

BACKGROUND

3. The Debtor is a diversified retailer operating fifty-nine (59) full-line department stores and three (3) specialty stores in six western states: California, Washington, Alaska, Oregon, Idaho and Nevada. It was founded in 1904 in Fresno, California, and expanded within California and the western states. The Debtor's stores operate under the "Gottschalks" and "Village East" names and are generally large, free-standing and mall-based outlets of between 30,000 and 200,000 square feet, primarily located in mid-sized cities that are otherwise underserved by the larger national chains. The Debtor carries a broad line of brand name and private label merchandise, including fashion clothing, shoes, cosmetics, jewelry, home furnishings and other products. Brands carried by the Debtor include Estee Lauder, Lancome, Clinique, Chanel, Dooney & Bourke, Nine West, Liz Claiborne, Calvin Klein, Nautica, Karen Kane, Ralph Lauren, Columbia, Fossil, Levi Strauss, Southpole, Izod, Quiksilver, Roxy, Woolrich and Carters.

4. The Debtor employs more than 5,282 full time and part time employees. Like other retailers, the Debtor's retail sales are subject to seasonal fluctuations – approximately 33% of the Debtor's annual sales occur in the fourth fiscal quarter (November 1 through January 31).³ Of its 62 retail locations, the Debtor owns 5 stores and leases the balance. The Debtor is publicly owned. One of its largest investors is The Harris Company ("Harris"), which sold certain stores to the Debtor in 1998 and is an affiliate of Spanish retailer El Corte Ingles.

5. The Debtor as borrower, the lenders party thereto and General Electric Capital Corporation, as administrative agent and collateral agent ("GECC"), are parties to that certain Second Amended and Restated Credit Agreement dated as of September 26, 2007 (as amended, the "GECC Facility"). The current amount outstanding under the GECC Facility is approximately \$73 million. The obligations under the GECC Facility are secured by a lien in most of the Debtor's assets including inventory, accounts receivable, equipment, most (but not all) of its real property, and intellectual property (among other things). The Debtor's principal

³ The Debtor's fiscal year ends on the Saturday nearest to January 31.

unsecured obligations consist of, among others, a note in favor of Harris with an outstanding principal amount of approximately \$16 million and approximately \$29 million owed to its trade vendors.

6. In November 2008, the Debtor signed an agreement with Everbright Development Overseas Securities, Ltd., a British Virgin Islands corporation (“Everbright”). Everbright agreed to invest up to \$30 million in exchange for common stock of the Debtor. The Everbright transaction was subject to a diligence condition through December 15, 2008.

7. Shortly after the Everbright agreement was signed, the Debtor was advised that (a) new, lower appraisals conducted by independent appraisers of the value of the Debtor’s inventory and other assets that comprise the “borrowing base” and control the Debtor’s asset-based credit facility agented by General Electric Capital Corporation (“GECC”) and (b) reserves due to a decline in the Debtor’s same-store sales trends in the current retail environment would lead to a reduction in the Debtor’s liquidity compared to budget under its credit line ranging from approximately \$18 million in December 2008 to a projected \$12 million in January, 2009. The Debtor had not anticipated the adjustments at the time it entered the proposed transactions with Everbright. GECC agreed to delay certain of the adjustments in availability under the credit facility for a period of time.

8. Everbright subsequently advised the Debtor that it was unable to go forward with its proposed investments, at least as it was previously structured. The Debtor attempted to modify the amount of the proposed investment from Everbright or raise additional capital from third parties (principally its existing investor, Harris). However, the Debtor’s efforts to secure such infusion of funds outside of a chapter 11 proceeding were ultimately unsuccessful, and its sales (like those of virtually all retailers) continued to be impacted by the very weak retail and credit environment. The combination of these factors (and the resulting impact on its access to cash and its line of credit) resulted in the filing of this case.

9. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on January 14, 2009 (the “Petition Date”). The Debtor intends to use this

chapter 11 case to (i) gain access to liquidity, and (ii) execute on one or more options to create value for stakeholders (including a sale of assets or other transaction with a third party investor). The Debtor is considering all possible options for maximizing stakeholder value. Among other things, it will focus on the sale of certain portions or all of its business as well as other third party investments and asset disposition options.

10. GECC has agreed to provide postpetition financing to the Debtor and consented to the use of cash collateral. The proposed postpetition financing arrangement (the "DIP Loan Facility") will provide the Debtor with cash advances and other extensions of credit in an aggregate principal amount not to exceed \$125 million. The proposed DIP Loan Facility contemplates a sale of the Debtor's business within approximately 60 days of the Petition Date.

11. The Debtor plans to seek approval for a sale process using the following timetable (which is incorporated into the DIP Loan Facility): the acceptance of a stalking horse bid on or about March 2, 2009 and an auction on or about March 17, 2009. The sale would close on an agreed schedule. To further its sale efforts, the Debtor has retained FTI Consulting, Inc. as its financial advisor and Financo, Inc. ("Financo") to act as its investment banker. Financo served as the Debtor's investment banker prior to the Petition Date and is very familiar with the Debtor. It is already working with interested investors and potential buyers. The Debtor believes that the DIP Loan Facility gives it the liquidity to execute on its sale effort.

RELIEF REQUESTED

12. By this Motion, the Debtor seeks, inter alia, entry of an order pursuant to section 105(a) of the Bankruptcy Code that authorizes, but does not direct, the Debtor to pay in its sole discretion the valid prepetition claims or any portion thereof of (i) certain reputable domestic and international common carriers, shippers, freight forwarders and trucks (collectively, the "Common Carriers") that the Debtor uses in the ordinary course of business for shipment, transport and delivery of goods and (ii) certain sales and shipping processors (the

“Sales and Shipping Processors”) that the Debtor uses in the ordinary course of business that are critical to the sale of merchandise and the timely shipping and delivery of goods used and sold in the ordinary course of the Debtor’s business; provided, however, the Debtor shall not pay prepetition charges of Common Carriers and Sales and Shipping Processors in an aggregate amount in excess of \$300,000 without further permission of the Court.

13. The Debtor receives goods through various forms of shipment, and much of the Debtor’s pricing policies, marketing strategies and fundamental business operations rely on its ability to obtain and sell goods at competitive prices. The sale of clothing, shoes, home furnishings, cosmetics, jewelry and other items (the “Retail Merchandise”) is the essence of the Debtor’s business. Moreover, a substantial part of the Debtor’s sales are paid for in cash by customers. This cash must be transported to the Debtor’s banks by its armored car service in multiple states.

14. The Debtor’s ability to timely receive, distribute and fulfill sales depends on the maintenance of a successful and efficient system of transportation, and any disruption of the delivery or return of Retail Merchandise would have an immediate and devastating impact on the Debtor’s operations. Likewise, any disruption in the Debtor’s ability to sell Retail Merchandise would have an equally immediate and devastating impact on the Debtor’s operations. Thus, the Debtor’s business operations and the success of its reorganization depends on the maintenance of reliable and efficient transportation and sale processing systems for Retail Merchandise, and these two related and important systems involve the use of the Common Carriers and Sales and Shipping Processors. Obviously, the Debtor needs immediate access to its cash receipts.

15. The Debtor must ensure that its chapter 11 case does not present a reason for third parties such as the Common Carriers and Sales and Shipping Processors to cease performing timely services, because the Debtor is in many cases dependent on the services of such third parties. If the Debtor is unable to ship, receive and sell deliveries of Retail Merchandise on a timely and uninterrupted basis (and use cash receipts), its operations will be immediately and substantially impeded and its business will suffer irreparable damage.

16. Prior to the Petition Date, the Debtor performed an analysis of (i) the identities of the core and indispensable Common Carriers and Sales and Shipping Processors, (ii) the Retail Merchandise that was in transit or needed to be shipped by the Common Carriers, (iii) the anticipated amount of payments that would be necessary for the Debtor to receive the Retail Merchandise in transit and (iv) the anticipated amount of payments that would be necessary for the Debtor to continue receiving the services provided by the Common Carriers and Sales and Shipping Processors. The Debtor has identified a core group of Common Carriers that consists of, without limitation, Great American Transport, Con-Way Western Express, Bax Global, Johanson Transportation, DCG Transportation, Kiwi Transport Inc., Oak Harbor Freight Lines Inc., Brinks Inc., Loomis Fargo & Co. and Secure Trans Armored. The Debtor has determined that each of the Common Carriers is absolutely necessary to the continued shipping, delivery and return of goods used or sold in the ordinary course of the Debtor's business.

17. The Debtor estimates that Retail Merchandise and cash valued at approximately \$1.7 million is currently being shipped for returns processing, for order fulfillment and for transporting cash from the Debtor's stores. The total estimated amount owed to all Common Carriers and the maximum amount required to obtain or deliver the Retail Merchandise and cash is approximately \$300,000. Further, the Debtor intends to negotiate with

the Common Carriers and Sales and Shipping Processors to obtain continued services with less than full payment to such Common Carriers and Sales and Shipping Processors, although the Debtor seeks Court approval for payments of amounts related to the services provided by Common Carriers and Sales and Shipping Processors.

BASIS FOR RELIEF REQUESTED

18. Pursuant to section 105(a) of the Bankruptcy Code, the “court may issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a). The Debtor submits that the relief requested herein is necessary and appropriate to carry out the provisions of the Bankruptcy Code.

19. The Debtor believes that authorization of payment of prepetition claims to certain Common Carriers and Sales and Shipping Processors is necessary to continue in the ordinary course of business and to facilitate rehabilitation. “The ability of the Bankruptcy Court 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). This equitable common law principle “was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C & S.W.R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed 117 (1882) and is commonly referred to as either the ‘doctrine of necessity’ or the ‘necessity of payment’ rule.” Id. at 175-76. “The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.” In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999). “The necessity of payment doctrine recognizes that paying certain pre-petition claims may be necessary to realize the goal of chapter 11 – a successful reorganization.” Id. at 825-26.

20. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay certain critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Columbia Gas Sys., 136 B.R. 930, 939 (Bankr. D. Del. 1992) citing In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3rd Cir. 1981) (recognizing that “if payment of a prepetition claim ‘is essential to the continued operation of [debtor], payment may be authorized.’”).

21. Courts routinely authorize the payment of common carrier charges and related fees in other large chapter 11 cases. See, e.g., In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re Dan River Holdings LLC, Case No. 08-10726 (BLS) (Bankr. D. Del. Apr. 24, 2008); In re Powermate Holding Corp., Case No. 08-10498 (KG) (Bankr. D. Del. Mar. 18, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Tweeter Home Entertainment Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re The Holliston Mills, Inc., Case No. 07-10687 (MFW) (Bankr. D. Del. May 23, 2007); In re Advanced Marketing Services, Inc., Case No. 06-11480 (CSS) (Bankr. D. Del. Jan. 3, 2007).⁴

22. The Debtor suspects that the Common Carriers may argue that they are entitled to possessory liens for transportation and storage of Retail Merchandise in their possession and may refuse to deliver or release such goods before their claims have been satisfied and their liens redeemed. Under the laws of some states, a carrier may have a lien on the goods in its possession that secures the charges or expenses incurred in connection with the

⁴ See, also In re Factory Card Outlet Corp., Case Nos. 99-685 and 99-686 (JJF) (Bankr. D. Del. 1999); In re Edison Bros. Stores Inc., Case No. 99-529 (MFW) (Bankr. D. Del. 1999); In re PWS Holding Corp., Case Nos. 98-212 through 98-223 (SLR) (Bankr. D. Del. 1998); In re Heileman Brewing Co., Inc., Case Nos. 96-501, 96-503, and 96-513 (PJW) (Bankr. D. Del. 1996); In re Edison Bros. Stores, Inc., Case No. 95-1354 (PJW) (Bankr. D. Del. 1995); In re Weiner’s Stores, Inc., Case No. 95-417 (PJW) (Bankr. D. Del. 1995); In re UDC Homes, Inc., Case No. 95-558 (HSB) (Bankr. D. Del. 1995).

transportation or storage of the goods. Pursuant to section 363(e) of the Bankruptcy Code, a carrier as a bailee may also be entitled to adequate protection of a valid possessory lien.

23. In addition, the Debtor anticipates that certain of the Common Carriers will have some outstanding invoices for Retail Merchandise delivered to the Debtor prior to the Petition Date (the "Shipping Charges"), and that certain of the Sales and Shipping Processors will have some outstanding invoices for products and processing services related to the delivery and sale of such Retail Merchandise prior to the Petition Date (the "Sales and Shipping Processor Charges"). The Debtor believes that if it fails to pay such Shipping Charges and Sales and Shipping Processor Charges, certain of the Common Carriers and Sales and Shipping Processors may discontinue or delay services and withhold or prevent the shipment and sale of essential Retail Merchandise.

24. The value of the Retail Merchandise and cash in the possession of the Common Carriers or dependent on the services of the Sales and Shipping Processors for delivery and sale, and the potential harm to the Debtor's business if the goods are not released or timely delivered or sold, is likely to far exceed the amount of such Shipping Charges and Sales and Shipping Processor Charges. Indeed, as noted above, if the Debtor is unable to ship, receive and sell deliveries of Retail Merchandise on a timely and uninterrupted basis, its operations will be immediately and substantially impeded and its business will suffer irreparable damage. For example, if the Sales and Shipping Processors cease providing services to the Debtor, the Debtor will be unable to ship certain essential goods or sell any Retail Merchandise to customers who will purchase such merchandise with payment by credit card or check. Likewise, if the Common Carriers cease providing services to the Debtor, the Debtor will be unable to receive any new or additional Retail Merchandise to sell to customers, which is the essence of its business.

Therefore, the Debtor believes that it is necessary and essential to its continued business operations and its reorganization to make payments on account of certain Shipping Charges and Sales and Shipping Processor Charges.

25. Accordingly, the Debtor seeks an order authorizing, but not directing, it to make certain payments to the Common Carriers and Sales and Shipping Processors as the Debtor determines in its business judgment is necessary or appropriate to obtain the release or final transport of any Retail Merchandise held by or to be shipped by such Common Carriers and to obtain the necessary services of the Sales and Shipping Processors. The Debtor seeks authority to make such payments in amounts and to the extent necessary to satisfy non-disputed prepetition Shipping Charges and Sales and Shipping Processor Charges, and to satisfy any possessory liens on the goods that may be held by a Common Carrier pending payment of such charges.

