

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING THEM TO (A) CONTINUE THEIR INSURANCE,
WORKERS' COMPENSATION AND SURETY BOND PROGRAMS AND
(B) PAY RELATED OBLIGATIONS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors (collectively, the "Debtors"), pursuant to sections 105(a) and 363 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") the Court for the entry of interim and final orders in substantially the forms attached hereto as Exhibit A (the "Proposed Order"), (i) authorizing, but not directing, the Debtors to (a) continue their Insurance Policies (as defined below) and Surety Bond Program (as defined below) and (b) pay prepetition obligations related thereto subject to an interim cap of \$450,000 and (ii) granting certain related relief. In support of this Motion, the Debtors

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.

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 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.

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 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.

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' Insurance Program

A. The Debtors' Insurance Policies

4. In the ordinary course of their businesses, the Debtors maintain numerous insurance policies that provide coverage for, among other things, general product liability, travel, automobile, property, marine/ocean cargo, directors and officers liability, employment practices liability, commercial crime liability, international casualty, special crime liability, pollution and fiduciary liability (together with the Workers' Compensation Program (as such term is defined below), the "Insurance Policies"). The Insurance Policies are essential for the preservation of the Debtors' businesses, and, in certain instances, required by various laws, regulations or contracts that govern the Debtors' businesses.

5. The Debtors maintain the Insurance Policies through several different insurance carriers (collectively, the "Insurance Carriers"). The names of the Insurance Policies, the Insurance Carriers, the term of the current policies, and the aggregate annual premiums due thereunder (collectively, the "Premiums"), are set forth on Exhibit B attached hereto.³

The aggregate annual Premiums under all of the Insurance Policies (including the Workers' Compensation Program) are approximately \$1.4 million. The Debtors are current with all of their premium payments under the Insurance Policies.

³ Although the Debtors believe that the list of Insurance Policies set forth on Exhibit B is substantially complete, the relief requested herein is intended to be applicable with respect to all Insurance Policies and is not limited to those listed on Exhibit B. Nothing in the Motion shall be construed as a guarantee or representation that the Debtors intend to, or ultimately will, supplement, amend, extend, renew, or replace any Insurance Policy.

B. The Premium Financing Agreement

6. In the ordinary course of the Debtors' businesses, sixteen of the twenty-six Insurance Policies (the "PFA Policies") and the fee owed to the Debtors' insurance broker, Oswald Companies, are subject to a premium financing agreement ("PFA") with First Insurance Funding, a division of Lake Forest Bank & Trust Company, N.A. ("FIF"). Specifically, FIF pays the respective premiums due under the PFA Policies, and the related broker fees, and the Debtors are obligated to pay to FIF a down payment of approximately 22% of the total premiums, plus ten equal monthly installments of \$69,660.82. As of the Petition Date, the Debtors owe a maximum amount of \$887,395.80 to FIF under the PFA.

7. The PFA contains a power of attorney granted to FIF by the Debtors. Pursuant to this power of attorney, if the Debtors default on their payment obligations under the PFA, FIF may cancel the PFA Policies and recover any unearned premiums refunded by the issuers of the PFA Policies and apply the refunds to reduce the Debtors' outstanding obligations under the PFA. In addition, the PFA grants FIF a security interest in financed Insurance Policies and any additional premiums required under the PFA Policies. By this Motion, the Debtors hereby request authority to continue the PFA, renew the PFA and enter into new PFAs in the ordinary course of business without the need for further approval or authority from the Bankruptcy Court.

C. Payment of Non-PFA Policies

8. Other than the PFA Policies and the certain Policies related to the Workers' Compensation Program (defined below), the Debtors pay almost all of the Premiums on an annual basis, and therefore have no prepetition amounts outstanding related to such

policies.⁴ The two exceptions are the Debtors' (a) General Liability maintained with the Travelers Indemnity Company of Connecticut and (b) Automobile Liability and Auto Physical Damage Policies maintained with the Travelers Property Casualty Company of America (collectively, the "Monthly Policies"). The Debtors pay the Premiums on the Monthly Policies on a monthly basis, in advance (the "Monthly Premiums"). On September 1, 2020, the Debtors expect to make a payment for the Monthly Premiums in the amount of approximately \$8,669. By this Motion, the Debtors are requesting authority, but not direction, to continue to pay the Monthly Premiums in the ordinary course of business, including any amounts representing prepetition coverage.

D. The Workers' Compensation Program

9. The Debtors (a) maintain workers' compensation liability insurance for their potential workers' compensation liability in most of the states in which they do business (collectively, the "Insured States"); (b) self-insure for their potential workers' compensation liability in Ohio up to \$400,000 per accident or per infected employee in the case of diseases; and (c) provide employees with workers' compensation coverage for claims arising in any jurisdiction from or related to their employment by the Debtors (collectively, the "Workers' Compensation Program"). By this Motion, the Debtors are seeking authority to continue the Workers' Compensation Program in all of these jurisdictions and to pay certain related prepetition premiums, claims and expenses.

⁴ As described further on Exhibit B, six of the Debtors' policies related to directors and officers liability were set to expire at the end of July 2020. The Debtors negotiated an extension until September 13, 2020, and paid the Insurance Carriers an aggregate Insurance Premium of approximately \$38,000 for such extension. After the extension was finalized, the Debtors negotiated replacement coverage for the time period beginning September 15, 2020 and ending on March 15, 2021. The Debtors paid an aggregate premium of \$1.385 million to the relevant Insurance Carriers up front and in full, and have no outstanding obligations related to these policies.

10. To implement the Workers' Compensation Program in the Insured States, the Debtors maintain workers' compensation insurance policies with The Standard Fire Insurance Company ("Standard Fire"). Under the Workers' Compensation Program (a) insurance coverage is provided by Standard Fire in the Insured States for workers' compensation claims in amounts required under applicable law with a deductible, or other similar mechanism, of up to \$500,000 per accident; and (b) the Debtors are obligated to pay a monthly premium (the "Workers' Compensation Premium"),⁵ all in accordance with the terms of the Workers' Compensation Program. The Debtors are current in the payment of their Workers' Compensation Premium to Standard Fire.

11. To implement the Workers' Compensation Program in Ohio, the Debtors with employees in Ohio participate in the state's workers' compensation system as self-insured employers and are therefore responsible for paying the own workers' compensation claims. However, the Debtors' have obtained an excess liability policy from Arch Insurance Group (the "Stop Loss Policy") which covers any losses related to an Ohio workers' compensation claim over \$400,000 per incident.⁶

⁵ Unlike the other Insured States, Wisconsin does not permit employers to obtain workers' compensation coverage that calls for a large deductible. As a result, the Debtors have obtained what is commonly referred to as a "retrospective" policy from Travelers Property Casualty Company of America ("Travelers") to cover any workers' compensation claims related to its employees located in Wisconsin (the "Wisconsin Policy"). Despite the fact that the Wisconsin Policy has a complex mechanism to calculate each month's premium, the result is ultimately similar to a large deductible policy. The Debtors are ultimately responsible for the first \$500,000 of losses related to an incident that gives rise to a workers' compensation claim and Travelers is responsible for any losses between \$500,000 and the statutory limit. The key difference is that losses that would be subject to a deductible in other Insured States are instead included in a future monthly premium payable by the Debtors. The Debtors' monthly premiums under the Wisconsin Policy are therefore variable. The Debtors recently changed the Insurance Company that provides the Wisconsin Policy. Over the past 12 months, the Debtors' paid Travelers' predecessor an average of approximately \$9,000 per month related to the Wisconsin Policy, with the highest monthly premium totaling \$37,872.20 and the lowest premium totaling \$953.64. Over the past three years, the highest monthly premium totaled \$265,328.52, however this payment was an outlier related to a claim settlement, and was the highest premium over the past three years by over \$200,000.

⁶ The excess liability policy from Arch Insurance Group which covers any losses related to an Ohio workers' compensation claim over \$400,000 per incident has been financed under the PFA.

12. The Debtors have retained third party administrators to assist in the claim management and administration of the Workers' Compensation Program (the "TPAs"). Associated Compensation Resources, Inc. is the TPA for claims originating in Ohio, and ESIS, Inc. is the TPA for claims originating in any other state. The Debtors pay the TPAs approximately \$85,000 per year for their services.

13. As of July 30, 2020, approximately thirty-five open workers' compensation claims with outstanding liabilities under the Stop Loss Policy were pending against the Debtors under the Workers' Compensation Program. In addition, there may be other claims by employees relating to prepetition injuries that have not yet been processed. Of the aggregate amount of workers' compensation claims accrued, but not yet paid by the Workers' Compensation Insurance Companies or the Debtors (the "Prepetition Workers' Compensation Claims"), including incurred claims that have not yet been reported to the Debtors or the Insurance Carriers ("Workers' Compensation IBNR Claims"), the Debtors are responsible for limited losses of approximately \$2.8 million, plus any unpaid deductibles, increased premiums under the Wisconsin Policy, or self-insured losses in Ohio.

E. Letters of Credit

14. To secure certain of the Debtors' obligations under the Insurance Policies (including the Workers' Compensation Program), certain of the Insurance Carriers have required the Debtors to post collateral, in the form of letters of credit, for such liabilities. As further described in the table below, the aggregate amount of outstanding letters of credit posted by the

Debtors in support of the Insurance Policies is approximately \$4,569,303 (collectively, the "Letters of Credit").

<u>BENEFICIARY</u>	<u>AMOUNT</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ANNUAL COST</u>
Chubb Insurance	\$788,303	5.00%	October 2021	\$39,415.15
Travelers Insurance	\$1,131,000	5.00%	October 2021	\$56,550
Zurich Insurance	\$2,300,000	5.00%	October 2021	\$115,000
Ohio Bureau of Workers' Compensation	\$350,000	5.00%	August 2021	\$17,500
TOTAL	\$4,569,303			\$228,465.15

F. **Incurred But Not Reported Claims**

15. In addition to the Workers' Compensation IBNR Claims described above, the Debtors anticipate that claims under the other Insurance Policies may have been incurred as of the Petition Date (thus giving rise to prepetition liabilities), but have not yet been reported to the Debtors or the Insurance Carriers (any such claim, an "Non-Workers' Compensation IBNR Claim" and collectively, with the Workers' Compensation IBNR Claims, the "IBNR Claims"). Historically, the Debtors Non-Workers' Compensation IBNR Claims are de minimis, and the Debtors' obligations are typically limited to any deductibles under the Insurance Policies. In the abundance of caution, by this Motion the Debtors are seeking authority to pay any Non-Workers' Compensation IBNR Claims in the ordinary course of business, regardless whether the claim arose before or after the Petition Date.

III. **The Debtors' Surety Bonds**

16. In the ordinary course of business, the Debtors are required to provide surety bonds (collectively, the "Surety Bonds") to certain third parties (e.g., governmental units or other public agencies) to secure the Debtors' payment or performance of certain obligations

(the "Surety Bond Program"). These bonded obligations generally relate to, among other things, customs duties.

17. As of the Petition Date, the Debtors only have one outstanding Surety Bond, a \$50,000 bond issued by the Roanoke Insurance Group for the benefit of United States Customs and Border Protection Agency. As of the Petition Date, the Debtors estimate that all premium payments due and owing under the Surety Bond have been paid in full, and the Debtors are not aware of any pending requests for payment by sureties. However, in the event that a request for payment of amounts attributable to the period prior to the Petition Date is outstanding or is received by the Debtors in accordance with the Surety Bond, the Debtors request authority to pay such prepetition claim (each a "Surety Bond Obligation").

18. The issuance of a Surety Bond shifts the risk of the Debtors' non-performance or non-payment of their obligations covered by the Surety Bond from the Debtors to the applicable surety. If the Debtors fail to pay covered obligations, the surety will pay the Debtors' obligations up to a specified amount. Unlike an insurance policy, if the surety incurs a loss on a surety bond, the surety is entitled to recover the full amount of that loss from the Debtors.

19. To continue business operations during these chapter 11 cases, the Debtors must be able to provide financial assurances to customers, governmental units and regulatory agencies which, in turn, requires the Debtors to maintain their Surety Bonds (including, as necessary, posting collateral in accordance with applicable agreements or as otherwise necessary) and acquire additional bonding capacity as needed in the ordinary course of the Debtors' businesses. The Debtors anticipate that they likely will have to renew or replace the existing Surety Bond as early as December 2020.

Basis for Relief Requested

I. Sections 105(a) and 363(b) of the Bankruptcy Code and the Doctrine of Necessity Provide a Basis for Granting the Requested Relief

20. As further described below, it is essential to the Debtors' businesses that the Debtors receive authority to (a) continue their Insurance Policies (including their Workers' Compensation Program and PFA) and Surety Bond Program; (b) pay any related prepetition obligations, including, without limitation, (i) Prepetition Workers' Compensation Claims, (ii) IBNR Claims (iii) any other payments to the Insurance Carriers, letter of credit issuers, or employees required as a result of any related claims against the Debtors (collectively, the "Prepetition Insurance Claims") and (iv) Surety Bond Obligations, as such obligations become due in the ordinary course of the Debtors' businesses; and (c) liquidate in an appropriate forum or settle such Prepetition Insurance Claims as necessary. The Debtors further request that any party holding a letter of credit to secure any of the Debtors' obligations under the Insurance Policies be authorized to use such letter of credit to secure the Debtors' postpetition insurance obligations.⁷ Courts in this District have routinely granted similar relief in other chapter 11 cases. See, e.g., In re FTD Cos., Inc., No. 19-11240 (LSS) (Bankr. D. Del. July 2, 2019) (authorizing debtors to pay their prepetition insurance and obligations); In re Imerys Talc Am., Inc., No. 19-10289 (LSS) (Bankr. D. Del. Mar. 26, 2019) (same); In re Promise Healthcare Grp., LLC, No. 18-12491 (CSS) (Bankr. D. Del. Dec. 3, 2018) (same); In re Heritage Home Grp. LLC, No. 18-11736 (KG)

⁷ To the extent any Insurance Policy, any Surety Bond, or any related agreement(s) is deemed to constitute an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time, seek to assume any such contract. Accordingly, if the Court authorizes the payments described above, such payments should not be deemed to constitute a postpetition assumption or adoption of the programs, policies or agreements as executory contracts. The Debtors reserve all of their rights under the Bankruptcy Code with respect to the Insurance Policies and related agreements, and the authorization to pay Insurance Obligations should not affect the Debtors' right to contest the amount or validity of such obligations.

(Bankr. D. Del. Aug. 24, 2018) (same); In re M & G USA Corp., No. 17-12307 (BLS) (Bankr. D. Del. Nov. 1, 2017) (same).⁸

21. Section 363(b)(1) of the Bankruptcy Code provides: "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 decision 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).

22. 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). 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 [its] jurisdiction." 2 Collier on Bankruptcy ¶ 105.01 (16th ed. 2020).

⁸ The unreported orders cited herein are not attached to this Motion. Copies of these orders are available upon request to proposed counsel to the Debtors.

23. 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 Matter of 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, Inc., 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 pre-petition 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).

24. 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).

25. 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 the debtor's business, and prepetition claims may be paid if necessary to perform the debtor in possession'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 pre-petition 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).

26. This Motion satisfies the foregoing criteria, as the relief sought herein is essential to the Debtors' reorganization, and payment of the Prepetition Insurance Claims and the continuation of the Surety Bond Program are necessary. It is essential to the Debtors' reorganization that the Insurance Policies be maintained on an ongoing and uninterrupted basis. Without such insurance, the Debtors and their estates immediately would be exposed to

potentially catastrophic liability. Further, if these Insurance Policies were to lapse, the Debtors would be required immediately to obtain replacement insurance, likely at a greater cost than to maintain the current Insurance Policies.⁹ Moreover, section 1112(b)(4) of the Bankruptcy Code and the guidelines for chapter 11 trustees promulgated by the Department of Justice, Executive Office for United States Trustees (the "Chapter 11 Trustee Guidelines"), require debtors to maintain appropriate levels of insurance. The Chapter 11 Trustee Guidelines require the Debtors to maintain appropriate insurance coverage throughout these chapter 11 cases,¹⁰ and section 1112(b)(4) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4).

27. Even where coverage is not expressly required by law, the Debtors nevertheless are compelled by sound business practice to maintain essential insurance and surety bond coverage. Any interruption in such coverage would expose the Debtors to a variety of risks, including: (a) the possible incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance Policies; (b) the possible inability to obtain similar types and levels of insurance coverage or surety bonds; and (c) the possible incurrence of

⁹ In addition, the Debtors will need to renew or replace certain of their Insurance Policies in the upcoming months. If the Debtors do not honor their obligations under the Insurance Policies, the Insurance Carriers may be reluctant to continue doing business with the Debtors.

¹⁰ See U.S. Department of Justice, Executive Office of United States Trustees, CHAPTER 11 TRUSTEE HANDBOOK (May 2004), at 26-27 ("In securing the assets of the estate, the chapter 11 trustee is required . . . to maintain appropriate insurance for the estate. . . . [T]o the extent necessary, and if reasonably available, the chapter 11 trustee must maintain the following types of insurance adequate to protect the estate: general comprehensive liability; fire and theft; workers' compensation; vehicle; product liability; flood and/or windstorm insurance; and other insurance as customary or prudent in the debtor's business or as required by law."). The Chapter 11 Trustee Guidelines are available at <https://www.justice.gov/ust/file/ch11handbook-200405.pdf/download>.

higher costs for re-establishing lapsed policies or obtaining new insurance coverage or surety bonds.

28. Further, the prepetition amounts proposed to be paid in respect of the Insurance Policies and Surety Bonds, if any, are insubstantial compared with the size of the Debtors' estates, and the potential liability exposure absent insurance coverage. The maintenance of the Insurance Policies and the payment of the Premiums are therefore in the best interests of the Debtors' estates, creditors and other parties in interest.

29. It also is necessary and essential to the Debtors' reorganization that the Debtors be permitted to continue and honor the terms of their PFA. Under section 363(e) of the Bankruptcy Code, FIF may possess a right to seek "adequate protection" of its interest in the PFA. Section 363(e) of the Bankruptcy Code provides, in pertinent part, that "on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Under the terms of the PFA, FIF possesses a security interest in any unearned premiums and dividends under the PFA Policies, and may utilize the power of attorney provided to FIF in the PFA to direct the Insurance Carriers to refund the unearned premiums directly to FIF. FIF's interest in the unearned premiums diminishes as the PFA Policies mature, as the amounts of the unearned premiums diminish. The reduction in the amounts of the unearned premiums potentially provides FIF with a basis to seek adequate protection under section 363(e) of the Bankruptcy Code. As a result, the Debtors respectfully request the authority to provide FIF with adequate protection of its interests in the unearned premiums by allowing the Debtors to fulfill their payment obligations under the PFA.

30. Should the Debtors fail to make the required postpetition installment payments, FIF likely would seek relief from the automatic stay to terminate the PFA Policies and collect any unearned premiums thereunder.¹¹ If FIF succeeds in such a request, the Debtors would be forced to seek replacement insurance coverage. Even if the Debtors were able to procure replacement insurance coverage, it is doubtful that the Debtors would be able to do so on terms and conditions as favorable as those presently in place under the PFA Policies. Accordingly, given the current circumstances, there is no assurance that the Debtors would be able to obtain replacement insurance quickly enough to prevent a lapse in coverage.

