Protection Agreement.

20. The Debtors propose that each Supplier Protection Agreement executed in connection with the Supplier Protection Program be subject to, without limitation, some or all of the following terms:

- a. in the Debtors' sole discretion, the Debtors will make some or all payments, in cash or in kind (at the Debtors' election), due the Critical Provider for pre-petition transactions, on the due date or as soon as reasonably practicable thereafter;
- b. each participating Critical Provider agrees, through the earlier of nine (9) months after the Petition Date or the effective date of a chapter 11 plan, to be bound by the Customary Trade Terms (as defined below), which shall include, but not be limited to, credit terms, historical pricing conventions, historical product volumes, cash discounts, payment terms, allowances, rebates, normal product mix, and availability and other applicable terms and programs acceptable to the Debtors, so long as the Debtors are not then in post-petition default;
- c. the "Customary Trade Terms" shall be defined as those trade terms with the Critical Provider that were most favorable to the Debtors at any time during the time period within 180 days of the Petition Date, or such other terms as mutually agreed to;
- d. each participating Critical Provider acknowledges that it has reviewed the terms and provisions of the Order approving this Motion, and consents to be bound thereby;
- e. each participating Critical Provider agrees that, to the extent it has received payment under the Supplier Protection Program from the Debtors on a Critical Pre-Petition Claim, but the Critical Provider subsequently refuses to supply products or services to the Debtors on Customary Trade Terms, the Critical Provider will immediately repay to the Debtors any such payments, without the right of setoff, recoupment, or reclamation by the Critical Vendor; and
- f. to the extent there exists any contract between the Debtors and the Critical Provider that contains a right of termination based on the Debtors' bankruptcy, insolvency, or other similar conditions, the Critical Provider agrees to waive the filing of bankruptcy by or the insolvency or other similar conditions of the Debtors as a termination right under those contracts for the duration of the Supplier Protection Agreement. All other default, suspension, and termination provisions in such contracts shall remain in effect, subject to applicable provisions of the Bankruptcy Code.²

² The Debtors do not waive, but rather expressly reserve all of their rights against every potential Critical Provider that is contractually obligated to the Debtors, including, without limitation, the right to assert that any failure of such potential Critical Provider to perform under such contract is a violation of the automatic stay pursuant to Section 362 of the Bankruptcy Code.

21. By this Motion, the Debtors seek an Order authorizing, but not directing, them to enter into Supplier Protection Agreements when they determine, in their business judgment, that payment of such Critical Pre-Petition Claims is necessary and that such agreements are in the best interests of the Debtors and their estates.

22. The Debtors reserve the right, in their sole discretion, to negotiate new trade terms with any Critical Provider as a condition to payment of any Critical Pre-Petition Claim. In addition, the Debtors reserve the right to contest any invoice of any Critical Provider on any grounds.

23. Notwithstanding the continuation of Customary Trade Terms, this Motion should not be construed as an assumption of any executory contract or unexpired lease between the Debtors and any of the Critical Providers, nor should it be construed as a rejection of any executory contract or unexpired lease with any creditor. The Debtors are in the process of reviewing these matters and reserve all of their rights with respect to the assumption or rejection of all executory contracts and unexpired leases. Furthermore, the Debtors reserve the right to contest, on non-bankruptcy grounds, the amount claimed to be due by any of the Critical Providers.

Basis for Relief Requested

The Court May Authorize Payment of the Critical Pre-Petition Claims Pursuant to Sections 363 and 364 of the Bankruptcy Code

24. The Court may grant the relief requested herein pursuant to Section 363 of the Bankruptcy Code. See, e.g., In re Tropical Sportswear Int'l Corp., 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”); In re UAL Corp., Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (pursuant to sections 363 and 364, the court authorized the debtors to pay pre-petition claims of essential trade creditors because the relief requested was “essential to the continued operation of the Debtors’ businesses”); Armstrong World Indus., Inc. v. James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (pursuant to section 363, the court authorized contractor to pay pre-petition claims of some suppliers who were potential lien claimants because payments were necessary for general contractors to release funds owed to the debtors).

25. The Debtors propose to pay certain Critical Pre-Petition Claims on the condition that each Critical Provider agrees to extend post-petition credit or provide other valuable consideration in exchange for payment. Thus, these parties, by providing value to the Debtors, principally in the form of post-petition credit extensions, may be compensated pursuant to section 364 of the Bankruptcy Code.

26. The Debtors may seek other forms of post-petition consideration from Critical Providers in exchange for payment of some or all of their pre-petition claims, such as commitments to continue supplying essential goods or services, the continuation or enhancement of favorable terms, and other business and concessions. This provision of “new value” by these

Critical Providers in exchange for payment of their pre-petition claims warrants approval of relief sought by this Motion pursuant to Sections 363 and 364(b) of the Bankruptcy Code.

27. Furthermore, as discussed above, maintaining the supplies, materiel, and services provided by the Critical Providers is vital to the Debtors' continuing business operations and the success of these cases. The Debtors submit that potential loss the Debtors' enterprise value if their business operations are severely disrupted justifies the relief requested. Accordingly, not only will the Debtors' other creditors not be impaired by payment of the Critical Pre-Petition Claims but such creditors will benefit by this Court's empowering the Debtors to negotiate payment of the Critical Pre-Petition Claims to facilitate a smooth transition into bankruptcy.

**The Court May Also Grant the Motion Pursuant to its
Equitable Powers Under Section 105(a) of the
Bankruptcy Code and the "Necessity of Payment" Doctrine**

28. The Debtors proposed payment of the Critical Pre-Petition Claims should also be authorized pursuant to Section 105(a) of the Bankruptcy Code and the "doctrine of necessity."

29. Section 105(a) of the Bankruptcy Code empowers the 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. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [Section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177), accord, In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999) ("to invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor's

reorganization”). See also, In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

30. In a long line of well-established cases, federal courts have consistently permitted post-petition payment of pre-petition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. See, e.g., Miltenberger v. Logansport Ry., 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of [crucial] business relations”); In re Lehigh Co. & New Eng. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that “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 [the] corpus”); Michigan Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court authorizing payment of pre-petition wages, salaries, expenses, and benefits).

31. The “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical pre-petition claims not explicitly authorized by the Bankruptcy Code. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a pre-petition claim is essential to the continued operation of [the debtor], payment may be authorized”); In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). The rationale for the doctrine of

necessity rule is consistent with the paramount goal of chapter 11, -- “facilitating the continued operation and rehabilitation of the debtor” Ionosphere Clubs, 98 B.R. at 176.

32. As stated above, the payment of the Critical Provider Claims is essential to the uninterrupted operation of the Debtors’ business. In turn, the maintenance of the Debtors’ businesses during these chapter 11 cases is crucial to the Debtors’ ability to rehabilitate for the benefit of all stakeholders. Hence, this Court should exercise its equitable powers to grant the relief requested herein.

33. The relief requested is similar to that previously approved by this Court. See, e.g., In re Sharper Image Corporation, Ch. 11 Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); In re Holley Performance Prods., Inc., Ch. 11 Case No. 08-10256 (PJW) (Bankr. D. Del. Feb. 12, 2008); In re Ritz Camera Centers, Inc., Ch. 11 Case No. 09-10617 (MFW) (Bankr. D. Del. Feb. 24, 2009); In re Hancock Fabrics, Inc., Ch. 11 Case No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007); In re Pecus ARG Holding, Inc., Ch. 11 Case No. 09-10170 (KJC) (Bankr. D. Del. Jan. 16, 2009); In re American Home Mortgage Holdings, Inc., Ch. 11 Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007).

The Court May Also Authorize Payment of the Critical Pre-Petition Claims as a Valid Exercise of the Debtors’ Fiduciary Duties

34. The Debtors, operating their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries charged with the responsibility of maximizing the value of the Debtors’ assets for the benefit of the Debtors estates and their creditors. Implicit in the duties of a debtor-in- possession is the duty to protect and preserve the estate, including the businesses’ going-concern value.