26. The Debtor shall only pay Shipping Charges and Sales and Shipping Processor Charges that, in its business judgment, will benefit the estate and its creditors from making such payments, taking into account (i) the costs the estate would incur by bringing an action to compel turnover of such goods, (ii) the delays associated with such actions, (iii) the costs of the delay in shipping, receiving and selling goods and merchandise and (iv) the business expenses related to replacing such Common Carriers and Sales and Shipping Processors to the extent replacement is possible. Further, the Debtor shall use its best efforts to negotiate total payments to the Common Carriers and Sales and Shipping Processors that are less than the full amount of any prepetition obligations.

27. In sum, the total amount to be paid to the Common Carriers and Sales and Shipping Processors would be minimal compared to the importance and necessity of the services of the Common Carriers and Sales and Shipping Processors and the losses the Debtor may suffer

if its operations are affected by a refusal to provide ongoing services. Moreover, the Debtor does not believe that there are viable timely alternatives to the Common Carriers and Sales and Shipping Processors that it has used prior to the Petition Date.

28. Authorization to pay the Shipping Charges and Sales and Shipping Processor Charges will not be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code, and the Debtor reserves all of its rights under the Bankruptcy Code with respect to any such agreements. Moreover, authorization to pay the Shipping Charges and Sales and Shipping Processor Charges does not affect the Debtor's right to contest the amount or validity of any such charges, in whole or in part.

29. Based upon the foregoing, the Debtor submits that the relief requested herein is essential, appropriate and in the best interest of the Debtor and all parties in interest. Further, the Debtor submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Rule 6003 of the Federal Rules of Bankruptcy Procedure has been satisfied.

NOTICE

30. No trustee, examiner or creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been provided to: (1) the Office of the United States Trustee for the District of Delaware; (2) counsel to General Electric Capital Corporation, agent for the Debtor's senior secured creditors; (3) the 20 largest unsecured creditors of the Debtor as identified in the Debtor's chapter 11 petition; (4) the Internal Revenue Service; (5) the Securities and Exchange Commission; and (6) the Office of the United States Attorney General for the District of Delaware. As this Motion is seeking first day relief, notice of this Motion and any order entered hereon will be served as required by Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

Delaware. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required.

NO PRIOR REQUEST

31. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the payment of the obligations and amounts herein and such other and further relief as is just and proper.

Dated: January 14, 2009
Wilmington, Delaware

Respectfully submitted,



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EXHIBIT A

Bakersfield.com

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

In re:)	
)	Chapter 11
GOTTSCHALKS INC., a Delaware corporation, ¹)	Case No. 09- _____ ()
Debtor.)	Re: Docket No. _____

**ORDER AUTHORIZING THE DEBTOR AND DEBTOR IN POSSESSION
TO SATISFY PREPETITION CLAIMS OF COMMON CARRIERS
AND SALES AND SHIPPING PROCESSORS PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE**

This matter coming before the Court on the *Motion of Debtor and Debtor in Possession for an Order Authorizing the Debtor to Satisfy Prepetition Claims of Certain Common Carriers and Sales and Shipping Processors Pursuant to Section 105(a) of the Bankruptcy Code* (the "Motion"), filed by the above-captioned debtor and debtor in possession (the "Debtor"); the Court having reviewed the Motion; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion was sufficient under the circumstances and that no other or further notice need be provided, and (d) capitalized terms not otherwise defined herein have the meanings given to them in the Motion; and the Court having considered the Declaration of J. Gregory Ambro in Support of Chapter 11 Petition and First Day Relief; 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 the Court having determined that the relief sought in the

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Gottschalks Inc. (9791). The Debtor's corporate offices are located at 7 River Park Place East, Fresno, California 93720.

Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Debtor is authorized, but not directed, to pay in its sole discretion any or all of the valid prepetition charges of certain Common Carriers and Sales and Shipping Processors, on the same basis and in accordance with the same practices and procedures in effect prior to the date hereof. Notwithstanding the foregoing, the Debtor shall not pay prepetition charges of Common Carriers and Sales and Shipping Processors in an aggregate amount in excess of \$300,000 without further permission of the Court.
3. Nothing in this Order or the Motion shall be construed as prejudicing the Debtor's right to dispute or contest the amount of, or basis for, any claims against the Debtor relating to any claims of the Common Carriers and Sales and Shipping Processors.
4. Nothing in this Order or the Motion shall be deemed to constitute an assumption of an executory contract, whether under section 365 of the Bankruptcy Code or otherwise.
5. The Debtor, its officers, employees and agents, are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein.
6. The requirements as set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.
7. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: January _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE