

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re:	:	
	:	
SHILOH INDUSTRIES, INC., ¹	:	Chapter 11
<i>et al.</i> ,	:	
	:	Case No. 20-____ (____)
Debtors.	:	(Joint Administration Requested)
	:	
	:	
	:	
	x	

**MOTION OF THE DEBTORS FOR INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS
TO PAY PREPETITION EMPLOYEE WAGES, BENEFITS AND
RELATED ITEMS AND (II) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtors (collectively, the "Debtors"), pursuant to sections 105(a), 363, 507(a)(4), 507(a)(5), 541(b)(7) and 541(d) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby move (the "Motion") for the entry of interim and final orders in substantially the form attached hereto as Exhibit A (the "Proposed Order") (i) authorizing, but not directing, the Debtors to pay (a) prepetition employee wages, salaries, overtime pay, bonuses, contractual compensation, vacation pay and other accrued compensation, as well as related

¹ The Debtors are the following nineteen entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Shiloh Industries, Inc. (7683), Greenfield Die & Manufacturing Corp. (8114), Jefferson Blanking Inc. (7850), Shiloh Automotive, Inc. (1339), Shiloh Corporation (5101), Shiloh Industries, Inc. Dickson Manufacturing Division (5835), Shiloh Holdings International, Inc. (1446), C & H Design Company (9432), Liverpool Coil Processing, Incorporated (0571), Medina Blanking, Inc. (0707), The Sectional Die Company (3562), VCS Properties, LLC (1094), Shiloh Die Cast LLC (5814), Shiloh Manufacturing Holdings LLC (0853), FMS Magnum Holdings LLC (6471), Sectional Stamping, Inc. (8967), Albany-Chicago Company LLC (4687), Shiloh Die Cast Midwest LLC (4114), and Shiloh Manufacturing LLC (1628). The noticing address of each of the Debtors in these chapter 11 cases is 880 Steel Drive, Valley City, Ohio 44280.

Withholdings and Deductions (as such terms are defined below) (collectively, the "Prepetition Compensation"), (b) unreimbursed prepetition business expenses (collectively, the "Prepetition Business Expenses"), (c) prepetition contributions to, and benefits under, employee benefit plans (collectively, the "Prepetition Benefits") and (d) all costs and expenses incident to the foregoing payments and contributions (including payroll-related taxes and related processing and administration costs); and (ii) granting certain related relief. In support of this Motion, the Debtors incorporate the statements contained in the *Declaration of Jeffrey Ficks in Support of First-Day Pleadings* (the "First Day Declaration") filed contemporaneously herewith and further respectfully state as follows:

Background

I. The Debtors and the Commencement of These Cases

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.² The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

2. The Debtors are a global innovative solutions provider focusing on lightweighting technologies that provide environmental and safety benefits to the mobility market. The Debtors have a global network of manufacturing operations and technical centers in Asia, Europe and North America. The Debtors' multi-material solutions consist of a variety of

² This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

alloys in aluminum, magnesium and steel grades, along with proprietary lines of noise and vibration reducing acoustic laminate products. The Debtors deliver these solutions in body structure, chassis and propulsion systems to original equipment manufacturers ("OEMs") and "Tier 1" suppliers in the automotive and commercial vehicle markets. For the twelve months ending October 31, 2019, the Debtors generated approximately \$1.045 billion in revenue.

3. Additional detail regarding the Debtors, their businesses and the commencement of these cases is set forth in the First Day Declaration.

II. The Debtors' Prepetition Employee Obligations³

A. Prepetition Compensation

4. As of the Petition Date, the Debtors have approximately 1,730 employees. Many of the employees are owed or have accrued various sums for Prepetition Compensation. These amounts remained unpaid on the Petition Date because, among other items, (a) the Debtors commenced their chapter 11 cases in the midst of their customary payroll period, (b) checks previously issued on account of such obligations may not have been presented for payment or may not have cleared the banking system, (c) amounts related to prepetition services, while accrued in whole or in part, had not yet become due and payable by the Debtors; and (d) amounts deducted from employee paychecks were not then due to be paid over to the intended recipient or account, including (i) deductions taken from employees' paychecks to make payments on behalf of the employees for or with respect to, e.g., the Prepetition Benefits or amounts due third parties, including certain employees' union remittances (collectively,

³ Nothing contained herein is intended to be or should be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any claim, or the amount or priority thereof, on any grounds, (c) a promise to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined hereunder or (e) the assumption of any executory contract or unexpired lease.

the "Deductions")⁴ and (ii) withholdings from employees' paychecks on account of various federal, state or local income, FICA, Medicare, state disability, workers' compensation and other taxes for remittance to the appropriate federal, state or local taxing authority (collectively, the "Withholdings"). The Debtors estimate that, as of the Petition Date, (a) the total amount of unpaid gross wages, salaries and other compensation (including payments owing under an ordinary course incentive program⁵ for non-insider salaried and hourly employees) was no more than \$3,200,000⁶, and (b) the total amount of unpaid Deductions and Withholdings was no more than \$975,000. The Debtors seek authorization to honor and pay Prepetition Compensation.⁷

⁴ Specifically, the Debtors take voluntary and/or involuntary Deductions from their employees' paychecks in connection with the Debtors' employee benefit programs, loan repayments, and garnishments.

⁵ The Shiloh Operating Incentive Program (the "Operating Program"), is available to employees who work on production lines or other various jobs in the Debtors' plants, and is based upon the certain productivity and quality criteria evaluated on a plant by plant basis. For employees at a specific plant to be eligible for an award under the Operating Program, the plant must hit certain operating income targets. There are currently approximately 1,100 hourly employees and 100 salaried employees participating in the Operating Program. Awards under the Operating Program are calculated and paid on a quarterly basis and can be as high as 5% of the Employee's salary. On average, the Debtors pay approximately \$500,000 of awards per quarter under the Operating Program. Awards were earned for the fiscal quarter than ended July 31, 2020, and were paid to recipients as part of their August 28, 2020 paycheck (each a "July Award"). If awards are earned for the fiscal quarter that ends October 31, 2020, the awards would be scheduled to be paid in mid-November (the "October Award"). Pursuant to this Motion, and in the abundance of caution, the Debtors are seeking authority in the Interim Order to pay any July Awards to eligible non-insider employees. Further, pursuant to this Motion, the Debtors are seeking authority in the Final Order to pay any October Awards to eligible non-insider employees. The payment of any July Awards will not cause any single employee to receive more than \$13,650 in total Prepetition Compensation and Prepetition Benefits.

⁶ This sum includes amounts owed as a result of the Debtors' use of temporary employees in their US facilities. Due to the COVID-19 pandemic, the Debtors' have had to increase their reliance on temporary workers and any loss of these employees at a production facility likely would disrupt production.

⁷ The Prepetition Compensation includes amounts owed to Anna Phillips, who was elected as a director of Debtor Shiloh Industries, Inc. at a special meeting of the Board of Directors held on June 12, 2020. Ms. Phillips serves on the Audit Committee and the Special Committee. The Special Committee was created on May 19, 2020, to explore financing and other strategic opportunities for the Debtors. In connection with her appointment, Ms. Phillips will be entitled to a cash retainer of \$10,000 per month plus incremental fees of \$500 for each additional hour of service in excess of 20 hours per month. Ms. Phillips also entered into an indemnification agreement in the same form as the indemnification agreements entered into with all other members of the Board of Directors of Debtor Shiloh Industries, Inc. As of the Petition Date, the Debtors estimate that Ms. Phillips is owed no more than \$13,650 in Prepetition Compensation. As of the Petition Date, no other director of Debtor Shiloh Industries, Inc. is owed any Prepetition Compensation.

B. Prepetition Benefits⁸

5. The Prepetition Benefits relate to the Debtors' employee benefit programs, including, (a) plans maintained by the Debtors that provide medical, prescription drug, dental, vision, life, accidental death and dismemberment and disability insurance along with health savings account and flexible spending account options; (b) a 401(k) retirement plan for certain of their Employees; (c) an auto allowance for certain of the Debtors' employees;⁹ (d) a smart-phone allowance for certain of the Debtors' employees;¹⁰ (e) a vacation program; and (f) COBRA Benefits; (collectively, the "Benefit Programs").¹¹

6. The Debtors maintain self-insured plans that provide general health, prescription drug, dental and short term disability insurance (collectively, the "Self-Insured Plans"). Under the Self-Insured Plans, the Debtors assume liability for, and initially pay, certain benefits, rather than paying premiums for independent insurance coverage. Cigna Corporation's various operating subsidiaries (collectively, "Cigna") serve as the third-party claims agent for, and processes the claims of covered Employees under, the Self-Insured Plans. The exception is the Debtors' dental plan, where Delta Dental of Ohio (collectively, with Cigna, the "Third Party

⁸ The descriptions of the Debtors' benefit programs contained herein are provided for convenience only and are qualified in all respects by the actual terms of such programs. Nothing contained herein shall have the effect of modifying the terms of the benefit programs or altering any party's rights and obligations thereunder.

⁹ Certain employees, including insiders, are provided with a monthly automobile stipend of no more than \$700 per month (the "Auto Allowance Program"). Historically, the Debtors' spend approximately \$30,000 per month related to the Auto Allowance Program. Pursuant to this Motion, the Debtors are seeking authority to pay any pre- or postpetition amounts owed to the Debtors' Employees pursuant to the Auto Allowance Program.

¹⁰ Approximately 342 employees, including insiders, are provided with a monthly smart-phone stipend of either \$50 or \$100 per month, based on seniority (the "Smart-Phone Program"). Historically, the Debtors' spend approximately \$26,500 per month related to the Smart-Phone Program. Pursuant to this Motion, the Debtors are seeking authority to pay any pre- or postpetition amounts owed to the Debtors' Employees pursuant to the Smart-Phone Program.

¹¹ As defined herein.

Administrators") provides such services. The Third Party Administrators pay for the claims of covered Employees out of a bank account owned and funded by the Debtors (the "Self-Insured Benefits Account"), which the Debtors must keep sufficiently funded pursuant to the terms of the various agreements between the Third Party Administrators and the Debtors. Cigna also operates as the "stop loss" provider under the Debtors' general health plans. In return for a monthly premium, Cigna pays for any medical claims of covered Employees after the Employee's total claims for a given year exceed \$300,000.00 (the "Stop Loss Coverage"). The Debtors do not have a "stop loss" provider under the Debtors' dental plan.

7. The Debtors also maintain certain insured benefit plans under which the Debtors, the Employees, or both, contribute to the payment of premiums for insurance or other coverage provided by third parties (collectively, the "Insured Plans"). The Insured Plans provide vision, life and accidental death and dismemberment and long term disability insurance.

8. The Debtors have established a 401(k) Plan through Principal Financial Services, Inc. To encourage Employees to save through the 401(k) Plan and increase the benefit thereof, the Debtors have historically made a matching contribution of 100% of the first 3% of the Employee's salary and 50% of the next 2% of the Employee's salary. These contributions have been made contemporaneously with the Employee's payroll cycle. However, as part of the cost-cutting measures the Debtors' have implemented as a result of the COVID-19 pandemic, the Debtors' have reduced the matching contributions by 50%. This reduction is expected to continue until October 31, 2020. Generally, active employees of the Debtor who are at least 18 years of age are eligible to join the 401(k) plan during the first month after their hire date. The exception is that unionized employees at the Debtors' plant in Warren, Michigan, who become eligible the day after 90 days of continuous service. Pursuant to this Motion, the Debtors' are

requesting authority to (i) continue to administer the 401(k) Plan; (ii) make matching contributions, regardless if such contributions are on account of an Employee's prepetition employment; and (iii) return to the pre-COVID-19 levels of matching contributions, without the need for further approval by this Court, if the Debtors' determine to do so in an exercise of their reasonable business judgment.

9. The Debtors provide their Employees with a set amount of vacation days each calendar year on a "use it or lose it" basis based upon an Employee's role and seniority (the "Vacation Plan").¹² Under the Vacation Plan, vacation days accrue throughout the year, though Employees are allowed to use vacation days before they accrue.¹³ All hourly employees are allowed to trade in unused vacation days for cash in two instances (a) upon termination and (b) on the anniversary of their start date, when they would otherwise lose accrued but unused vacation. The Debtors seek authority to (i) honor unused vacation days and (ii) compensate any eligible Employee for their accrued but unused vacation days upon their termination, in both cases, regardless of whether the vacation days accrued before or after the Petition Date.¹⁴

10. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended, "COBRA"), the Debtors offer eligible former Employees (the "Former

¹² In addition, the Debtors provide the employees with certain leave policies and benefits (including military duty leave, jury duty leave and medical and family leave), some of which are mandated or encouraged by law and some of which may have pay or benefits components. The Debtors also provide their Employees with paid holidays and bereavement leave. The Debtors have no formal sick leave policy. Instead, they anticipate that their Employees, both union and non-union, will require a few days off per year for personal illness or the illness of a family member. The Debtors' allow their Employees to take this time off without utilizing any days under the Vacation Plan. The only exception to this general rule is when a situation is serious enough to implicate the Family Medical Leave Act of 1993, as amended. The Debtors' also provide their unionized employees with a set amount of paid and unpaid personal days, which they may schedule in advance.

¹³ If an Employee leaves having used more vacation days than accrued, the Debtors do not deduct the value of the extra vacation days from the Employee's final pay check.

¹⁴ The payment of any cash under the Debtors' existing Vacation Plan will not cause any single employee to receive more than \$13,650 in total Prepetition Compensation and Prepetition Benefits.

Employees") the opportunity to elect to continue insurance coverage under the general health, dental and vision plans maintained by the Debtors (the "COBRA Benefits"). Following an eligible Employee's termination, such former Employee is solely responsible for payment of premiums and is billed directly. The Debtors also provide COBRA Benefits to eligible Employees who have been furloughed for more than six weeks, or who are on short or long-term disability leave (the "Employees On Leave" and collectively, with the Former Employees, the "COBRA Employees"). Employees On Leave pay the same amount of premiums as they did prior to their absence, plus a two-percent administration fee. The Debtors' utilize a third party administrator for the COBRA Benefits who is responsible for collecting the premiums from the COBRA Employees and remitting them (minus an administrative fee) to the Debtors. On September 1, 2020, the Debtors will switch administrators and begin to utilize HealthEquity, Inc. As a number of the COBRA Benefits relate to the Debtors' Self-Insured Plans, the Debtors continue to assume liability for, and initially pay for claims of the COBRA Employees,¹⁵ under the applicable Self-Insured Plans.¹⁶

11. As of the Petition Date, there are approximately 28 COBRA Employees.

By this Motion, the Debtors seek to continue to pay amounts related to the COBRA Benefits for

¹⁵ During the first sixth months of 2020, the Debtors paid \$680,869 of COBRA Benefits, or an average of \$113,478 of COBRA Benefits per month. These COBRA Benefits were offset by \$91,502 of premiums remitted by the predecessor of HealthEquity, Inc. (and are net of a 2% fee), resulting in a net COBRA Benefit cost of \$589,367 to the Debtors during the first sixth months of 2020. The Stop Loss Coverage applies to the COBRA Employees in the same manner as active Employees.

¹⁶ The Debtors also maintain the Shiloh Retiree Medical Plan, whereby they subsidize the costs of insurance for certain retirees and their spouses. The Shiloh Retiree Medical Plan allows its participants to participate in the Debtors' dental and vision plans at the same cost that COBRA Employees pay. Participants pay these premiums directly to the Debtors. In addition, participants are eligible to enroll in medial and prescription benefit plans under Medicare through Benistar Group Retiree Health Solutions ("Benistar"). Shiloh subsidizes a portion of the participants Medicare premiums. Participants pay their share of the premiums directly to Benistar and Benistar bills the Debtors monthly for the subsidized portion. Approximately twenty individuals are enrolled in the plan, and the Debtors pay Benistar an average of \$2,400 per month. Pursuant to this Motion, the Debtors are seeking authority to pay any claims related to the Shiloh Retiree Medical Plan.

COBRA Employees and the administrative costs associated therewith, regardless of whether the COBRA Employee's right to receive COBRA Benefits arose before or after the Petition Date.¹⁷

12. The Debtors owe certain Prepetition Benefits as of the Petition Date because various obligations under the Benefit Programs accrued either in whole or in part prior to the Petition Date, but will not become payable in the ordinary course of the Debtors' business until a later date. The Debtors estimate that the value of the unpaid Prepetition Benefits was no more than \$6,500,000, as of the Petition Date. The Debtors seek authority to pay all Prepetition Benefits that, as of the Petition Date, had accrued but remained unpaid. For the avoidance of doubt, the Debtors seek authority to allow Cigna to continue to draw on the Self-Insured Benefits Account to pay the claims of covered Employees pursuant to the Self-Insurance Plans regardless if such claims arose before or after the Petition Date.

C. Prepetition Business Expenses

13. The Debtors customarily reimburse their employees for a variety of business expenses incurred in the ordinary course of their businesses. Generally, the Debtors reimburse approximately \$400,000 in such business expenses on a monthly basis.¹⁸ However, the COVID-19 pandemic's impact on business travel has caused that amount to be reduced to approximately \$200,000. It is difficult for the Debtors to determine the exact amount of Prepetition Business Expenses that are outstanding, because employees may not submit

¹⁷ As the Debtors' are self-insured, and given the small size of the pool of COBRA Employees, it is impossible to estimate the amount of COBRA Benefits that may be owed by the Debtors. Over the past sixth months, the Debtors have paid an average of \$115,000 per month of COBRA Benefits.

¹⁸ The Prepetition Business Expenses include the reimbursement of certain expenses of the Board of Directors of Debtor Shiloh Industries, Inc. (the "Shiloh Directors"), including costs related to travel and tax preparation. As of the Petition Date, the Debtors believe that any outstanding reimbursement obligations owed to the Shiloh Directors are de minimis. Pursuant to this Motion, the Debtors' are requesting authority to continue to reimburse the Shiloh Directors for certain expenses consistent with past practice, regardless of whether the expense arose before or after the Petition Date.

reimbursement forms promptly. Nonetheless, the Debtors estimate that their obligations for Prepetition Business Expenses as of the Petition Date to employees will not exceed \$200,000.

The Debtors seek authorization to reimburse all Prepetition Business Expenses.¹⁹

D. Costs and Expenses Incident to the Foregoing

14. The Debtors incur costs incident to Prepetition Compensation and Deductions (collectively, the "Prepetition Processing Costs"). Included in the Prepetition Processing Costs are processing costs, broker costs, and the employer portion of payroll-related taxes,²⁰ as well as accrued but unpaid prepetition charges for administration of the Prepetition Benefits, including direct payments to the Third Party Administrators. The Debtors estimate that the aggregate amount of Prepetition Processing Costs accrued but unpaid, as of the Petition Date, was no greater than \$2,400,000 of the Prepetition Processing Costs is justified because the failure to pay any such amounts might disrupt services provided by third-party providers with respect to

¹⁹ Additionally, certain of the Debtors' employees have access to Debtor owned credit cards for certain business related expenses, including travel related expenses (the "P-Cards"). Charges to the P-Cards are paid directly by the Debtors. Prior to the Petition Date, the Debtors paid all known and outstanding obligations related to the P-Cards. In order to maintain certain of the P-Cards, the Debtors have provided cash collateral to secure their past and future obligations thereunder (the "JPMC P-Card Obligations") to JPMorgan Chase Bank, N.A. ("JPMC") through a bank account ending in -1525 (the "JPMC Account") that is subject to an exclusive first-priority lien in favor of JPMC. Continued access to the P-Cards is critical to avoid disruption to the Debtors' ordinary course business operations and, accordingly, the Debtors are seeking the authority to pay any outstanding prepetition obligations related to the P-Cards, as Prepetition Business Expenses, and otherwise continue to perform in the ordinary course of business. The Debtors will also seek, in the final order approving this Motion, court authority to continue to maintain the P-Card Account for purposes of cash collateralizing the JPMC P-Card Obligations and for the cash in the account to remain subject to an exclusive first-priority lien in favor of JPMC as security for the JPMC P-Card Obligations. The Debtors will also seek, in the final order, to preserve JPMC's right, in the event the Debtors fail to make any timely payment to JPMC in respect of the JPMC P-Card Obligations, to terminate the Debtors' P-Card program with JPMC and/or to debit the JPMC Account for the amount of any unpaid JPMC P-Card Obligations, without further order of the Court; provided, however, that any such termination (a) must be consistent with the terms and provisions of the agreement between the Debtors' and JPMC governing the Debtors' P-Card program with JPMC and (b) must not be effectuated on less than ten (10) days advanced written notice to the Debtors.

²⁰ The Debtors have elected to defer the payment of the employer portion of certain payroll-related taxes as permitted under Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). As of the Petition Date, the Debtors' have deferred approximately \$2.0 million in such taxes. By this Motion, the Debtors are seeking authority, but not direction, to pay any and all payroll-related taxes that were deferred under the CARES Act.

Prepetition Compensation, Deductions and Prepetition Benefits. By paying the Prepetition Processing Costs, the Debtors may avoid even temporary disruptions of such services and thereby ensure that their employees obtain all compensation and benefits without interruption.

Legal Basis for Relief Requested

I. Payment of the Employee Related Claims is Necessary and Appropriate

A. Section 363 of the Bankruptcy Code and the Doctrine of Necessity Provides the Basis for Granting the Requested Relief

14. Section 363(b)(1) of the Bankruptcy Code provides as follows: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . ." 11 U.S.C. § 363(b)(1). A debtor's decisions to use, sell, or lease assets outside the ordinary course of business must be based upon a sound business purpose. See In re Filene's Basement, LLC, No. 11-13511, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("Transactions under § 363 must be based upon the sound business judgment of the debtor or trustee."); In re Decora Indus., Inc., No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (a debtor satisfies the requirements of § 363(b)(1) through the "sound exercise of business judgment"); see also In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992) (holding that the use, sale, or lease of property of the estate is justified if it is supported by a good business reason).

15. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code under equitable common law principles. The purpose of section 105 of the Bankruptcy Code is to ensure the bankruptcy court has the power "to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (16th ed. 2020).

16. Under the "doctrine of necessity," courts allow the immediate payment of prepetition claims where such payment is essential to the debtor's continued operations. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a [prepetition] claim ... is essential to the continued operation of the [debtor,] ... payment may be authorized "); In re Motor Coach Indus. Int'l, No. 09-078 (SLR), 2009 U.S. Dist. LEXIS 10024, at *7 n.5 (D. Del. Feb. 10, 2009) ("The 'doctrine of necessity' or 'necessity of payment' doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor."); In re Just for Feet, 242 B.R. 821, 825 (D. Del. 1999) ("The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of prepetition claims when such payment is necessary for the debtor's survival during chapter 11."); accord In re Boston & Me. Corp., 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors' continued operation).

17. Recently, in dicta, the Supreme Court of the United States endorsed motions seeking to pay certain prepetition claims early in a chapter 11 case in order to "enable a successful reorganization and make even the disfavored creditors better off." See Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 985 (2017) ("Courts, for example, have approved first-day

wage orders that *allow payment of employees' prepetition wages*, critical vendor orders that allow payment of essential suppliers' prepetition invoices and roll-ups that allow lenders who continue financing the debtor to be paid first on their prepetition claims. In doing so, these courts have usually found that the distributions at issue would enable a successful reorganization and make even the disfavored creditors better off.") (internal citations and quotation marks omitted) (emphasis added).

18. The bankruptcy court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out certain statutory provisions of chapter 11—specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code—which collectively authorize a debtor in possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business. Indeed, a debtor in possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim."). see also Just for Feet, 242 B.R. at 824-25 (authorizing, under the "necessity of payment doctrine," the "payment of prepetition claims" outside of plan because such claims were "essential to the continued operation of the debtor"). "[M]ost courts will allow [the payment of prepetition claims] under the 'doctrine of necessity,' if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor's business." In re Friedman's Inc., No. 09-10161 (CSS), 2011 Bankr. LEXIS 4500, at *7 (Bankr. D. Del. Nov. 30, 2011).

19. This Motion satisfies the foregoing criteria. The immediate impairment of the Debtors' relationships with their employees and the irreparable harm to workforce morale

sure to attend any delay or disruption in the payments and benefits provided to employees—at the very time when the dedication, confidence and cooperation of those employees is most critical—would clearly imperil the Debtors' chances of consummating a successful going concern transaction. The Debtors operate in a highly competitive sector of the domestic economy. Companies within the Debtors' sector depend upon their employees' intelligence and skill to maintain high levels of production quality that customers require.

20. Thus, maintaining morale and the goodwill of the Debtors' employees and ensuring the uninterrupted availability of their services is necessary to assist the Debtors in (a) maintaining the "business as usual" atmosphere needed to continue high quality production and (b) preserving the Debtors' relationships with vendors and, crucially, customers, as the Debtors' employees act as the Debtors' "face to the world."

21. Moreover, the Debtors' inability to obtain the relief requested herein would cause harm to the Debtors' employees themselves. The Debtors' employees depend upon the receipt of the amounts represented by Prepetition Compensation, Prepetition Business Expenses and Prepetition Benefits to enable the Debtors' employees to meet their own personal obligations. Absent receipt of such amounts, the Debtors' employees would suffer undue hardship and, in many instances, serious financial difficulties.

15. In sum, ensuring the Debtors' employees remain as unaffected by the filing of these cases is imperative to maintain the Debtors' operations and satisfy customers' expectations with respect to quality and service. As such, the Debtors believe the relief requested herein is essential and should be granted.

B. Employee Wages and Related Costs Have Priority Status Under the Bankruptcy Code

16. In addition to the essential nature of the relief requested herein, payments on account of much of the Prepetition Compensation are entitled to priority under the Bankruptcy Code and, would be made, in a liquidation or under a plan, prior to general unsecured creditors receiving distributions from the Debtors' estates. This absence of harm to general unsecured creditors (even in a liquidation) is further support for granting the relief requested herein.

17. Under section 507(a)(4) of the Bankruptcy Code, employees are granted a priority claim for the following:

[A]llowed unsecured claims, but only to the extent of \$13,650 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor

11 U.S.C. § 507(a)(4). Likewise, under section 507(a)(5) of the Bankruptcy Code, employees are granted a priority claim for the following:

[A]llowed unsecured claims for contributions to an employee benefit plan —

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of —

(i) the number of employees covered by each such plan multiplied by \$13,650; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(5).

22. In the instant case, the Debtors believe that the amount of Prepetition Compensation owing to, or on account of, each of their employees will not exceed the sum of \$13,650 allowable as a priority claim under section 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Employee Cap"). Therefore, the payment of these amounts pursuant to this Motion would not deplete assets otherwise available to other unsecured creditors. For the avoidance of doubt, the Debtors will not pay any individual employee any amounts in excess of the Employee Cap.

23. Similarly, the Prepetition Processing Costs associated with paying Prepetition Compensation are likely also entitled to priority treatment under section 507(a)(5) of the Bankruptcy Code. Allegheny Int'l, Inc. v. Metro. Life Ins. Co., 145 B.R. 820 (W.D. Pa. 1992). In Allegheny, the court ruled that the prepetition claims of a medical benefits plan administrator for, among other things, fees charged for performing administrative, actuarial and claims services in connection with the medical benefits plans of a chapter 11 debtor were entitled to priority under former section 507(a)(4) (now section 507(a)(5)) of the Bankruptcy Code. The court stated that "[i]t would be useless to prioritize expenses for contributions to an employee benefit plan and not prioritize the expenses necessary to administer those plans." Id. at 822-23.

C. Funds Held in Trust Are Not Available for General Distribution to Creditors

24. The Debtors maintain the Withholdings in trust for their Employees, and as such, the Withholdings are not property of the Debtors' estates. Section 541(d) of the Bankruptcy Code provides that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest" becomes property of a debtor's estate only to the extent of the debtor's legal title therein. 11 U.S.C. § 541(d). It is well established in this District that "property a debtor holds in trust for another is not property of the estate" within the meaning of section 541 of the Bankruptcy Code. See In re Lenox Healthcare, Inc., 343 B.R. 96, 100 (Bankr. D. Del. 2006); see also In re Columbia Gas Sys., Inc., 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property which a debtor holds in trust — either express or constructive—for another does not become property of the estate when the debtor files for bankruptcy; stating that "Congress clearly intended the exclusion created by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust.").

25. More specifically, taxes collected on behalf of taxing authorities are not property of the estate. See Begier v. IRS, 496 U.S. 53, 59 (1990) (holding that taxes such as excise taxes, FICA taxes and withholding taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); see also In re Calabrese, 689 F.3d 312, 321 (3d Cir. 2012) (finding that third-party sales taxes collected by a retailer "resemble trust fund taxes" and never become property of the estate but "are merely held by the debtor on behalf of the party that owes the tax"). Accordingly, such funds are not available for general distribution to a debtor's creditors.

26. The Withholdings are held in trust for the benefit of the appropriate federal, state, or local taxing authorities. Likewise, certain of the Deductions also are held in trust for, among others, the Debtors' employees themselves. Thus, they are not property of the

Debtors' estates within the meaning of section 541 of the Bankruptcy Code. As a result, the remittance of the Withholdings and Deductions is warranted because it will not adversely affect the Debtors' estates or their creditors.

27. Further, many federal, state and local taxing authorities impose personal liability on the officers and directors of entities responsible for collecting taxes from employees to the extent any such taxes are collected but not remitted. See, e.g., 26 U.S.C. § 6672(a) (establishing, among other things, personal liability for persons required to collect taxes to the extent such taxes are collected but not remitted); id. § 7202 (same); 30 Del. Code § 572 (same); Ind. Code § 6-3-4-8(g) (same); Ky. Rev. Stat. Ann. § 141.330(3) (same); Mich. Comp. Laws § 205.27a(5) (same); Ohio Rev. Code § 5747.07(G) (same); Wis. Stat. § 71.83(1)(b)(2) (same). Accordingly, if these amounts remain unpaid, there is a risk that the Debtors' officers and directors may be subject to lawsuits on account of any such nonpayment during the pendency of these chapter 11 cases. Such lawsuits obviously would constitute a significant distraction for officers and directors at a time when they should be focused on the Debtors' efforts to (a) stabilize their postpetition business operations and (b) develop and implement a successful strategy with respect to a going concern sale. To avoid the serious disruption of the Debtors' reorganization efforts that could result from the nonpayment of any withholding taxes, the Debtors seek authority to remit all Withholdings collected on behalf of the employees, including prepetition Withholdings, to the applicable taxing authorities to the extent that that they have not already been remitted.

D. Certain Employee Withholdings and Contributions for ERISA Plans Are Not Property of the Estate

28. In addition to the general exclusion of certain property from a debtor's estate under section 541(d) of the Bankruptcy Code, section 541(b)(7) of the Bankruptcy Code

specifically provides that property of the estate does not include amounts withheld by an employer from wages of an employee, or amounts received by an employer from employees, for payment as contributions to an employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Amounts withheld or collected from employees on account of certain Prepetition Benefits, such as 401(k) accounts, medical, life, disability and other insurance; or other benefits that are subject to Title I of ERISA and thus satisfy the standards of section 541(b)(7) of the Bankruptcy Code are not property of the Debtors' estates and not available for distribution to the Debtors' creditors. As such, the remittance of amounts constituting Prepetition Benefits that do not constitute property of the Debtors' estates will not adversely affect the Debtors' estates or their creditors and is therefore warranted.

E. Conclusion

29. Courts in this District have routinely approved the payment of prepetition claims of employee wages, salaries, expenses and benefits in various chapter 11 cases. See, e.g., In re Pace Indus., LLC, No. 20-10927 (MFW) (Bankr. D. Del. May 4, 2020) (approving the payment of prepetition employee obligations); In re FTD Cos., Inc., No. 19-11240 (LSS) (Bankr. D. Del. July 1, 2019) (same); In re Imerys Talc Am., Inc., No. 19-10289 (LSS) (Bankr. D. Del. Mar. 19, 2019) (same); In re Promise Healthcare Grp., LLC, No. 18-12491 (CSS) (Bankr. D. Del. Dec. 4, 2018) (same); In re M & G USA Corp., No. 17-12307 (BLS) (Bankr. D. Del. Nov. 1, 2017) (same).²¹

30. In light of the foregoing, the Debtors respectfully submit that the payment of the employee-related obligations as requested herein is (a) necessary and essential for the

²¹ These unreported orders are not attached to this Motion. Copies of these orders will be made available to the Court at or prior to the hearing on this Motion and are available to other parties upon request from the Debtors' counsel.

Debtors' reorganization and necessary to prevent immediate and irreparable harm to the Debtors, their estates and their employees, (b) in the best interests of the Debtors, their estates and their creditors and (c) a sound business judgment.

II. Request for Authority for Banks to Honor and Pay Checks Issued to Pay Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits and Prepetition Processing Costs

31. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions (collectively, the "Banks") be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits and Prepetition Processing Costs, regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on identifiable payroll and disbursement accounts and can be readily identified as relating directly to the authorized payment of Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits and/or Prepetition Processing Costs. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

32. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; or (d) an implication or admission that any particular claim against the Debtors would constitute a claim for Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits, or Prepetition Processing Costs.

III. Requests for Immediate Relief & Waiver of Stay

33. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to pay all or part of a claim that arose before the filing of the petition." Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Where the failure to grant any such requested relief would result in immediate and irreparable harm to a debtor's estate, a court may allow a debtor to pay immediately all or part of a prepetition claim.

34. As set forth above and in the First Day Declaration, the payment of the Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits and Prepetition Processing Costs is necessary to prevent the immediate and irreparable damage to the Debtors' (a) operations (and customer confidence therein), (b) going-concern value and (c) ability to reorganize that would result from a collapse of employee morale. Accordingly, the Debtors submit that ample cause exists to justify (i) the immediate entry of an order granting the relief sought herein and (ii) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) and the notice requirements of 6004(a), to the extent that they apply.

Reservation of Rights

35. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim, including the amount or priority thereof, on any grounds; (c) a promise to

pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; or (e) the assumption of any executory contract or unexpired lease.

Consent to Jurisdiction

36. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

37. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' fifty largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; and (iii) counsel to the Debtors' proposed postpetition secured lenders. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Proposed Order, granting the relief requested herein on an interim basis; (ii) enter a final order, granting the relief requested herein; and (iii) grant such other and further relief as to the Debtors as the Court may deem proper.

Dated: August 30, 2020
Wilmington, Delaware

Respectfully submitted,

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
:
In re : Chapter 11
:
SHILOH INDUSTRIES, INC.,¹ et al., : Case No. 20-_____ (____)
:
Debtors. : (Joint Administration Requested)
:
----- X

INTERIM ORDER GRANTING
MOTION OF THE DEBTORS FOR AN ORDER (I) AUTHORIZING THE
DEBTORS TO PAY PREPETITION EMPLOYEE WAGES, BENEFITS,
AND RELATED ITEMS AND (II) GRANTING CERTAIN RELATED RELIEF

This matter coming before the Court on the Motion of the Debtors for Interim and
Final Orders (I) Authorizing the Debtors to Pay Prepetition Employee Waves, Benefits and
Related Items and (II) Granting Certain Related Relief (the "Motion"),² filed by the above-
captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having
reviewed the Motion and the First Day Declaration and having considered the statements of
counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the
"Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to
28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United
States District Court for the District of Delaware, dated as of February 29, 2012, (ii) venue is

¹ The Debtors are the following nineteen entities (the last four digits of their respective taxpayer
identification numbers, if any, follow in parentheses): Shiloh Industries, Inc. (7683), Greenfield Die &
Manufacturing Corp. (8114), Jefferson Blanking Inc. (7850), Shiloh Automotive, Inc. (1339), Shiloh
Corporation (5101), Shiloh Industries, Inc. Dickson Manufacturing Division (5835), Shiloh Holdings
International, Inc. (1446), C & H Design Company (9432), Liverpool Coil Processing, Incorporated (0571),
Medina Blanking, Inc. (0707), The Sectional Die Company (3562), VCS Properties, LLC (1094), Shiloh
Die Cast LLC (5814), Shiloh Manufacturing Holdings LLC (0853), FMS Magnum Holdings LLC (6471),
Sectional Stamping, Inc. (8967), Albany-Chicago Company LLC (4687), Shiloh Die Cast Midwest LLC
(4114), and Shiloh Manufacturing LLC (1628). The noticing address of each of the Debtors in these
chapter 11 cases is 880 Steel Drive, Valley City, Ohio 44280.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion and the Hearing was sufficient under the circumstances, (v) the relief sought in the Motion is in the best interest of the Debtors' estates and creditors and is an exercise of the Debtors' reasonable business judgment, (vi) the payment of prepetition amounts as requested in the Motion is necessary and appropriate to prevent immediate and irreparable harm to the Debtors' business operations and will serve to protect and preserve the Debtors' estates for the benefit of all stakeholders and, thus, cause exists to permit such payments to be made immediately notwithstanding Bankruptcy Rule 6003 and (vii) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The Debtors are authorized, but not directed, in the Debtors' sole discretion, to pay the Prepetition Compensation, Prepetition Business Expenses, Prepetition Benefits and Prepetition Processing Costs that have accrued, but remained unpaid, as of the Petition Date, in an aggregate amount not to exceed \$13.275 million.
3. Nothing in this Interim Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code; provided that nothing in this Interim Order shall prejudice the Debtors' ability to seek approval of such relief pursuant to section 503(c) of the Bankruptcy Code.

4. Nothing in this Interim Order shall authorize any payments under the Operating Program; provided, however, that any amounts paid by check or wires prior to the Petition Date, which have not yet cleared the Debtors' bank accounts as of the Petition Date, are authorized to be paid or, to the extent necessary, reissued pursuant to the terms of this Interim Order.

5. Notwithstanding any other provision of this Interim Order to the contrary, payments to or on behalf of Employees on account of prepetition obligations in the interim period shall be limited by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and capped at the amount afforded priority by those statutory subsections.

6. The Banks are authorized, at the Debtors' direction, to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by, the Debtors related to relief granted by this Interim Order, whether such checks were presented or fund transfer requests were submitted, prior to, on or after the Petition Date, provided that sufficient funds are available in the Debtors' accounts to cover such checks and fund transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim, including the amount or priority thereof, on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; or (e) the assumption of any executory contract or unexpired lease.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order. This Interim Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the 14-day stay imposed by Bankruptcy Rule 6004(h) and any notice requirements of Bankruptcy Rule 6004(a) are hereby waived.

9. Notwithstanding anything to the contrary contained herein, (i) any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving debtor-in-possession financing (a "DIP Order"), and (ii) any claim for which payment is authorized pursuant to this Order that is treated as an administrative expense of the Debtors' estates shall be and is subject and subordinate to any and all claims, liens, security interests and priorities granted to the DIP Agents (as defined in the DIP Order) in accordance with and subject to the terms of the applicable DIP Order, and payment on any such claim shall be subject to any and all restrictions on payments in the DIP Order and any other order of the Court authorizing the Debtors' use of cash collateral.

10. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

11. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Interim Order.

12. A final hearing to consider the relief requested in the Motion shall be held on [], 2020 at [] (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on or prior to [], 2020 at [] (prevailing Eastern Time).