35. There are instances in which a debtor in possession can fulfill its fiduciary duty only by the pre-plan satisfaction of pre-petition claims. Pre-plan satisfaction of pre-petition

claims is a valid exercise of a debtor's fiduciary duty when, for example, the payment is a means of effecting a substantial enhancement of the estate or when a payment is to a sole-source vendor.

36. Here, payment of the Critical Pre-Petition Claims is a valid exercise of the Debtors' business and fiduciary judgment because the Debtors have narrowly tailored their requests to pay the Critical Pre-Petition Claims to encompass only those suppliers and service providers that are absolutely essential to the Debtors' ongoing business operations and only to the extent reasonably necessary to continue the uninterrupted provision of goods or services. Without these Critical Providers, the Debtors' operations would be, at best, disrupted for a significant period of time due to the time and expense that would be involved in transitioning to new vendors (if even available) and, at the worst, shut down completely. This disruption or possible shutdown of the Debtors' operations would cost the Debtors' estates substantial amounts in lost revenues and would adversely impact the Debtors' ongoing operations sale efforts.

37. Accordingly, the harm and economic disadvantage that would stem from the failure to pay the Critical Providers is grossly disproportionate to the amount of the Critical Pre-Petition Claims that would have to be paid to ensure that the Critical Providers continue to conduct business with the Debtors. Accordingly, the Debtors request that the Court grant the relief requested herein.

**Payment of the Other Critical Claims is Essential to the Debtors'
Reorganization Bankruptcy Rule 6003 is Satisfied; Request for Waiver of Stay**

38. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 20 days after the filing of the petition regarding a motion to pay all or part of a pre-petition claim only if such relief is necessary to avoid immediate and irreparable harm. Here, the relief requested is necessary to avoid immediate and irreparable harm to the Debtors' estates for the reasons set

forth above and in the Dowd Declaration. Accordingly, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

39. The Debtors request a waiver of any stay of the effectiveness of the Order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of ten (10) days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, proposed payment on account of Critical Pre-Petition Claims is essential to prevent irreparable damage to the Debtors’ operations. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

Notice

1. 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 Debtors’ pre-petition secured lenders; (v) the United States Department of Justice; (vi) the Internal Revenue Service, (vii) the United States Environmental Protection Agency, (viii) the Banks; (ix) the administrators of the Debtors’ Employee Benefit Plans; and (x) 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 similar to the proposed form of order attached hereto as Exhibit B, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: April 27, 2010
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



William A. Hazeltine (No. 3294)
John G. Pope (No. 4888)
4 East 8th Street, Suite 400
Wilmington, DE 19801
Tel: (302) 428-8191
Fax: (302) 428-8195

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

Exhibit A

April 27, 2010

To: Provider
Address

Dear Provider:

As you may be aware, on April 27, 2010 (the "Petition Date"), Moll Industries, Inc. together with certain of its affiliates (collectively, the "Debtors"), filed voluntary petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (The "Bankruptcy Cases" and the "Bankruptcy Court," respectively). On the Petition Date, the Debtors requested that the Bankruptcy Court's authority to pay certain vendors, suppliers and service providers (the "Providers") in recognition of, among other things, the importance of our relationship with such Providers and our desire that the Bankruptcy Cases have as little effect on our business as possible. On April ____, 2010, the Bankruptcy Court entered an order (the "Order") authorizing the Debtors, under certain conditions, to pay pre-bankruptcy claims of certain Providers that agree to the terms set forth below and to be bound by the terms of the Order.¹ A copy of the Order is enclosed.

To receive payment on pre-bankruptcy claims, we require each selected Provider to agree to continue supplying goods or services to the Debtors based on "Customary Trade Terms" as described in the Order and this agreement (the "Agreement"). In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, historical pricing conventions, cash discounts, payment terms, allowances, rebates, normal product mix and availability and other applicable terms and programs) which were most favorable to the Debtors and in effect between such Provider and the Debtors on a historical basis for the period within 180 days of the Petition Date (the "Prepetition Trade Terms"), or such other trade terms as we mutually agree.

For purposes of administration of this program as authorized by the Bankruptcy Court, the Debtors and you agree as follows:

1. Subject to the below, the estimated balance of the prepetition claim (net of any setoffs, credits or discounts) (the "Claim") is \$ _____. Your Claim does not constitute a claim allowed by the Court in the Bankruptcy Cases, and signing this Trade Agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Cases, including, without limitation, for any portion of your Trade Claim not paid in accordance with this Agreement.
2. Within ten (10) days of the date of this agreement, the Debtors shall pay to you \$ _____ on account of your Claim.

¹ The parties agree that the effectiveness of this Agreement is expressly conditioned upon entry of the Order by the Bankruptcy Court. To the extent the Order has not been entered by the Bankruptcy Court upon execution of this Agreement, this Agreement shall become immediately effective upon entry of the Order.

3. In consideration for the obligations and payment terms described herein, you agree not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a "Lien") or claim for reclamation ("Reclamation Claim"), regardless of the statute or other legal authority upon which such Lien or Reclamation Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors prior to the Petition Date and, to the extent you already obtained or otherwise asserted such a Lien or Reclamation Claim, you shall (at your expense) immediately take whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim.
4. You will hereafter extend to the Debtors Customary Trade Terms, which are:

Your execution of this Letter Agreement and the return of the same to the Debtors constitutes an agreement by you and the Debtors:

- a. to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of your Claim set forth above;
- b. that you will continue to supply the Debtors with goods pursuant to the terms hereof and that the Debtors will pay for such goods in accordance with terms hereof;
- c. that you have reviewed the terms and provisions of the Order and acknowledge that you are bound by such terms;
- d. that you will not separately seek payment for reclamation or similar claims outside the terms of the Order;
- e. that the payment of the portion of your Claim as set forth herein shall be applied first to the payment of goods received by the Debtors within 20 days prior to the Petition Date;
- f. that if you refuse to supply goods in accordance with the Customary Trade Terms or this Agreement, any payments received by you on account of your Claim will be deemed to have been in payment of postpetition obligations owed to you and you will immediately repay to the Debtors any payments made to you on account of your Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations, without the right of any setoffs, reclamation, or other defenses.
- g. to the extent there exists any contract between the Debtors and you that contains a right of termination based on the Debtors' bankruptcy, insolvency, or other similar conditions, you agree to waive the filing of bankruptcy by or the insolvency or other similar conditions of the Debtors

as a termination right under those contracts for the duration of the Supplier Protection Agreement. All other default, suspension, and termination provisions in such contracts shall remain in effect, subject to applicable provisions of the Bankruptcy Code.

The Debtors and you also hereby agree that any dispute with respect to this Agreement, the Order or the payment of your Trade Claim, in whole or in part, shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call _____ at _____.

Sincerely,

Moll Industries, Inc.

By: _____
Its: _____

Agreed and Accepted by:

[Name of Provider]

By: _____

Its: _____

Dated: _____

Exhibit B

**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-_____ (____)
)	Joint Administration Pending
)	
Debtors.)	Related Docket No. _____

**ORDER GRANTING MOTION OF DEBTORS PURSUANT TO
SECTIONS 105, 363, 364, 1107 AND 1108 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 6003 AND 6004 FOR AUTHORIZATION TO PAY
THE PRE-PETITION CLAIMS OF CERTAIN CRITICAL PROVIDERS**

Upon the motion, dated April 27, 2010 (the "Motion") of Moll Industries, Inc. and its affiliated debtors (the "Debtors"), pursuant to Sections 105, 363, 364, 1107 and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 6003 and 6004, to pay certain Critical Pre-Petition Claims of Critical Providers, consisting of (I) the pre-petition fixed, liquidated, and undisputed claims of certain of the Debtors' Critical Vendors² on the terms and conditions set forth herein, and (II) the pre-petition claims of certain Other Critical Providers, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and upon the Declaration of Jeffrey Merritt in Support of First Day Motions and Applications; and due and proper notice of the Motion having been given under the circumstances; and it appearing that no other or further

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, capitalized terms not otherwise defined shall have the meanings ascribed to them in the Motion.

notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interest of the Debtors, their creditors and all parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted as set forth herein, and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay the Critical Pre-Petition Claims of the Critical Providers in an amount not to exceed \$200,000 in the aggregate; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to seek to cause each Critical Provider to enter into an agreement (“Supplier Protection Agreement”) with the Debtors as a condition of payment of their Critical Pre-Petition Claim that includes some or all of the following terms:

- (a) in the Debtors’ sole discretion, the Debtors may make some or all payments in cash or in kind (at the Debtors’ election), due the Critical Provider for pre-petition transactions, on the due date or as soon as reasonable practicable thereafter;
- (b) each participating Critical Provider agrees, through the earlier of nine (9) months after the Petition Date or the effective date of a chapter 11 plan, to be bound by the Customary Trade Terms (as defined below), which shall include, but not be limited to, credit terms, historical pricing conventions, historic product volumes, cash discounts, payment terms, allowances, rebates, normal product mix, and availability and other applicable terms and programs acceptable to the Debtors, so long as the Debtors are not then in post-petition default;
- (c) the “Customary Trade Terms” shall be defined as those trade terms with the Critical Provider that were most favorable to the Debtors at any time during the time period within 180 days of the Petition Date, or such other terms as mutually agreed to;
- (d) each participating Critical Provider acknowledges that it has reviewed the terms and provisions of this Order, and consents to be bound thereby;

- (e) each participating Critical Provider agrees that, to the extent it has received payment under the Critical Provider Program from the Debtors on a Critical Provider Claim, but the Critical Provider subsequently refuses to supply products or services to the Debtors on Customary Trade Terms, the Critical Provider will immediately repay the Debtors any such payments, without the right of setoff, recoupment, or reclamation by the Critical Provider; and
- (f) to the extent there exist any contract between the Debtors and the Critical Provider that contains a right of termination based on the Debtors' bankruptcy, insolvency, or other similar conditions, the participating Critical Provider agrees to waive the filing of bankruptcy by or the insolvency or other similar conditions of the Debtors as a termination right under those contracts for the duration of the Supplier Protection Agreement. All other default, suspension, and termination provisions in such contracts shall remain in effect, subject to applicable provisions of the Bankruptcy Code;

and it is further

ORDERED that if a Critical Provider refuses to provide product, supplies, or services on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Pre-Petition Claim, or fails to comply with any Supplier Protection Agreement entered into between such Critical Provider and the Debtors, the Debtors are authorized to, in their discretion and without further order of the Court, (a) declare that any Supplier Protection Agreement between the Debtors and such Critical Provider is terminated, and (b) declare that provisional payments made to such Critical Provider on account of its Critical Provider Claim, whether pursuant to a Supplier Protection Agreement or otherwise, shall be deemed to have been in payment of then-outstanding, undisputed, post-petition claims of such Critical Providers without further order of the Court or action by any person or entity; and it is further

ORDERED that if a Critical Provider refuses to provide supplies, materiel or services to the Debtors on Customary Trade Terms (or such other terms as are agreed by the parties) following receipt of payment on its Critical Provider Claim, or fails to comply with any Supplier

Protection Agreement entered into between such Critical Provider and the Debtors, the Debtors are hereby authorized, in their sole discretion, without further order of the Court, to exercise either or both of the rights set forth in the preceding paragraph. If the Debtors decide, in their business judgment, to exercise the rights set forth in clause (b) in the preceding paragraph, the Critical Provider against whom such rights are exercised shall immediately return to the Debtors all payments made to it on account of its Critical Provider Claim to the extent that any such payments exceed the undisputed post-petition claims of such provider then outstanding without giving effect to any rights of setoff, recoupment, claims, defenses, provisions for payment of reclamation or trust fund claims, or otherwise; and it is further

ORDERED that nothing contained in this Order shall constitute a waiver of the Debtors' right to seek damages or other appropriate remedies against any breaching Critical Provider; and it is further

ORDERED that, notwithstanding the foregoing, the Debtors, in their business judgment, may reinstate a Supplier Protection Agreement if the underlying default under the Supplier Protection Agreement is fully cured by the Critical Provider not later than five (5) business days following the Debtors' delivery of written notice of default and demand for cure; provided, however, that nothing contained herein shall prohibit the Debtors, in their business judgment, from agreeing to a favorable alternative agreement with the Critical Provider; and it is further

ORDERED that nothing herein shall change the nature or priority of the underlying Critical Pre-Petition Claims; and it is further

ORDERED that nothing contained in this Order shall be deemed to constitute an assumption or adoption of any executory contract or pre-petition or post-petition agreement

between the Debtors and the holder of a Critical Prepetition Claim, or to require the Debtors to make any of the payments authorized herein; and it is further

ORDERED that the authority granted hereby to pay Critical Pre-Petition Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay the Critical Pre-Petition Claims. None of the foregoing persons or entities shall have any liability on account of any decision by the Debtors not to pay a Critical Pre-Petition Claim, and nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect the Critical Provider Claims to the extent they are not paid; and it is further

ORDERED that the amount of such Critical Pre-Petition Claim set forth in connection with a Supplier Protection Agreement shall be used only for purposes of determining such Critical Provider's claim under this Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court. Further, signing a Supplier Protection Agreement containing a claim amount for purposes of this Order shall not excuse such Critical Provider from filing a proof of claim in these cases; provided, however, that a Critical Provider shall not be required to file a proof of claim for any portion of its claim actually paid pursuant to this order and a Supplier Protection Agreement; and it is further

ORDERED that, except as provided in a Supplier Protection Agreement, no claimant who receives payment on account of a Critical Pre-Petition Claim is permitted to file or perfect a lien, reclamation claim, or a claim under section 503(b)(9) of the Bankruptcy Code on account of such Critical Pre-Petition Claim, and any such claimant shall take at the claimant's expense all necessary action to remove any existing lien or withdraw such reclamation claim or section

503(b)(9) claim relating to such Critical Prepetition Claim, even if the lien, reclamation claim, or section 503(b)(9) claim is against property of a non-debtor; and it is further

ORDERED that notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any person or entity; and it is further

ORDERED that all banks and other financial institutions are hereby authorized and required, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order, whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representation of the Debtors' or their agents as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that nothing in this Order shall be deemed either a grant of administrative priority expense status to, or authority to pay, any amounts that are disputed by the Debtors; and it is further

ORDERED that nothing contained in this Order shall be construed as a waiver by the Debtors of their rights to contest any claim or invoice of a holder of a Critical Pre-Petition Claim under applicable law; and it is further

ORDERED that nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the pre-petition amounts authorized to be paid hereunder; and it is further

ORDERED that the requirements of Rule 6003 of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of the Motion and notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order; and it is further

Date: April ____, 2010

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 4:10 PM EDT and filed on 4/27/2010

Case Name: Moll Industries, Inc.

Case Number: 10-11371

Document Number: 11

Docket Text:

Motion to Pay Critical Trade Vendor Claims Filed By Moll Industries, Inc. (Hazeltine, William)

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

Document description:Main Document

Original filename:C:\fakepath\Critical Vendors Motion.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=4/27/2010] [FileNumber=8395198-0]

[8ff94b74f1eefc351bf148180eff2123d2886b6214be52844a826c3259cae66dc992

f3cf8f935428c6cce4ebb899cb3f93400e20a6583b0475e616c2aa40c4ea]]

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: