

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

In re:)	
	)	Chapter 11
MES INTERNATIONAL, INC., ¹)	
Debtor.	)	Case No. 09-14109
)	
In re:	)	Chapter 11
)	
GSI GROUP INC.,	)	Case No. 09-14110
Debtor.)	
)	
In re:	)	Chapter 11
)	
GSI GROUP CORPORATION,	)	Case No. 09-14111
Debtor.	)	Joint Administration Requested
)	

**MOTION OF DEBTORS FOR (I) AN ORDER AUTHORIZING
PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL
VENDORS AND (II) AN ORDER AUTHORIZING, BUT NOT DIRECTING,
AFTER NOTICE AND A HEARING, THE DEBTORS TO PAY CERTAIN
OBLIGATIONS ARISING IN CONNECTION WITH GOODS RECEIVED BY THE
DEBTORS WITHIN THE TWENTY DAY PERIOD BEFORE THE PETITION DATE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move this Court (the “Motion”) pursuant to sections 105(a), 363, 364, 503(b), 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the “Bankruptcy Code”) for entry of an order (i) authorizing, on an emergency basis, the Debtors to pay, in their discretion, certain prepetition claims of critical vendors and (ii) authorizing, but not directing, after notice and a hearing, the Debtors, in their discretion, to pay certain obligations arising under

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: MES International, Inc. (1964); GSI Group Inc. (0412); and GSI Group Corporation (9358). The Debtors’ headquarters is located at 125 Middlesex Turnpike, Bedford, MA 01730.

section 503(b)(9) of the Bankruptcy Code in connection with goods supplied by vendors that were received by the Debtors in the ordinary course of their businesses within the twenty day period before the Petition Date (as defined herein). In support of this Motion, the Debtors rely on the Declaration of Sergio Edelstein, the Debtors' President and Chief Executive Officer (the "Edelstein Declaration"), which is being filed contemporaneously herewith, and respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 363, 364, 503(b), 1107 and 1108 of the Bankruptcy Code.

BACKGROUND

A. Company Overview

2. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the "Chapter 11 Cases") and, as of the date of the filing of this Motion, no official committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have sought procedural consolidation and joint administration of the Chapter 11 Cases.

3. As more particularly described in the Edelstein Declaration, the Debtors in these cases are comprised of three entities within a corporate family led by parent company GSI Group Inc. ("Holdings"). The Debtors consist of Holdings, its wholly owned subsidiary GSI Group

Corporation (“GSI”), and MES International, Inc. (“MES”), itself an indirect wholly owned subsidiary of GSI. Holdings has ten other U.S. and nineteen foreign subsidiaries and one joint venture which have not filed for chapter 11 protection and are not debtors in the Chapter 11 Cases.

4. Holdings, together with its debtor and non-debtor subsidiaries (collectively, the “Company”) designs, develops, manufactures and sells photonics-based solutions (consisting of lasers, laser systems and electro-optical components), precision motion devices, associated precision motion control technology and systems. The Company’s customers incorporate its technology into their products or manufacturing processes for a wide range of applications across multiple markets, including: industrial, scientific, electronics, semiconductor, medical and aerospace. The Company’s products enable customers to implement advanced manufacturing processes, to make advances in materials and processing technology, and to meet extremely precise manufacturing specifications, including device complexity and miniaturization.

5. The Company, headquartered in Bedford, Massachusetts, sells worldwide with a direct sales force and through distributors and sales agents. The Company has manufacturing, research and development sites in several states in North America, as well as in the United Kingdom, China and Germany. Additional sales, service and applications sites are located in multiple locations throughout Asia and around the world. The Company employs approximately 1,300 full and part-time employees.

6. In August 2008, the Company acquired Excel Technology, Inc. (“Excel”), a designer, manufacturer and marketer of photonics-based solutions. Prior to the acquisition, Excel, which is not a debtor in the Chapter 11 Cases, was headquartered in East Setauket, New York. Excel manufactures its products in plants located in the United States and Germany, and

sells its products to customers worldwide, both directly and indirectly through resellers and distributors.

B. Prepetition Financing

7. The Debtors have no material secured debt. In August 2008, in order to finance a portion of the Excel acquisition, GSI issued and sold to various investors \$210.0 million of unsecured senior notes at a fixed interest rate of 11% per annum due 2013 (the “Senior Notes”), which are guaranteed by Holdings and certain of Holdings’ U.S. subsidiaries.

C. Events Leading to the Commencement of the Chapter 11 Cases

8. As detailed in the Edelstein Declaration, delays in the integration of the financial accounting systems of Holdings and Excel immediately following the acquisition of Excel in 2008 initially led to a delay of several weeks in the preparation of Holdings’ Quarterly Report on Form 10-Q for the quarterly period ended September 26, 2008 (the “2008 Q3 Report”). Shortly thereafter and prior to filing the 2008 Q3 Report, on December 4, 2008, Holdings announced that it had identified potential errors in the recognition of revenue related to sales to a customer in the first and second fiscal quarters of 2008 in Holdings’ Semiconductor Systems Segment, which were brought to the attention of the Audit Committee of Holdings’ Board of Directors (the “Audit Committee”) by Holdings’ management. Following an initial review, the Audit Committee, in consultation with Holdings’ outside legal counsel and its independent auditors, Ernst & Young, determined that it was appropriate to undertake an independent review of the potential revenue recognition issues brought to its attention. In connection therewith, the Audit Committee subsequently voluntarily expanded its review of sales transactions in the Company’s Semiconductor Systems Segment, along with other sales transactions that contained arrangements with multiple deliverables for fiscal years 2006, 2007 and 2008. Between

December 4, 2008 and March 30, 2009, Holdings announced that it had identified errors relating to the timing of revenue recognition relating to certain sales to customers in the Semiconductor Systems Segment during fiscal years 2006, 2007 and 2008 and that, as a result, the previously issued interim and annual financial statements for these years should not be relied upon.

9. In December of 2008, certain holders of the Senior Notes alleged that Holdings had failed to comply with the covenant in Section 4.02 of the indenture for the Senior Notes (the "Indenture") as a result of Holdings' failure to timely file its 2008 Q3 Report with the U.S. Securities and Exchange Commission. These holders further alleged that, if such failure continued for 60 days from the date that Holdings received notices of failure from Holders comprising at least 25% of the aggregate amount of Senior Notes then outstanding, then such failure would constitute an event of default.

10. As a result of these events, Holdings began engaging in ongoing discussions with certain holders of the Senior Notes. On February 11, 2009, Holdings announced that it entered into a forbearance agreement with certain entities holding greater than 75% of the outstanding aggregate principal amount of the Senior Notes (the "Senior Noteholders"). Thereafter, the Company continued to engage in negotiations that ultimately led in June 2009 to an agreement on a non-binding term sheet with the Senior Noteholders to consensually restructure the Company's outstanding obligations under the Senior Notes. Since that time, Holdings has conducted an extensive process to identify possible alternatives to the transactions described in the Plan (as hereinafter defined), and has concluded that the transactions described in the Plan provide the highest and best treatment for all creditors of the Debtors' estates, Holdings' shareholders and the Company's customers, vendors and employees.

11. On November 19, 2009, the Debtors and the Senior Noteholders entered into a Plan Support Agreement. Pursuant to the Plan Support Agreement, holders of 88.1% of the outstanding principal amount of the Senior Notes have agreed to support the Joint Chapter 11 Plan of Reorganization for MES International, Inc., GSI Group Inc. and GSI Group Corporation (the “Plan”) which was filed in the Chapter 11 Cases on the Petition Date, to the extent the Debtors continue to comply with the terms and conditions of the Plan Support Agreement. Pursuant to the Plan, the Senior Notes, together with an additional unsecured note payable by GSI to a foreign subsidiary of Holdings (the “GSI UK Note”), will be converted to (a) a payment in cash for certain accrued and unpaid interest (at the non-default rate), fees, expenses (including, without limitation, all amounts payable to the trustee under the Indenture) and all other amounts (other than principal) due to the extent such amounts are unpaid as of the Effective Date; (b) new common shares equal to 81.4% of the outstanding capital stock of reorganized Holdings²; and (c) new secured notes in the approximate amount of \$104,100,000³, resulting in the reduction of the Debtors’ funded indebtedness by more than \$125,000,000 and leaving the Debtors’ remaining debt, including all vendor payables and all or substantially all other claims, unimpaired under the Plan. The Debtors filed the Chapter 11 Cases to implement the Plan.

12. The Debtors have met their obligations as they have come due. The Debtors have had sufficient cash from operations to meet their obligations arising prior to their filing of the Plan and believe that they will continue to have sufficient cash to readily pay when due all ordinary course obligations arising after the commencement of the Chapter 11 Cases.

² Specifically, the holders of Senior Notes will receive approximately 74.3% of the outstanding capital stock of reorganized Holdings, and the holder of the GSI UK Note will receive approximately 7.1% of the outstanding capital stock of reorganized Holdings.

³ Specifically, holders of the Senior Notes will receive new secured notes in the approximate aggregate amount of \$95 million, and the holder of the GSI UK Note will receive new secured notes in the approximate aggregate amount of \$9.1 million.

13. The Debtors are making every effort to commence and implement these cases with as little disruption as possible to their highly valued customers, employees and vendors. Additional information regarding the Debtors and the Company, and the background to the Debtors' bankruptcy filing, is set forth in the Edelstein Declaration filed contemporaneously herewith and incorporated by reference herein.

RELIEF REQUESTED

14. By this Motion, the Debtors seek entry of an order pursuant to sections 105(a), 363, 364, 1107 and 1108 of the Bankruptcy Code and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors, (i) in their discretion, to pay the prepetition claims of critical vendors that delivered goods or provided services to the Debtors before the Petition Date and (ii) after notice and a hearing, to pay, in their discretion, certain administrative expense priority claims for obligations arising in connection with goods supplied by certain vendors that were received by the Debtors in the ordinary course of business within the twenty day period before the Petition Date (the "Twenty Day Period").⁴

15. The Motion further seeks authorization for all applicable banks and other financial institutions asked to process, honor and pay any and all checks and transfer requests with respect to Critical Vendor Claims and Twenty Day Claims (each as defined below) to rely on the representations of the Debtors as to which checks are issued or authorized to be paid in accordance with this Motion without any further duty of inquiry and without liability for following the Debtors' instructions.

⁴ The Debtors also seek the authority, where applicable and consistent with the relief sought in this Motion, to "pay" certain of the Critical Vendor Claims and Twenty Day Claims (each as defined below) by cancelling out certain postpetition amounts that may be owed to the Debtors (a "Cancellation"). Such Cancellations would merely serve to avoid the administrative burden of keeping track of payments flowing both to and from the Debtors.

BASIS FOR RELIEF

I. *Critical Vendor Payments*

16. Certain vendors (the “Critical Vendors”) have claims for providing (i) essential goods to the Debtors that were received by the Debtors before the Petition Date and/or (ii) essential services that were rendered to, or on behalf of, the Debtors before the Petition Date (collectively, the “Critical Vendor Claims”). By this Motion, the Debtors seek entry of an order authorizing the Debtors, in their discretion, to pay the prepetition claims of such Critical Vendors in an aggregate amount not to exceed \$900,000 (the “Critical Vendor Cap”).

17. The Debtors believe that payment of the Critical Vendor Claims is vital to the Debtors’ reorganization efforts because the Critical Vendors are the only source from which the Debtors can procure certain goods and services within a timeframe and at a price that will permit the Debtors to continue their businesses. A failure to pay the Critical Vendor Claims would likely result in many of the Critical Vendors refusing to provide goods and services to the Debtors postpetition, and may force the Debtors to obtain such goods and services elsewhere at a higher price or not of the quantity or quality required by the Debtors.⁵

18. The Debtors have examined whether the payment of Critical Vendor Claims is necessary and will ensure that the Debtors have access to adequate amounts of trade credit on a postpetition basis. Specifically, the Debtors have reviewed their accounts payable and undertaken a process to identify those vendors who are essential to the Debtors’ operations. The Debtors have further developed certain procedures (for which they seek this Court’s approval) that, when implemented, will ensure that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtors’ operations on a postpetition basis.

⁵ Nothing in this Motion should be construed as a waiver of the Debtors’ right to compel performance of any non-debtor under any agreement.

19. The Debtors consulted with appropriate members of their management team to identify those vendors that are most likely essential to the Debtors' operations using the following criteria: (a) whether the vendor in question is a "sole-source" provider, (b) whether the Debtors receive advantageous pricing or other terms from a vendor or service provider such that a postpetition replacement would result in significantly higher costs, (c) whether quality requirements, geographic constraints, customizations or other specifications prevent the Debtors from obtaining the necessary products or services from alternative sources within a reasonable timeframe, or (d) if a vendor is not a sole provider, whether the Debtors have sufficient goods in inventory to continue operations while a replacement vendor is secured, and (e) whether a vendor meeting any of the aforementioned standards is likely to refuse to continue providing goods or services to the Debtors postpetition if its prepetition balances are not paid.

20. After carefully assessing the universe of vendors against the foregoing criteria, the Debtors estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtors in calculating the Critical Vendor Cap.

21. The Debtors propose to condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtors on terms that are as or more favorable to the Debtors as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtors in the six months prior to the Petition Date (the "Customary Trade Terms"), or such other trade terms as are agreed to by the Debtors and the Critical Vendor. The Debtors reserve the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim.

22. The Debtors further propose to take appropriate efforts, in their discretion, to cause each Critical Vendor to enter into an agreement (the "Trade Agreement") that includes, without limitation, the following terms:

- a. The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- b. The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtors, subject to the terms and conditions as set forth in this Court's Order;
- c. The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtors and such Critical Vendor, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- d. The Critical Vendor's agreement not to file or otherwise assert against the Debtors, their estates or any of their assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- e. The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- f. The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

- g. If a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods to the Debtors on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

23. Such Trade Agreements may be in addition to any other agreements between the parties.

24. For those Critical Vendors who have agreed to provide goods or services to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis. Nothing in this Motion or any order of this Court approving this Motion should be construed as a waiver by any of the Debtors of their rights to contest any invoice of a Critical Vendor under applicable non-bankruptcy law.

25. If a Critical Vendor refuses to supply goods or services to the Debtors on Customary Trade Terms following payment of any portion of its Critical Vendor Claim, or fails to comply with any Trade Agreement it entered into with the Debtors, the Debtors hereby seek authority to, in their discretion and without further order of the Court, (i) terminate any Trade Agreement between the Debtors and such Critical Vendor (if applicable), and (ii) deem any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, to have been in payment of then-outstanding postpetition claims of such Critical Vendor (the "Terminated Critical Vendor") without further order of the Court. If, however, the Debtors choose not to terminate a Trade Agreement immediately upon a refusal by the participating Critical Vendor party to provide goods and/or

services in accordance with such Trade Agreement, they shall not be deemed to have waived the ability to terminate such Trade Agreement.

26. In the event the Debtors exercise either of the rights set forth in the preceding paragraph, the Debtors request that the Terminated Critical Vendor be required to immediately return any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owed to such Terminated Critical Vendor, without giving effect to any rights of setoff or reclamation. In the event that a Terminated Critical Vendor refuses to acknowledge such recharacterization and to issue the repayment, the Debtors propose that they be authorized to compel such recharacterization and repayment by a motion (on such notice as is required by this Court or by the Local Rules for the United States Bankruptcy Court for the District of Delaware).

A. PAYMENT OF THE CRITICAL VENDOR CLAIMS IS CRITICAL TO THE DEBTORS' REORGANIZATION EFFORTS

27. The Debtors believe that authority to pay the Critical Vendor Claims is vital to their reorganization efforts. If this Motion is not granted, the Debtors believe that many of the Critical Vendors will stop providing goods and services to the Debtors altogether, thereby causing immediate and irreparable damage to the Debtors and their estates.

28. Additionally, the Plan provides that, with the exception of the claims of the holders of the Senior Notes, substantially all other claims will be unimpaired. Consequently, the relief requested herein will affect only the timing of payments and not the amounts that would ultimately be payable to Critical Vendors.

29. The types of Critical Vendors identified by the Debtors are certain vendors of parts that are used in the design, manufacture and testing of the Company's various technology products, and certain vendors that provide outsourced information technology support services,

inbound and outbound shipping services, services to facilitate the importation and exportation of the Company's technology products, and services related to the registration and maintenance of the Company's intellectual property assets. Vendors and service of the nature described above, and others that satisfy the criteria described in paragraph 19 above, fall under the rubric of Critical Vendors. Any refusal by Critical Vendors to provide essential products or perform key services would have immediate and serious adverse repercussions, including, but not limited to, jeopardizing or impairing the value of the Debtors' businesses. For even in those instances in which an actual replacement vendor exists, the Debtors have determined that the time and other factors involved in replacing such Critical Vendors would be disruptive, cost-prohibitive and, in certain instances, impossible given the Debtors' efforts to maximize value for their estates and to continue to operate their business in the normal course.

B. CASE LAW AND STATUTORY SUPPORT FOR AUTHORIZATION TO PAY CRITICAL VENDOR CLAIMS

i. This Court May Authorize Payment of the Critical Vendor Claims Pursuant to Sections 363 and 364 of the Bankruptcy Code

30. The Court may grant the relief requested herein pursuant to sections 363 and 364 of the Bankruptcy Code. See, e.g., In re UAL Corporation, et al., Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (an essential trade motion generated by section 363 is "completely consistent with the Bankruptcy Code" and such payments have further support where the Debtor seeks "the extension of credit under section 364 on different than usual terms, terms that might include payment of a prepetition obligation"); In re James A. Phillips, Inc. Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

31. The relief requested in this Motion contemplates the payment of Critical Vendor Claims of those Critical Vendors who agree to provide postpetition goods to the Debtors on Customary Trade Terms or other terms acceptable to the Debtors. As a result, the payment of such Critical Vendor Claims is consistent with and appropriate under sections 363 and 364 of the Bankruptcy Code.

