

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION

IN RE

INNOVATIVE MATTRESS SOLUTIONS, LLC, *et al.*<sup>1</sup>

CASE NO. 19-50042

DEBTORS IN POSSESSION

CHAPTER 11

JOINTLY ADMINISTERED

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**DECLARATION OF KIMBERLY B. KNOPF IN SUPPORT OF  
CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

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Kimberly B. Knopf, being first duly sworn, states as follows under penalty of perjury:

**I. INTRODUCTION**

1. My name is Kimberly B. Knopf and I have personal knowledge of the facts and information stated herein. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I would testify competently to the facts and information set forth herein.

2. I am the founder, CEO and majority member of the LLC Debtors, and majority shareholder of the incorporated Debtor. I actively oversee and manage the day to day affairs of the Debtors, along with other executive officers, and I am familiar with all of the Debtors' operations.

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Innovative Mattress Solutions, LLC – 1096; Sleep Outfitters of Alabama LLC – 2914; Sleep Outfitters of Indiana LLC – 6006; Sleep Outfitters of Kentucky, LLC – 2729; Sleep Outfitters of Ohio LLC – 9814; Sleep Outfitters of Tennessee LLC – 1127; Sleep Outfitters of West Virginia, LLC – 6079; Sleep Liquidators LLC – 5703; Brown Immobilien LLC – 6617; Knopf Systems, LLC – 1096; and K. B. & Associates, Incorporated – 3479.

3. Unless otherwise indicated, all facts and statements set forth in this Declaration are based upon my personal knowledge and familiarity with the Debtors' operations and financial affairs, my review of relevant documents, my opinions and my experience in the industry.

4. On January 11, 2019 (the "Petition Date"), Debtors each filed voluntary petitions for relief with this Court under Chapter 11 of the United States Bankruptcy Code. Debtors requested and the Court has now ordered that the cases be jointly administered for procedural purposes.

5. Upon commencement of these cases, Debtors intend to and will be continuing to operate their business affairs as "debtors in possession" pursuant to 11 U.S.C. §§ 1107(a) and 1108.

6. I submit this Declaration in support of and to confirm the statements in the "First Day Motions" filed in the above-captioned Chapter 11 cases. Debtors have tendered an order designating me to serve as the individual responsible for the Debtors' affairs in these cases, which has been granted by the Court, and I am authorized to act on behalf of the Debtors.

7. I have reviewed and overseen, along with my team, the preparation of each of the First Day Motions, and I believe the relief sought: (i) is vital to enabling the Debtors to make the transition to, and to operate in, Chapter 11 with minimal disruption to the business and minimal loss of productivity and (ii) constitutes critical first steps in formulating and achieving a successful chapter 11 process, all as more fully set forth herein.

## **II. BACKGROUND AND OVERVIEW OF DEBTOR ENTITIES**

### **A. Corporate and capital structure**

8. The original founding of the business dates back to 1983, when at age 23 I made the decision to pursue my dream of becoming a small business owner. With little to my name, I

borrowed \$12,500 from a local bank and convinced my then boyfriend, Ken Knopf<sup>2</sup>, and his father and step-mother to invest in me and my dream. Ken invested \$2,500, and his father and step-mother invested \$5,000 each. It is with this money that we opened the first mattress store in the Charleston, West Virginia area through the formation of K.B. & Associates, Incorporated, a West Virginia corporation (“KB&A”). Initially, I owned 50% of the shares in KB&A, my (future) in-laws owned 20% each, as they were investors and had co-signed my loan, and Ken owned 10%.

9. KB&A was successful in its initial store location, bought real property in Winfield, West Virginia as an office and warehouse (located about 20 minutes outside Charleston), and began to expand with other leased store locations in West Virginia as well as expanding into the areas of Ohio and Kentucky which border West Virginia. KB&A continues to own the real property in Winfield and holds most, if not all, of the store leases in West Virginia and several of the leases in the bordering stores in Ohio and Kentucky.

10. In the early 2000s, as sales continued to grow and expansion opportunities continued, we obtained professional advice regarding the corporate and personal structure for continued expansions. Numerous additional entities were formed around this time, each as a Delaware LLC. Also around this time, Ken and I bought out his parents’ ownership interests in KB&A, and KB&A’s current ownership is 16.67% to Ken and 83.33% to me. A true and accurate copy of the Debtors’ organizational chart is attached hereto as **Exhibit A**.

11. Debtor Innovative Mattress Solutions, LLC (“iMS”) was formed in October 2002. It has functioned as the single entity which purchases and owns all of the inventory across all locations. It is the primary “corporate office” entity, and employs the executive and other team members overseeing HR, operations, finance, marketing, delivery, and other general and

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<sup>2</sup> Ken and I have been married since 1985.

administrative functions. iMS previously operated out of the KB&A Winfield WV offices, but moved its corporate headquarters to Lexington KY in 2015. iMS is 100% owned by Debtor Knopf Systems LLC.

12. Debtor Knopf Systems LLC (“Knopf Systems”) was formed in March 2001. It owns all of the intellectual property used in the operations. Debtors currently operate their retail and online sales under the trade names of Sleep Outfitters®, Mattress Warehouse®, and Mattress King, two of which are trademark-protected and registered. Knopf Systems is owned 70% by me, and 15% each by trusts set up in 2002 for the benefit of our two now-adult children. United Bank, a Virginia banking corporation (“United Bank”), has been trustee of the Trusts since their inceptions. Contemporaneously with this filing or promptly thereafter, United Bank will resign or will be removed by agreement as Trustee of the Trusts due to the current situation.

13. The “Sleep Liquidators” LLC and each of the six “Sleep Outfitters®” LLCs were formed as the operations expanded into different states. Each is a Delaware LLC and except as described below, essentially functions as an operating company without assets but for the respective leases. The expansion was highly successful and profitable through 2015, the most profitable year with collective gross revenues of approximately \$146 million.

14. As of the Petition Date<sup>3</sup>, Debtor iMS, as primary borrower, along with other entities, has one secured bank lender, United Bank, Inc., to which it owes approximately \$1.325 million under a term note and approximately \$2.380 million under a line of credit. This debt is secured by essentially all business assets of all the Debtors. In addition, this debt is secured by

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<sup>3</sup> As noted in the Motions, Tempur World, LLC and United Bank, Inc., the current lender under the Prepetition Loan Agreements, have reached an agreement-in-principle under which Tempur World, LLC would be assigned all rights and obligations of United Bank, Inc. under the Prepetition Loan Agreements. The parties continue to finalize and document this agreement and expect to provide notice of this assignment in advance of the first day hearings.

certain real property, the KB&A Winfield real estate and a store location at 3712 MacCorkle Ave. S.E., Charleston WV, which is owned by Debtor Brown Immobilien. Such debt is also secured by the pledge of an investment account owned by KB&A and various guaranties. iMS has been operating under a forbearance agreement with United Bank prior to the date of this filing. Debtors believe United Bank is fully secured and potentially over-secured.

15. Tempur-Sealy International, Inc. (“TSI”) is the largest vendor and the primary seller of mattress inventory to Debtor iMS. As of the Petition Date, TSI is owed approximately \$21 million by Debtor iMS as a prepetition unsecured claim. Kim Knopf has executed a personal guarantee to TSI for the payment of a certain portion of those obligations. TSI is by far the Debtors’ largest unsecured creditor, and also holds some amount of administrative claim under 11 U.S.C. §503(b)(9) for inventory received and not yet paid in the last 20 days. Debtors function as a “Top 20” regional bedding retailer in North America and supporter of Tempur Sealy-branded products.

16. Several of the Debtors have no active operations but are being filed as part of the corporate umbrella. Debtor Sleep Outfitters of West Virginia, LLC was formed but never used, and Sleep Liquidators LLC was formed with the intention of operating around the selling of clearance items but has not actively been marketed under that name.

17. Two other related non-debtor entities also exist but have not sought bankruptcy relief at this time. Breakwater Point LLC (“BWP”) and Knopf Investment Properties LLC (“KIP”) are not involved in the mattress business operations, but have some interconnections and intercompany transactions with Debtors. BWP is a single member LLC owned by me, and KIP is owned 50/50 by myself and Ken. BWP owns real property in Costa Rica, and has an approximate \$700,000 promissory note with United Bank, which iMS guarantees and for which the same iMS collateral package is pledged as security for the term note and line of credit. KIP

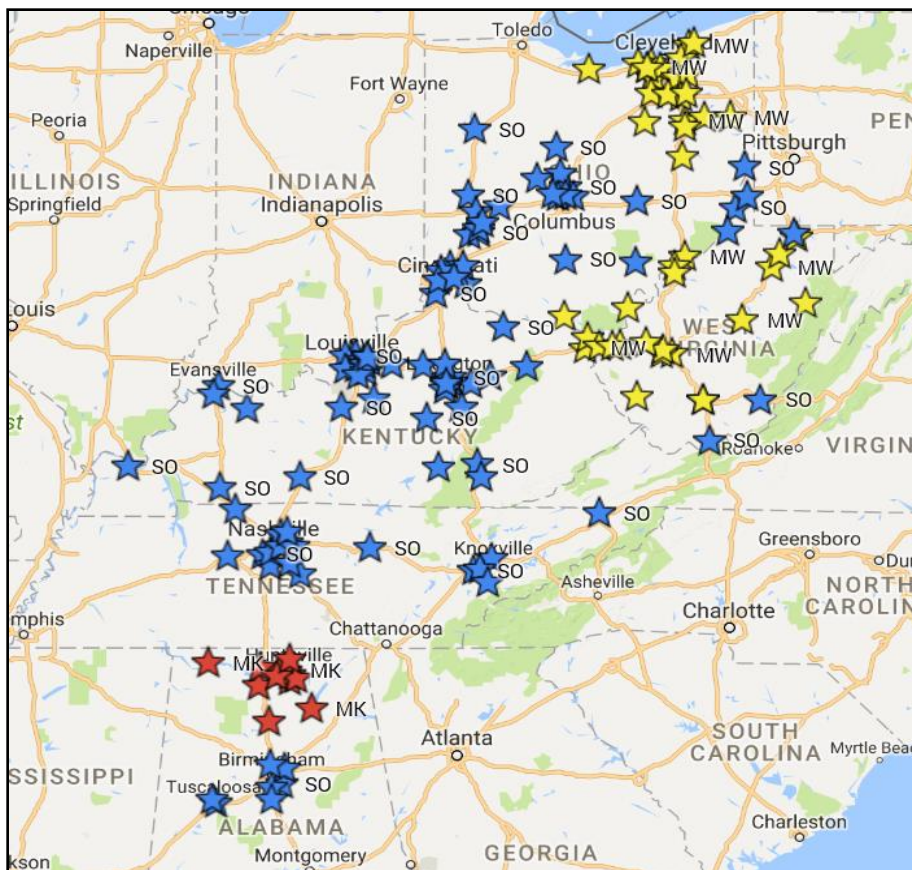
owns real property in Hilton Head Island, South Carolina and in Davis, West Virginia, and has an approximate \$2.0 million promissory note with United Bank, secured by said real estate. Ken and I are personal guarantors on the KIP debt but not the BWP debt.

18. In years past, I have taken member distributions as needed from the Debtor LLC entities in varying amounts, in addition to my salary, pursuant to the organizational documents of each applicable Debtor LLC entity. The two Trusts are 15% owners each of Knopf Systems, and distributions have also been made to the Trusts pursuant to the organizational documents of Knopf Systems LLC. No further member or Trust distributions are being made at this time without Court authorization.

**B. Retail operations and employees**

19. Over the years, the operations grew from the initial original store in South Charleston, WV to over 160 retail locations in West Virginia, Ohio, Kentucky, Indiana, Tennessee, Alabama and Virginia. The Debtors currently operate a total of 142 retail locations and 6 distribution centers, have a growing online sale volume, and also sell and deliver mattresses to over 100 universities during the annual back- to-school period, in some cases serving as the exclusive provider.

20. Collectively, the Debtors are a party to approximately 142 retail store leases with approximately 119 different landlords.



★ Sleep Outfitters    ★ Mattress Warehouse    ★ Mattress King

21. Debtors group the retail locations into “markets” for purposes of operations. Stores in a given geographic area share costs such as with distribution costs, advertising, and other considerations, which are evaluated to determine how a given “market” is performing, as opposed to how any one individual store location is performing.

22. iMS owns all inventory, and sells it at cost to the various operating Debtors at the time of customer purchase. The operating Debtors remit the sales proceeds to iMS, and the Sleep Outfitters® entities also book a royalty obligation owed to Knopf Systems for use of the trademarks, said royalty being calculated as a percentage of gross sales for each retail location. The royalty rate is 5%.

23. As set forth more fully in the First Day Motion, Debtors collectively have approximately 400 employees, all of whom are based across the states where Debtors operate. The employees serve in numerous capacities, including, without limitation: sales associates and store managers; warehouse associates, pickers and supervisors; delivery drivers and assistants; distribution center managers; market coordinators; and various corporate and administrative employees. The employees are paid either hourly, salary, on commission, or some combination of hourly and commission. The retail employees are employed by the respective state operating entity, and the general and administrative employees as well as warehouse-related employees are employed by iMS.

### **III. EVENTS LEADING TO THE CHAPTER 11 FILING**

24. Following the creation of the expanded corporate structure, Debtors continued to successfully and profitably grow and expand, including surviving the “Great Recession” of 2008-09. Gross sales and EBITDA continued to increase year over year, with 2015 being the most profitable year in the history of operations, with approximately \$146 million in gross sales and EBITDA of over \$8 million. In 2016, Debtors embarked on further expansions, including appointing Tempur Sealy as our single mattress product provider which also included incentives to expand into other geographic markets. In hindsight, this expansion (with its increased occupancy and personnel costs) was poorly timed in relation to several other events in the overall market. First, the national mattress market has suffered along with the general brick-and-mortar retail market. Second, the highly aggressive promotional strategy employed by Mattress Firm, a large, nationwide competitor to the Debtors, further challenged the business through heavy discounting, product liquidations and free product give-a-ways. Third, throughout the period from 2016 to 2018, Mattress Firm aggressively expanded the number of stores it operated in the Debtors’



core markets, resulting in lost sales which hindered the Debtors' ability to effectively expand into new markets.

25. Debtors operations have struggled during 2017-18, with gross sales dropping and EBITDA moving from \$8-plus million at year end 2015 to a negative EBITDA in 2018. We have undertaken numerous initiatives to grow sales and cut costs in an effort to address lower sales volume and overall changes in the market. Our efforts have included, among others, the closure of approximately 30 lower-performing stores; the retention in April 2018 of a Chief Marketing Officer and improvements in consumer-facing marketing strategies; additional sales team training; roll out of improved POS and SKU systems, and development of better analytics to guide decision-making. These efforts have begun to show improvements and we have recently also launched a new website which is designed to drive more traffic to stores as well as grow online revenues. Of course, these have been investments into the future, and have not yet brought the operations back to profitability to date, although the trends towards the end of December 2018 and the first weeks of January 2019 reflect increases in year over year sales. Our winter month sales are greatly impacted by weather.

26. During 2018 until the last few months, Debtors remained current with the majority of parties in interest.. As part of a forbearance with TSI, Debtors retained outside financial consultants in October 2018. Rents in certain markets have gone unpaid in recent months, leading to default notices, evictions and other landlord-related litigation and disruptions. In addition, certain advertising is now beginning to be cut off at certain levels. Our marketing, as in all retail and especially in the mattress environment, is critical to ongoing operations.

27. At this point, in order to work to maximize the returns for all stakeholders, Debtors have determined that a chapter 11 going concern process will produce the best outcome for the benefit of all creditors and equity holders. TSI is providing DIP financing to facilitate that process.

#### **IV. FIRST DAY MOTIONS**

**A. Debtors' Expedited Motions regarding procedural and administrative Relief: (i) Motion for Expedited Hearing on Limited and Shortened Notice for First Day Motions; (ii) Motion for Approval of Master Service List and Noticing Processes for all cases; and (iii) Motion for Joint Administration of all cases**

28. My understanding is that it is common to have certain expedited hearings at the beginning of all chapter 11 cases, and Debtors have requested an expedited hearing on various matters. It is my belief that the relief sought in the various First Day Motions, requested to be heard on an expedited basis with shortened and limited notice, is essential to maintaining the Debtors' ongoing businesses and operations, thereby maximizing the value of the going concern and avoiding disruptions during the early stages of chapter 11. Some of these matters are procedural only and to facilitate an orderly process, which I believe to be in the best interests of all concerned.

29. As set forth in the motions and based upon the foregoing, I believe that granting the relief requested in the Motions listed above regarding the development of the most efficient processes for the cases is in the best interests of the Debtors, their creditors, and all parties in interest, and that they should all be granted in all respects or in such fashion as best addresses the goal of efficient administration herein.

**B. Debtor's Motion for Interim and Final Approval of DIP Financing and Use of Cash Collateral, and to Schedule Final Hearing for Same**

30. As set forth more fully in the Debtor's Cash Collateral and DIP Financing Motion, Debtors require sufficient cash flow to continue as a going concern for the benefit of all creditors

and constituencies. TSI and Debtors negotiated in good faith regarding the Term Sheet outlining the primary terms under which TSI will agree to fund a DIP Loan, all of which details are set forth in full in the DIP Financing Motion and related papers. Debtors also negotiated in good faith with United Bank regarding the use of its cash collateral in conjunction with the DIP funding.

31. Debtors' CFO Rick Zander along with myself and others have worked extensively with TSI along with outside financial consultants to formulate the 13 week cash use budget attached to the Motion, as well as to negotiate the Term Sheet attached to the Motion outlining the terms of the proposed DIP Funding. I believe these projections are accurate and will be capable of being performed by Debtors; provided, however, as stated in the Motion, sales numbers and the variable costs associated therewith on a weekly basis can vary significantly week over week, being impacted by the weather as well as the timing of any holiday weekends within the period. Debtors' use of cash collateral and DIP financing is essential to ensure that the businesses are able to continue operating as going concerns, to provide assurances to vendors, customers and employees, and to thereby maximize recovery to all creditors. Without the use of cash collateral and DIP financing as a means of providing working capital and ongoing operations, Debtors would face high risk in satisfying their ongoing financial obligations in the ordinary course of business.

32. Based upon our understanding from counsel, the proposed uses of cash collateral and DIP financing included in the initial 2 weeks of the budget period are only for those ordinary course expenditures which Debtors deem to be necessary to avoid "immediate and irreparable harm." Later weeks contain other expenditures and types of expenditures will be needed in future time periods, such as adequate protection payments to secured lenders, costs of administration such as UST fees and professional fees, tax payments and others. I believe that authorizing the Debtors to use cash collateral and to fund initial funding under the DIP Term Sheet pursuant to the

terms of an interim order and a subsequent final order is crucial to the successful chapter 11 herein, and is in the best interests of all parties, as it continues the going concern business in the ordinary course with minimum disruption.

**C. Applications of Debtors for Interim Orders and Final Orders Authorizing Employment of Debtors' Professionals: DelCotto Law Group PLLC as Attorneys; Brown, Edwards & Company, L.L.P. as Accountants; and Conway MacKenzie as Financial Consultants**

33. In each of Debtors' Applications to employ the above named professionals, effective as of the Petition Date, Debtors have requested that the Court enter an interim order allowing the respective employment immediately, pending a full 21 days' notice to all parties as required by bankruptcy law, and thereafter has requested entry of a final order approving the employment following the full notice and opportunity.

34. Debtors' professionals must be available to provide significant work during this interim period or there would be immediate and irreparable harm to the Debtors and the Estates. There are many matters at the start of these cases, and Debtors require much assistance from their respective professionals for all the tasks which will arise during this initial 21 days' time. If the professionals were unable to undertake much of the work due to lack of employment approval, in my opinion there would be immediate and irreparable harm to all parties and the cases would not be progressing during this crucial time period. Time is of the essence in these cases.

**D. Motion to Employ and Pay Professionals Utilized by Debtors in the Ordinary Course of Business**

35. Debtors have also filed a Motion to employ professionals utilized by the Debtors in the ordinary course of business, in which we requested the Court allow the Debtors to employ and pay certain professionals we currently use in the ordinary course of our business as well as authority to hire other ordinary course business professionals in the future (collectively, the

“OCBP”), if needed and upon notice, without the necessity of a separate, formal retention application for each such professional. Debtors have requested this relief because the nature of the work performed by the OCBP is only indirectly related to the work carried out by the Debtors’ restructuring counsel, the degree of the discretion afforded the OCBP in performing such work is marginal, and the OCBP will not be involved in the administration of these Chapter 11 cases. Additionally, this would be cost efficient and relieve the burden on all parties involved from reviewing numerous fee applications involving other ordinary course fees and expenses.

36. Debtors believe this in the best interests of the Debtors’ Estates because: (i) the OCBP are unfamiliar with the chapter 11 process and will want assurances for payment for providing services to the Debtors if they may be paid only through a formal application process and (ii) if the expertise and background knowledge of the OCBP with respect to the particular matters for which they were responsible prior to the Petition Date are lost, the Estates will incur added and unnecessary expense because the Debtors will be forced to retain other professionals without such background and expertise. Time is of the essence in these cases, so there is no time to be getting new counsel up to speed regarding their respective areas of practice. I believe that it is in the best interests of the Debtors’ estates to avoid any disruption in the professional services required in the day-to-day operations of the Debtors’ businesses.

**E. Debtors’ Motion for an Order to Pay and Honor Prepetition Wages and Related Items**

37. In the ordinary course of its business operations, Debtors incur routine payroll obligations to approximately 400 employees and temporary workers in connection with the overall business operations. As further described in more detail in the Motion, the Employees serve in numerous critical capacities, including, without limitation: sales associates and store managers; warehouse associates, pickers and supervisors; delivery drivers and assistants; distribution center

managers; market coordinators; and various general and administrative employees and executives. The Employees are located at the Debtors' corporate headquarters in Lexington, Kentucky, at the Debtors' regional office in Winfield, West Virginia, at the Debtors' approximately 142 retail stores in 6 states, and at the Debtors' 6 distribution centers in 5 states.

38. In summary and as further described in the Motion, some employees are paid on salary, some hourly, and some also earn commissions. Debtors supplement their workforce by retaining temporary workers through third-party staffing agencies to perform various tasks including operations and delivery services. Debtors pay the staffing agencies, and the staffing agencies, in turn, pay the wages and benefits (as applicable) of the temporary workers. I have worked with our Director of HR to review and details of the Motion and they are accurate to my belief with input from him.

39. Retail (store-based) Employees are paid bi-weekly, with the next upcoming payroll date for these Employees being Friday January 18, 2019 (the "Retail Prepetition Payroll") for the two weeks prior. All other Employees are also paid bi-weekly on alternating Fridays. This payroll was remitted to employees prior to the Filing.

40. Under the Motion, Debtors are also requesting continued payments for other routine related amounts and benefits, including but not limited to prepetition severance agreements, remittance of appropriate federal, state and local FICA, FUTA, Social Security, Medicare and imputed taxes and to match from their own funds Social Security and Medicare taxes and unemployment and disability insurance (collectively, the "Payroll Taxes"). Debtors are generally current on all such remittances and see approval to continue in the ordinary course. Debtors also deduct various amounts from certain Employee's compensation, and in some cases match from their own funds, for wage garnishments, child support, payroll-related taxes, accrued vacation pay,

health, dental and vision insurance, life and disability insurance, and a 401(k) retirement fund, etc. (the, “Payroll Deductions”).

41. All of the Debtors’ payroll obligations are administered by Automatic Data Processing, Inc., (“ADP”), which is a third-party payroll administrator. Debtors pay a monthly processing fees to ADP (the “Payroll Processing Fees”), which also needs to continue in the ordinary course.

42. I firmly believe that our employees are the lifeblood of our operations. Many are long-time and loyal employees, well trained and experienced. Any failure to honor all routine prepetition employee obligations will significantly disrupt Debtors’ businesses and severely threaten our ability to continue as a going concern, harming loyalty and morale. The employees will also suffer undue hardship if these amounts are not paid and the stability of the Debtors will be threatened because they may seek other employment or not perform to the best of their ability. Payment of the employee obligations is necessary to the Debtors’ continued operations at all levels as a going concern and is part of the obligations as debtors in possession.

43. Based upon the foregoing, I believe granting the Debtors’ Motion authorizing the Debtors to pay all the pre-petition employee obligations set forth in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest.

**F. Debtors’ Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (II) Approving Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (III) Approving Debtors’ Proposed Procedure for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief**

44. As set forth more fully in the Utilities Motion, in the ordinary course of business, Debtors deal with numerous utility expenses, including electricity, natural gas, water, sewage,

telecommunications, internet, and waste services from a number of different utility providers identified on the Exhibit to the Utilities Motion.

45. Preserving utility services on an uninterrupted basis is essential to the Debtors' ongoing business operations. The Debtors currently operate approximately 142 retail stores, 6 distribution centers, 1 regional office, and maintain their corporate headquarters in Lexington, Kentucky. Any interruption in utility services at any location would significantly disrupt the Debtors' ability to continue their business operations, especially under the current circumstances with all the other activities connected with the beginning of these cases. Debtors' cash flow through sales would also be disrupted, jeopardizing Debtors' reorganization efforts. Accordingly, it is critical that the Debtors obtain the relief requested in the utilities motion and ensure they are able to maintain and pay for utility services on an uninterrupted basis throughout these chapter 11 cases.

46. I have been advised that under federal bankruptcy law, a utility may alter, refuse, or discontinue a Chapter 11 debtor's utility services if the utility does not receive adequate "assurance of payment" from the debtor within 30 days of the commencement of the case. The Motion proposes a process for the treatment of all utilities to provide adequate assurance and give each notice and opportunity to be heard and to work with the Debtors regarding same. Since Debtors project that the cash flows from operations, along with the proposed use of cash collateral and debtor-in-possession financing will be sufficient to pay all post-petition obligations related to their utility services in the ordinary course of business as they come due, Debtors' believe the Motion and the process is adequate, and is in the best interests of the Debtors, all creditors and parties in interest, and should be granted in all respects.

**G. Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Maintain Prepetition Insurance Policies and Programs; (B) to Honor Certain Insurance Obligations; and (C) Granting Related Relief**



47. The Debtors maintain various liability, property and other insurance policies which insure against general liability, commercial automobile liability, workers' compensation, property damage, employment practices, directors' and officers' liability, cyber liability, aircraft, and umbrella coverage (collectively, the "Liability Policies"), as well as offer health, dental, vision, disability and life insurance coverage for employees (the "Benefit Policies," which are also addressed in the Wages and Benefits Motion, and with the Liability Policies, the "Insurance Policies"). The details regarding the Policies are set forth in the Motion.

48. Debtors maintain the Insurance Policies to manage and limit the risks associated with operating their businesses and to adequately compensate employees, both of which are essential to the preservation of the value of the Debtors' businesses and assets. Some of the Insurance Policies are required by certain regulations, laws, and contracts that govern the Debtors' commercial activities.

49. Debtors procure their general liability, commercial automobile liability, workers' compensation, property damage, employment practices, directors' and officers' liability, cyber liability, and umbrella coverage through Assured Partners, Inc. ("Assured"), an independent third party agency in Charleston, West Virginia. Debtors pay for certain insurance policies directly to Assured, while the premium for their primary coverages is paid directly to Traveler's Indemnity Company or its affiliates on an installment basis. The Debtors pay primary and excess aircraft insurance coverage through Aviation Solutions, a Marsh & McLennon Agency. Debtors do not currently finance any insurance premiums.

50. Certain of the Insurance Policies are subject to regular audits, loss assessments, and operating cost adjustments (the "Insurance Policy Audits"), which may result in an adjustment of the Insurance Premiums. Insurance Policy Audits for certain prepetition Insurance Premium

payments may not conclude until after the Petition Date. As a result, the aggregate amount of the Debtors' obligations arising from the Insurance Policy Audits is unknown at this time.

51. The Debtors maintain workers' compensation insurance as required by statute in each of the states in which they operate and provide coverage to employees for claims arising from or related to their employment by the Debtors. Debtors maintain a workers' compensation Insurance Policy through Travelers Indemnity Co. of America, which covers workers' compensation claims in all states in which the Debtors operate (except Ohio as stated in the Motion).

52. As of the Petition Date, certain routine and ordinary amounts are due and owing on account of the Insurance Policies.

53. The maintenance of the Insurance Policies and Programs are essential to the Debtors' business operations and substantial harm could inure to the Debtors and other parties in interest if it is not maintained. Failure to maintain the Insurance Policies and Programs could have a material adverse impact on the Debtors' chapter 11 strategy and their ability to maximize value for their stakeholders. Further, these insurances are required to operate in a chapter 11 setting. Continuing to pay in the ordinary course all amounts as they come due is in the best interest of the Estates.

**H. Debtors' Motion for Interim and Final Orders pursuant to 11 U.S.C. §§ 105(a), 507(a)(7), 1107(a), and 1108 Authorizing the Continuation of Customer Practices**

54. To maintain our good relations in the consumer market, which is critical to operations and ongoing sales, Debtors request authorization to continue to administer our existing customer programs (collectively, the "Customer Satisfaction Programs") as more fully described in detail in the Customer Practices Motion.

55. The Customer Satisfaction Programs build lasting trust, loyalty, and goodwill with the Debtors' customers and drive sales and customer referrals. Without the ability to pay or otherwise honor their obligations under the Customer Satisfaction Programs (collectively, the "Customer Program Obligations") and maintain the Customer Satisfaction Programs in the ordinary course, Debtors would risk losing the hard-earned trust, loyalty, and goodwill associated with the brands and the customer base, as well as market share, which would irreparably damage the value of their businesses. Many of our markets are in smaller towns, and any rumors, gossip or other such negative local news would be very detrimental in small town environments. We have operated in some markets for many years and the brands have high name recognition and value. Debtors' ability to maintain and administer the Customer Satisfaction Programs and pay and otherwise honor the Customer Program Obligations is necessary to protect the value and reputation of the brands, meet competitive market pressures, ensure continued customer satisfaction, and, in turn, maximize the value of the Debtors' estates.

**I. Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Remit and Pay Certain Prepetition Sales and Local Taxes and Fees**

56. In connection with the normal operations of the Debtors' businesses, various taxing authorities (listed on Exhibit A to the Tax Motion) assess certain taxes in relation to the Debtors' businesses in states where the various Debtors operate. Debtors bill and collect from their customers certain sales taxes for remittance to the appropriate taxing authorities. Also, the Debtors have other ordinary-course tax obligations to various local, state, and federal taxing authorities in jurisdictions where the Debtors operate or are authorized to do business.

57. Because the payment of these taxes are directly related to the Debtors' ability to continue providing services to their customers, and to properly operate under local jurisdiction tax

laws, payment of the taxes is critical to the Debtors' continued operations and restructuring. Therefore, the Debtors believe it is the best interests of the Estates to grant the Debtors authority to pay certain undisputed prepetition sales and income-related taxes owed to the federal, state and local taxing authorities in the ordinary course of Debtors' business.

**J. Debtors' Motion for Entry of Interim and Final Orders Authorizing Debtors to (A) Maintain Existing Cash Management Systems and Bank Accounts; (B) Honor Certain Prepetition Obligations Issued and Outstanding, (C) Continue Use of Existing Business Forms; and (D) Granting Related Relief**

58. The nature of the Debtors' businesses requires a sophisticated cash management system, which is fully described in the Motion. Debtors maintain an integrated, centralized system (the "Cash Management System") for this purpose to facilitate monitoring, reporting and control of its 22 separate bank accounts related to local operations. The Cash Management System is similar to the systems commonly employed by complex businesses comparable to that of the Debtors. The Cash Management System in essence comprises the following principal components: (a) multiple depository accounts that Debtors use to collect payments at local market levels; and (b) a central operating account that Debtors use to aggregate cash and from which they make all or most disbursements to creditors and from which the payrolls are drafted. There is no separate payroll account.

59. In addition to the above, Debtors also maintain separate accounts for the deposit of credit card receipts and third-party financing receipts, among others. As the Debtors expanded and acquired established retail outlets in various states, they maintained certain accounts in rural markets where banking options were limited. A list of the Debtors' bank accounts (the "Bank Accounts") are attached to the Motion along with a more detailed description regarding each account.

60. In order to minimize disruption to the ongoing postpetition operations, Debtors seek the relief in the Motion, to continue using their Bank Accounts including continuing its ordinary course auto-deduct and debit transactions, and to designate them as “debtor in possession” accounts. Requiring the opening and establishment of all new accounts would substantially interrupt Debtors’ business operations and cash flow at a time when stability of these operations is paramount.

**K. Debtors’ Motion for Entry of Order Authorizing Payment of Critical Vendors and to File Under Seal**

61. Debtors have filed a Motion for authority to pay certain prepetition amounts to certain vendors deemed critical to ongoing operations, and those who, if they refused to provide services postpetition, could have a significant negative effect on Debtors’ efforts to successfully reorganize and continue as a going concern.

62. As set forth in the Motion, Debtors have requested to file the confidential information under seal along with information about the postpetition terms each vendor will be required to enter into as part of the “critical vendor” designation.

63. I have reviewed each vendor designated as a critical vendor with my team and believe each such entity is necessary, and that any payments and accompanying terms will not prejudice other prepetition creditors, but will benefit all creditors due to the lack of disruption in critical areas and functions. Each such entity /claimant supports critical portions of the business operations. In my business judgment, each vendor designated could significantly disrupt operations to a crucial and irreparable level if they cut off services. The number and amounts of claims are small in comparison to the remainder of the creditors and the overall size of these cases.

64. It is the Debtors’ intentions that its Financial Consultants will handle these matters and the discussions with each vendor to assure the vendor will provide ongoing goods or services

without disruption, to the benefit of all concerned. Further, Debtors have agreed to obtain the express consent of the DIP Lender on the exact amount and terms for each such vendor as the Court authorizes to be a critical vendor.

I hereby declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information and belief.

/s/Kimberly B. Knopf  
Kimberly B. Knopf  
Designated Representative of the Debtors