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IT IS SO ORDERED.

Dated: May 4, 2018



John E. Hoffman, Jr.
John E. Hoffman, Jr.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Chapter 11
)
AcuSport Corporation,) Case No. 18-52736
)
Debtor.) Honorable John E. Hoffman, Jr.

**INTERIM ORDER (I) PROHIBITING
UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING
SERVICES TO THE DEBTOR AND (II) ESTABLISHING PROCEDURES
FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**
[Rel. Doc. No. 14]

Upon the motion (the “*Motion*”)¹ of AcuSport Corporation, the debtor and debtor in possession (“*Debtor*”), in this chapter 11 case (the “*Case*”), for entry of an interim order (this “*Interim Order*”), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”): (i) prohibiting Debtor’s utility providers from altering, refusing, or

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

discontinuing utility service to Debtor; (ii) establishing procedures for determining requests for additional adequate assurance of payment. [Docket No. 14]; and (iii) setting a final hearing (the “*Final Hearing*”) on the relief requested by the Motion; and upon consideration of the Flanagan Declaration and the entire record of this Case; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of Debtor’s estate, its creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefore,

IT IS ORDERED that:

1. The Motion is granted on an interim basis as set forth herein.
2. Debtor is authorized, but not directed, to pay on a timely basis in accordance with its prepetition practice all undisputed invoices for utility services provided by Utilities to Debtor after the Petition Date.
3. Debtor shall, upon request in writing from a Utility listed on Exhibit A to the Motion (the “*Utility Exhibit*”), pay to such Utility a security deposit in the amount set forth on the Utility Exhibit.
4. Absent any further order of this Court, this Court hereby finds and determines that Debtor’s provision for payment of a security deposit to Utilities in amounts set forth on the Utility Exhibit is adequate assurance of payment for the Utility Services to be provided by Utilities postpetition in accordance with section 366 of the Bankruptcy Code.

5. Absent any further order of this Court, Utilities set forth on the Utility Exhibit shall be and hereby are prohibited from altering, refusing, or discontinuing services to, or discriminating against, Debtor on the basis of the commencement of the Case or on account of any unpaid invoice for services provided prior to the Petition Date.

6. This Court hereby establishes the following procedures by which any Utility may seek additional or alternate adequate assurance (the “*Adequate Assurance Procedure*”):

- (a) If any Utility is not satisfied with the assurance of future payment provided by Debtor, it shall make a request in writing (a “*Request*”), served on Debtor, Debtor’s counsel, Administrative Agent for Debtor’s credit facility and counsel for such Administrative Agent (“*Notice Parties*”) by postage pre-paid, certified U.S. Mail, setting forth the following: (i) the type of utility services provided; (ii) the location for which utility services were provided; (iii) Debtor’s payment history for the most recent six (6) months; (iv) a list of any deposits or other security currently held by the Utility making the Request on account of Debtor; (v) a description of any prior material payment delinquency or irregularity; and (vi) the form and amount of adequate assurance requested by the Utility.
- (b) A Request must be actually received by Notice Parties within **twenty-five (25) days** (the “*Request Deadline*”) after the date of entry of the Order granting this Motion.
- (c) If any Utility makes a timely Request and the Utility and Debtor (with the advice of the Administrative Agent under Debtor’s credit facility and any Official Committee of Unsecured Creditors) cannot agree on the form or amount of adequate assurance to be provided to the Utility, Debtor shall be permitted to file a Motion for Determination of Adequate Assurance of Payment (a “*Determination Motion*”) within **ten (10) days** after a properly issued Request is received and may request the Court to set such Determination Motion for hearing (a “*Determination Hearing*”).
- (d) Any Utility shall be prohibited from altering, refusing or discontinuing services to, or discriminating against, Debtor from the date that the Order is entered. If a Utility makes a timely and properly issued Request, and Debtor does not file a Determination Motion within ten days after receipt as set forth above, the foregoing prohibition shall be lifted on the eleventh

(11th) day after Notice Parties receive the Request. If a Utility makes a timely and properly issued Request, and Debtor files a Determination Motion or a Determination Hearing is scheduled, the prohibition shall remain in effect until a further order of the Court is entered in connection with the Determination Motion.

7. Nothing set forth herein is intended to or shall modify or alter the burdens of proof on the issues raised by a Determination Motion.

8. The authorizations in this Order for Debtor to make payments and otherwise disburse funds are subject to the terms and conditions of the Court's orders authorizing the use of cash collateral or postpetition financing entered in the Case

9. As soon as practicable after entry of this Interim Order, Debtor shall serve the Motion and this Interim Order via first-class mail on the Utilities, each other party that Debtor believes could be affected by the Motion, and on all other parties required to receive service under Rule 2002 of the Federal Rules of Bankruptcy Procedure and by the Procedures of the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division.

10. The deadline by which objections to the Motion must be filed and served is May 18, 2018. A final hearing on the Motion will be held on May 21, 2018 at 10:00 a.m. EDT in Courtroom A in the United States Bankruptcy Court at 170 North High Street, Columbus, Ohio 43215. If no objections are filed to the Motion, this Court may enter an order granting the relief sought therein on a final basis without further notice or hearing.

11. Debtor is authorized, in its sole discretion, to amend the list of Utilities attached as Exhibit A to the Motion to add or delete any Utility.

12. Nothing in the Motion, the Utility Exhibit, or this Interim Order shall be deemed to constitute an admission or finding, as applicable, that any entity is or is not a utility hereunder or under section 366 of the Bankruptcy Code.

13. Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

14. Notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein or in the Motion or the Utility Exhibit shall be deemed: (i) an admission as to the validity of any claim against Debtor; (ii) a waiver of Debtor's right to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined hereunder; (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (vi) a waiver of Debtor's rights under the Bankruptcy Code or any other applicable law.

15. Notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of, any claim held by any person.

16. The contents of this Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

18. This Court shall retain jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Order.

IT IS SO ORDERED.

Submitted By:

/s/ Thomas R. Allen

Thomas R. Allen (0017513)
Richard K. Stovall (0029978)
J. Matthew Fisher (0067192)
Erin L. Gapinski (0084984)
ALLEN KUEHNLE STOVALL & NEUMAN LLP
17 South High Street, Suite 1220
Columbus, Ohio 43215
Tel: (614) 221-8500
Fax: (614) 221-5988
allen@aksnlaw.com
stovall@aksnlaw.com
fisher@aksnlaw.com
gapinski@aksnlaw.com

*Proposed Local Counsel for Debtor and
Debtor in Possession, AcuSport Corporation*

Copies to Default List Plus Top 20 and

AT&T's Corporate Office Headquarters HQ
ATTN: LEGAL DEPT.
208 South Akard Street
Dallas, TX 75202

CenturyLink Corporate Office Headquarters
HQ
ATTN: LEGAL DEPT.
100 CenturyTel Drive
Monroe, LA 71203

Charter Communications Corporate
Office
ATTN: LEGAL DEPT.
400 Atlantic Street, 10th Fl
Stamford, CT 6901

CITY OF BELLEFONTAINE
ATTN: LEGAL DEPT.
135 N. Detroit St.
Bellefontaine, OH 43311

CONSOLIDATEED
COMMUNICATIONS HQ
ATTN: LEGAL DEPT.
121 South 17th Street
MATTOON, IL 61938

Constellation Brands, Inc Corp.
Office & HQ
ATTN: LEGAL DEPT.
370 Woodcliff Dr., Ste. 300
Fairport , NY 14450

DAYTON POWER AND LIGHT CO HQ
ATTN: LEGAL DEPT.
1065 Woodman Drive
Dayton, OH 45432

DOMINION ENERGY HQ
ATTN: LEGAL DEPT.
120 TREDEGAR ST
RICHMOND, VA 23219-4306

DPL INC.
GENERAL MAIL
CORRESPONDENCES
PO BOX 1247
DAYTON, OH 45401-1247

ELITE HOME SVC
ATTN: LEGAL DEPT.
1919 Montana Ave
BILLINGS, MT 59101

JACKSON ELECTRIC MEMBERSHIP
CORP HQ
ATTN: LEGAL DEPT.
850 COMMERCE RADA
JEFFERSON, GA 30549

LEVEL 3 COMMUNICATIONS
LLC
C/O CenturyLink, Attn: Legal Dept.
100 CenturyTel Drive
Monroe, LA 71203

MONTANA DAKOTA UTILITIES CO
HQ
ATTN: LEGAL DEPT.
400 North 4th Street
Bismarck, ND 58501-4022

NETGAIN
ATTN: LEGAL DEPT.
220 REYNOLDS AVE
BELLEFONTAINE, OH 43311

NETGAIN
ATTN: LEGAL DEPT.
128 W COLUMBUS AVE
BELLEFONTAINE, OH 43311

NETGAIN INFORMATION SYSTEMS
CO
ATTN: LEGAL DEPT.
128 W Columbus Ave.
BELLEFONTAINE, OH 43311

PPL ELECTRIC UTILITIES HQ
ATTN: LEGAL DEPT.
Two North Ninth Street
Allentown, PA 18101-1179

READYTALK HQ
ATTN: LEGAL DEPT.
1900 16th Street, Suite 600
DENVER, CO 80202

ROCKY MOUNTAIN POWER HQ
ATTN: LEGAL DEPT.
1407 W. NORTH TEMPLE
SALT LAKE CITY, UT 84116

Sprint Corporate Office Headquarters HQ
ATTN: LEGAL DEPT.
6200 Sprint Parkway
Overland Park, KS 66251

TSC
ATTN: LEGAL DEPT.
2045 W UNION AVE, Bldg. E
ENGLEWOOD, CO 80110

UGI Utilities Headquarters
ATTN: LEGAL DEPT.
2525 North 12th Street, Suite 360
Reading, PA 19605

Vectren Corporation Corporate Office
ATTN: LEGAL DEPT.
One Vectren Square
Evansville, IN 47708

VERIZON WIRELESS
CORPORATE HQ
ATTN: LEGAL DEPT.
One Verizon Way
BASKING RIDGE, NJ 7920

WINDSTREAM CORPORATE OFFICE
ATTN: LEGAL DEPT.
4001 Rodney Parham Rd.
LITTLE ROCK, AR 72212

Xcel Energy Corporate Office
ATTN: LEGAL DEPT.
414 Nicollet Mall
Minneapolis, MN 55401

Republic Svc.
2946 US Route 68 North
Bellefontaine, OH 43311

Republic Svc.
675 Gladiola St.
Salt Lake City, UT 84104-4414

XO Communications
14239 Collections Ctr. Dr.
Chicago, IL 60693

XO Communications
8851 Sandy Pkwy.
Sandy Park UT 84070

Yellowstone Valley Electric Cooperative
150 Cooperative Way
Huntlet MT 59037-0249

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