

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

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

**AMENDED 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 in these cases are as follows: Moll Industries, Inc., Case No. 10-11371 (MFW); Moll Holdings, Inc., Case No. 10-11372 (MFW); Moll Europe Holdings, LLC, Case No. 10-11373 (MFW); and Moll Latin America Holdings, LLC, Case No. 10-11374 (MFW).

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 substantially in the form attached hereto as Exhibit 1 ("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 (with the Consent of the Critical Provider), 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 is 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 Debtors may seek repayment from such Critical Provider for amounts paid to that Critical Provider that exceed the undisputed amounts owed on account of post-petition product or services provided without giving effect to any rights of setoff, recoupment, claims, defenses, provisions for payment of reclamation or trust fund claims, or otherwise; 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 Debtors may seek to recover any such payments which exceed the undisputed post-petition claims of such Critical 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 neither the execution of a Critical Provider Agreement by the Debtors nor any payment made by the Debtors pursuant to this Order shall be declared or deemed to be a waiver of any cause of action, including avoidance actions, that may be held by the Debtors against that Critical Provider; and it is further

ORDERED that that no actions undertaken pursuant to this Order shall constitute, nor shall be intended to constitute, (a) an admission as to the viability of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any ground; (c) a promise to pay any claim; or (d) an implication or admission that any particular claim constitutes a Critical Provider Claim; and it is further

ORDERED that the Debtors shall provide the Official Committee of Unsecured Creditors (the "Committee") with written notice of any Critical Provider Payment of \$10,000 or more within five (5) days after making such payment. The Committee shall have fourteen (14) days after receipt of such notice to object to the payment of that claim. Any such objection shall be filed with the Court under seal. If any such objection is filed, the parties may request (subject to the local rules) that the Court hear the matter at the next regularly scheduled omnibus hearing date; and it is further

ORDERED that the Debtors shall provide the Committee's financial advisors with a monthly report of all payments made pursuant to this Order; 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: May 27, 2010



The Honorable Mary F. Walrath
United States Bankruptcy Judge