

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
COMFORT CO., INC., : Case No. 08-12305 (MFW)
: :
a Delaware corporation, *et al.*,¹ : [Joint Administration Pending]
: :
Debtors. : Ref. Docket No. 14
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**ORDER PURSUANT TO 11 U.S.C.
§§ 105, 363 AND 506(b) AUTHORIZING DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF
CRITICAL VENDORS**

Upon consideration of the motion (the "Motion")² of the Debtors for an order, pursuant to sections 105 and 363 of title 11 of the Bankruptcy Code authorizing the Debtors, in their discretion, to pay the prepetition claims of certain critical vendors and service providers; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefor, it is hereby:

1. ORDERED, that the Motion is granted; and it is further

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Comfort Co., Inc. (0360); Sleep Innovations, Inc. (6386); Advanced Innovations Central, LLC (7109); Advanced Innovations East, LLC (2669); Advanced Innovations West, LLC (2116); Advanced Urethane Technologies, Inc. (1725); AUT Brenham, Inc. (7286); AUT Dallas, Inc. (7706); AUT Lebanon, Inc. (7928); AUT Newburyport, Inc. (7032); and AUT West Chicago, Inc. (7561). The address for all of the Debtors is 187 Route 36, Suite 101, West Long Branch, NJ 07764.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

2. ORDERED, that the Debtors are authorized, but not required, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition claims of certain Critical Vendors (the "Critical Vendor Claims") subject to the conditions set forth in this Order; and it is further

3. ORDERED, that the Debtors' payment of the Critical Vendor Claims shall not exceed ~~\$16,000,000~~ ^{\$8,000,000} (the "Critical Vendor Cap") in the aggregate ^{in the interim period until a final hearing is held on October 24, 2008 at 10:30 A.M.} unless otherwise ordered by the Court; and it is further

4. ORDERED, that the Debtors shall undertake all appropriate efforts to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), 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 Critical Vendor's agreement to be bound by 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), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- (c) The Critical Vendor's agreement to provide goods to the Debtors based upon Customary Trade Terms, 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 any of the Debtors, their estates or any of their respective 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) The Critical Vendor's agreement that it has received payment of a prepetition claim but subsequently refuses to supply goods to the Debtors on Customary 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.

and it is further

5. ORDERED, that the Debtors are authorized, in their sole discretion, to make payments on account of Critical Vendor Claims, even in the absence of a Trade Agreement, if the Debtors determine, in their sole discretion and business judgment, that failure to pay such Critical Vendor Claim is likely to result in significant harm to the Debtors' business operations; and it is further

6. ORDERED, that the Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has not complied with the terms and provisions of

the Trade Agreement or has failed to continue to provide Customary Trade Terms to the Debtors; and it is further

7. 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, declare that provisional payments made to the Critical Vendor on account of prepetition Trade Claims be deemed to have been in payment of then outstanding postpetition amounts owed to such Critical Vendor without further order of the Court or action by any person or entity. A 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, it being the express intention of this Court to return the parties to the status quo in effect as of the date of entry of this Order with respect to all prepetition claims if a Trade Agreement is terminated; and it is further

8. ORDERED, that the execution of a 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

9. ORDERED that Rule 6003(b) of the Federal Rules of Bankruptcy Procedure has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors; and it is further

10. ORDERED that, notwithstanding the applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

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

Dated: October 6, 2008
Wilmington, Delaware



United States Bankruptcy Judge