32. As detailed above, maintaining the goods and services provided by the Critical Vendors is vital to the Debtors' continuing business operations and the success of the Chapter 11 Cases. In addition, and as also detailed above, the Debtors have conducted an extensive analysis and review of the Debtors immediate trade needs and supplier base and have concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtors unless their Critical Vendor Claims are paid. Should any Critical Vendor stop supplying goods or services to the Debtors, or choose to significantly downgrade the Debtors' trade terms, their businesses would be adversely affected as a result of, among other things, an adverse impact on the Debtors' ability to manufacture its core group of products for sale. As such, the Debtors submit that the amount of the Critical Vendor Cap pales in comparison to the likely damage to the Debtors' businesses and estates should the relief requested herein not be granted. In light of the foregoing, the Debtors submit that payment of the Critical Vendor Claims is plainly in the best interests of their estates and creditors.

ii. The Court May Also Grant the Motion Pursuant to Its General Equitable Powers Under Section 105(a) of the Bankruptcy Code and the Necessity of Payment Doctrine

33. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary 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(a), the Court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also 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”).

34. Numerous courts have used their section 105(a) equitable powers under the necessity of payment doctrine⁶ to authorize payment of a debtor’s prepetition obligations where, as here, such payment is necessary to effectuate the “paramount purpose” of chapter 11 reorganization, which is to prevent the debtor from going into liquidation and preserve the debtor’s potential for rehabilitation. See In re Lehigh Co. & New England 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”); Ionosphere Clubs, 98 B.R. at 176-77 (doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor”); see also In re James A. Phillips, Inc., 29 B.R. 391, 394-95 (S.D.N.Y. 1983) (upholding the bankruptcy court’s order authorizing the debtor to make postpetition payment of prepetition claims in the ordinary course without notice and a hearing). The “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to

⁶ This doctrine, first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

pay prepetition claims where such payment is essential to the continued operation of the debtor.” Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This rule is consistent with the paramount goal of chapter 11, i.e., “facilitating the continued operation and rehabilitation of the debtor . . .” Ionosphere Clubs, 98 B.R. at 176.

35. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay the prepetition claims of certain critical vendors. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a prepetition claim is essential to the continued operation of [the debtor], payment may be authorized”). Indeed, it is not uncommon for courts in this District to authorize the payment of critical trade claims where the payment of such claims is essential to the debtor’s continued operations. See, e.g., In re Questex Media Group, Inc., Case No. 09-13423 (Bankr. D. Del. Oct. 5, 2009) (MFW); In re Muzak Holdings LLC, Case No. 09-10422 (KJC) (Bankr. D. Del. Feb. 12, 2009); In re Tropicana Entm’t LLC, Case No. 08-10856 (KJC) (Bankr. D. Del. Feb. 12, 2009); In re Buffets Holding, Inc., Case No. 08-10141 (Bankr. D. Del. Jan. 24, 2008) (MFW) (entered by BLS); In re American Home Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Aug. 7, 2007) (CSS); In re Tweeter Home Entertainment Group, Inc., Case No. 07-10787 (Bankr. D. Del. June 12, 2007) (PJW); In re Holliston Mills, Inc., Case No. 07-10687 (Bankr. D. Del. May 23, 2007) (MFW); In re Meridian Automotive Systems-Composite Operations, et al., Case No. 05-11168 (Bankr. D. Del. May 27, 2005) (MFW); In re Glass Group, Inc., Case No. 05-10532 (Bankr. D. Del. March 2, 2005) (PJW). This Court has also upheld the relief requested by the Debtors concerning their remedies for breach of a Trade Agreement. See In re Maxxim Medical Group, Inc., Case No. 03-10438 (Bankr. D. Del. Feb. 19, 2003) (Walsh, J.). The Debtors respectfully submit that similar relief is warranted in the Chapter 11 Cases.

iii. The Court May Also Authorize the Relief Requested as a Valid Exercise of the Debtors' Fiduciary Duties

36. The Debtors, operating their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business for the benefit of . . . [their] creditors and (if the value justifies) equity owners.” In re CoServ, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty “to protect and preserve the estate, including operating business’s going-concern value.” Id.

37. It has been noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that pre-plan of reorganization satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” and also when the payment was to “sole suppliers of a given product.” Id. at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

38. Payment of the Critical Vendor Claims meets the test set forth in CoServ. As described above, the Debtors have narrowly tailored the Critical Vendor Cap to encompass only those Critical Vendors which are essential to the business and operation of each of the Debtors’

businesses. Any interruption of the Debtors' operations could cost the Debtors' estates millions of dollars in lost revenues and furthermore, could cause the Debtors to lose a significant amount of customers. Accordingly, the harm that would stem from the failure to pay any of the Critical Vendors is disproportionate to the amount of the prepetition claims that the Debtors are seeking to pay hereunder. Moreover, with respect to each Critical Vendor, the Debtors have examined other options short of payment of such Critical Vendor Claims and have determined that to avoid significant disruption of the Debtors' business operations, there exists no practical or legal alternative to payment of the Critical Vendor Claims. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Critical Vendor Claims. Accordingly, the Court should grant the relief requested herein.

iv. The Court Should Authorize the Debtors to Satisfy the Critical Vendor Claims Within Twenty Days After the Petition Date as Requested

39. Pursuant to the recent revisions to Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Court may authorize payment of a prepetition claim within 20 days after the Petition Date if such relief is necessary to avoid immediate and irreparable harm. As explained above, satisfying the Critical Vendor Claims is essential to the continued, uninterrupted operation of the Debtors' businesses. Without satisfaction of these claims, the Debtors believe that the Critical Vendors will significantly downgrade trade terms and may stop supplying them with critical goods and services necessary in their operations, thereby hampering the Debtors' ability to successfully reorganize.

40. For the foregoing reasons, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 and accordingly, the Court should grant the relief requested herein.

II. *Payments to Vendors Related to Section 503(b)(9) of the Bankruptcy Code*

41. In the ordinary course of their businesses, the Debtors receive goods on a daily basis that are used in their operations. As such, the Debtors have received goods (the “Twenty Day Goods”) from various vendors, including certain Critical Vendors, (the “Twenty Day Vendors”), in the ordinary course of their businesses within the Twenty Day Period for which payment has not yet been made. In order to maintain and ensure timely delivery of postpetition goods from the Twenty Day Vendors, and to help ensure that the Debtors have access to postpetition trade credit from the Twenty Day Vendors, the Debtors also seek entry of an order, after notice and a hearing, authorizing payment in the ordinary course of certain prepetition claims of Twenty Day Vendors entitled to administrative priority under Bankruptcy Code sections 503(b)(9) and 507(a)(2) for those undisputed obligations arising from Twenty Day Goods received by the Debtors (the “Twenty Day Claims”). The Debtors estimate that they have received approximately \$500,000 of Twenty Day Goods, which have not yet been paid for.

42. Section 503(b)(9) of the Bankruptcy Code provides that “there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9). Moreover, pursuant to section 507(a)(2) of the Bankruptcy Code, administrative expenses allowed under section 503(b) are granted priority status. Accordingly, Twenty-Day Vendors with Twenty-Day Claims should be allowed administrative expense priority claims for those undisputed obligations. 11 U.S.C. § 503(b)(9).

43. Although Twenty Day Claims are not required to be paid prior to the general payment of administrative claims in connection with confirmation of a chapter 11 plan, nothing

in the Bankruptcy Code prohibits the Debtors from paying such claims sooner if they choose to do so, and courts in this district have held that timing of such payments is within the discretion of the Court. See, e.g., In re Global Home Products, LLC, 2006 Bankr. LEXIS 3608 (Bankr. D. Del. Dec. 21, 2006) (timing of payment of section 503(b)(9) claim is within discretion of court). Additionally, since the enactment of 503(b)(9), courts in this jurisdiction have exercised their discretion in favor of granting relief similar to the relief requested herein. See, e.g., In re Dura Automotive Sys., Inc., Case No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006); In re Werner Holding Co. (DE), Inc., Case No. 06-10578 (KJC) (Bankr. D. Del. June 13, 2006). In fact, one judge in this district, in granting similar relief, noted that “arguably the debtor could pay its 503(b)(9) claimants without court approval.” In re Dura Automotive Sys., Inc., Case No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) (approving payment of 503(b)(9) claims as first day relief).

44. As described above with respect to the Critical Vendor Claims, the Debtors submit that they will, in their discretion, attempt to condition any payment on account of a Twenty Day Claim on the written acknowledgement from the applicable Twenty Day Vendor that they will continue to provide their goods to the Debtors on trade terms that, at a minimum, such Twenty Day Vendor provided to the Debtors six (6) months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date.⁷ Furthermore, the Debtors reserve the right to negotiate more favorable trade terms with any Twenty Day Vendor as a condition to payment of any such Twenty Day Claim. Moreover, the Debtors are not seeking authority to alter the priority scheme

⁷ Any payment made by the Debtors on account of section 503(b)(9) of the Bankruptcy Code will be conditioned upon the Vendor’s agreement to refrain from asserting, or to withdraw, any reclamation claim with respect to the Twenty Day Goods.

created by the Bankruptcy Code in a manner which prejudices the rights of their general unsecured creditors, but rather the Debtors are merely seeking authority to alter the timing of payments of administrative expense claims that the Twenty Day Vendors are entitled to be paid under the Bankruptcy Code.

45. Accordingly, the Debtors should be authorized, in their discretion, after notice and hearing, to pay the Twenty Day Claims pursuant to section 503(b)(9) of the Bankruptcy Code.⁸ A hearing with respect to the relief requested in connection with the Twenty Day Claims shall be held on the date and at the time specified in the Order attached hereto as **Exhibit A**, and parties shall be given an opportunity to object as set forth in the Order. A proposed order with respect to the relief requested herein in connection with the Twenty Day Claims is attached hereto as **Exhibit B**.

NOTICE

Notice of this Motion has been given to: (i) the Office of the United States Trustee; (ii) those creditors listed on the Debtors' Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (iii) the Office of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) the U.S. Securities and Exchange Commission; (vi) counsel to the Senior Noteholders; and (vii) the Indenture Trustee on behalf of the holders of the Senior Notes and its counsel.

NO PRIOR REQUEST

46. The Debtors have not previously sought the relief requested herein from this or any other Court.

⁸ To the best of their knowledge, any Twenty Day Claims that the Debtors seek to satisfy under this Motion, pursuant to section 503(b)(9), do not exceed the value of the underlying goods, as required by section 503(b)(9) of the Bankruptcy Code.

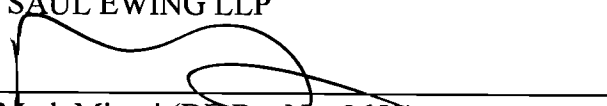
WHEREFORE, the Debtors respectfully request that the Court enter orders, in substantially the forms attached hereto as **Exhibit A** and **Exhibit B** (i) authorizing, on an emergency basis, the Debtors to satisfy, in their discretion, the Critical Vendor Claims; (ii) authorizing, after notice and a hearing, the Debtors to satisfy, in their discretion, the Twenty Day Claims as they come due; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: November 20, 2009

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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

Proposed Order

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

In re:)	
MES INTERNATIONAL, INC., ¹	)	Chapter 11
Debtor.	)	Case No. 09-14109
In re:	)	Chapter 11
GSI GROUP INC.,	)	Case No. 09-14110
Debtor.)	
In re:	)	Chapter 11
GSI GROUP CORPORATION,	)	Case No. 09-14111
Debtor.	)	Joint Administration Requested
	)	Related to Docket No. _____

**ORDER GRANTING THE DEBTORS' MOTION FOR AN ORDER AUTHORIZING
PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS**

Upon the Motion² of the above-captioned debtors and debtors in possession for entry of an order authorizing the Debtors to pay, in their discretion, certain prepetition claims of critical vendors; and upon consideration of the Motion and all pleadings related thereto, including the Edelstein Declaration; and the Court finding that (a) the Court 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

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: MES International, Inc. (1964); GSI Group Inc. (0412); and GSI Group Corporation (9358). The Debtors' headquarters is located at 125 Middlesex Turnpike, Bedford, MA 01730.

² Capitalized terms used but otherwise not defined herein shall have the meaning ascribed to such terms in the Motion.

the Debtors, their estates and creditors; and after due deliberation and good and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted with respect to payment of the Critical Vendor Claims; and it is further

ORDERED, that the Debtors are authorized, in their discretion and in the reasonable exercise of their business judgment, to pay and/or effect a Cancellation of the prepetition claims of Critical Vendor Claims subject to the conditions set forth in this Order; and it is further

ORDERED, that the Debtors' payment of the Critical Vendor Claims shall not exceed \$900,000 in the aggregate unless otherwise ordered by the Court after notice and a hearing; and it is further

ORDERED, that after the date hereof, the Debtors shall determine who is a Critical Vendor by considering, among other things, whether failure to pay such creditor's prepetition claims will have a material impact on the Debtors' operations; and it is further

ORDERED, that the Debtors shall undertake all appropriate efforts to cause each Critical Vendor to enter into Trade Agreement with the Debtors, including, but not limited to, the following terms:

- (a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (b) The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtors, subject to the terms and conditions as set forth in this Court's Order;
- (c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments,

allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtors and such Critical Vendor, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;

- (d) The Critical Vendor's agreement not to file or otherwise assert against the Debtors, their estates or any of their assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from goods provided to the Debtors prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (e) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (f) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (g) If a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods to the Debtors on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

ORDERED, that the Debtors may, in their discretion, enter into a Trade Agreement with an individual Critical Vendor and the terms of any such Trade Agreement are hereby incorporated by reference and approved; and it is further

ORDERED, that any such Trade Agreement entered into by the Debtors with an individual Critical Vendor and hereby incorporated by reference and approved shall not automatically terminate upon confirmation of a plan of reorganization (the "Confirmation Date"); and it is further

ORDERED, that the Debtors may, in their discretion, terminate a Trade Agreement with an individual Critical Vendor (a "Terminated Critical Vendor"), together with the other benefits to the Terminated Critical Vendor as contained in this Order, at their discretion provided, however, that in the event the Debtors terminate a Trade Agreement with a Critical Vendor they shall provide notice of such termination to the Office of the United States Trustee and any other official committee of unsecured creditors appointed in these cases, if any; and it is further

ORDERED, that if the Debtors choose not to immediately terminate a Trade Agreement upon a refusal by the participating Critical Vendor party to provide goods in accordance with such Trade Agreement, the Debtors shall not be deemed to have waived their right to terminate such Trade Agreement; and it is further

ORDERED, that if a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods to the Debtors on Customary Trade Terms during the pendency of these chapter 11 cases, the Debtors may, in their discretion, deem provisional payments made to the Critical Vendor on account of prepetition Trade Claims to have been in payment of then outstanding postpetition amounts owed to such Terminated Critical Vendor without further order of the Court or action by any person or entity. Such Terminated Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendor Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation; and it is further

ORDERED, that upon termination of a Trade Agreement by the Debtors, and any related recovery by the Debtors from the Terminated Critical Vendor of amounts paid by the Debtors to the Terminated Critical Vendor, the claim for which such payment initially was made shall be

reinstated as a prepetition claim in the amount disgorged as a result of the termination, subject to objection by the Debtors and other parties-in-interest and the claims allowance process; and it is further

ORDERED, that the execution of the Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including avoidance actions, that may be held by the Debtors; and it is further

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

ORDERED, that all applicable banks and other financial institutions are hereby authorized 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 representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

ORDERED, that notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is intended to constitute, the assumption or adoption of any contract or agreement under 11 U.S.C. § 365; and it is further

ORDERED, that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED, that the Court will consider authorization of payment of certain Twenty Day Claims at a hearing scheduled for _____, 2009 at _____ [__.m] (EST) with objections due by _____, 2009 at _____ [__.m] (EST); and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2009

United States Bankruptcy Judge

Exhibit B

Twenty Day Claims Order

thereto, including the Edelstein Declaration; and the Court finding that (a) the Court 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 therefor, it is hereby:

ORDERED, that the Motion is granted with respect to payment of the Twenty Day Claims; and it is further

ORDERED, that the Debtors are authorized, but not directed, in their discretion and in the reasonable exercise of their business judgment, to pay and/or effect a Cancellation to satisfy any such obligations to the Twenty Day Vendors as they become due; and it is further

ORDERED, that the Debtors, in their discretion, shall undertake appropriate efforts to cause the Twenty Day Vendors to acknowledge in writing that payment of their Twenty Day Claims is conditioned upon the applicable Twenty Day Vendor continuing to supply goods to the Debtors on trade terms that, at a minimum, such Twenty Day Vendor provided to the Debtors six (6) months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect prior to the Petition Date, and the Debtors reserve the right to negotiate more favorable trade terms with any Twenty Day Vendor as a condition to payment of any such Twenty Day Claim; and it is further

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

ORDERED, that any payment made by the Debtors on account of section 503(b)(9) of the Bankruptcy Code is conditioned upon the Twenty Day Vendor's agreement to refrain from asserting, or to withdraw, any reclamation claim with respect to the goods that are the subject of any such payment; and it is further

ORDERED, that all applicable banks and other financial institutions are hereby authorized 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 representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2009

United States Bankruptcy Judge