31. Similar to the other Insurance Policies, the PFA Policies provide the Debtors with essential insurance coverage. Any interruption in such coverage under these policies would expose the Debtors to serious risks, including (a) the possible incurrence of direct liability for the payment of claims that otherwise would have otherwise been payable by the Insurers under the PFA Policies, (b) the possible incurrence of material costs and other losses that otherwise would have been reimbursed by the Insurers under the PFA Policies, (c) the possible loss of good standing certification to conduct business in states that require companies like the Debtors to maintain certain types and levels of insurance coverage, (d) the possible inability to obtain similar types and levels of insurance coverage and (e) the possible incurrence of higher costs for reestablishing lapsed policies or obtaining new insurance coverage.

32. It is further critical that the Debtors be permitted to continue the Workers' Compensation Program and ensure that the Prepetition Workers' Compensation Claims, and the

¹¹ Pursuant to the PFA, the Debtors assigned any and all unearned premiums and dividends and any payment on account of loss which results in a reduction of unearned premiums under the PFA Policies to FIF as security for amounts payable under the PFA.

Debtors are able to continue processing and paying any valid IBNR Claims described herein. If the Debtors are unable to maintain the Workers' Compensation Programs, the Debtors would be required to make alternative arrangements for workers' compensation coverage—almost certainly at a much higher cost—because such coverage is required under many state laws, with severe remedies if an employer fails to comply with such laws. In fact, if workers' compensation coverage is not maintained as required by such laws, without interruption, (a) employees could bring lawsuits seeking damages, (b) the Debtors' ongoing business operations in certain states could be enjoined and (c) the Debtors' officers could be subject to criminal prosecution.¹² Furthermore, if the Workers' Compensation Program is not maintained, there is a risk that eligible claimants will not receive timely payments with respect to employment-related injuries. This could have a negative impact on the financial well-being and morale of the Debtors' employees and their willingness to remain in the Debtors' employ at a time when a significant deterioration in employee morale will have a substantially adverse impact on the Debtors, the value of their assets and business, and their ability to consummate a going concern transaction in these cases.

II. Request for Authority for Banks to Honor Checks and Pay Checks Issued to Pay Prepetition Insurance Claims

33. 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

¹² See, e.g., 19 DEL. CODE. ANN. § 2386(b) (2008) (establishing, among other things, criminal liability for failure to comply with obligatory provisions of workers' compensation statutes, including obligation to provide workers' compensation coverage); Ind. Code § 22-3-4-13(d) (same); Ky. Rev. Stat. § 342.990(9) (same); Mich. Comp. Laws § 418.641(1) (same); Tenn. Code § 50-6-412 (same); Ohio Rev. Code § 4123.99(B) (same); Wis. Stat. § 102.85(1),(2) (same); see also id. § 102.88 (establishing, among other things, heightened criminal penalties for repeat offenders).

honor all fund transfer requests made by the Debtors related to, Prepetition Insurance Claims or Surety Bond Obligations, 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 applicable accounts to make the payments. The Debtors represent that these checks are drawn on specific disbursement accounts and can be readily identified as relating directly to the authorized payment of Prepetition Insurance Claims or Surety Bond Obligations. Accordingly, the Debtors believe that such checks should be honored.

III. Requests for Immediate Relief & Waiver of Stay

34. 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." Accordingly, 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 all or part of a claim that arose prepetition immediately.

35. As set forth above and in the First Day Declaration, the payment of the Prepetition Insurance Claims and maintenance of the Insurance Policies and the Surety Bonds is necessary to prevent the immediate and irreparable damage to the Debtors' estates. Accordingly, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting

the relief sought herein and (b) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) and the notice requirements of Bankruptcy Rule 6004(a), to the extent that they apply.

Reservation of Rights

36. Nothing herein is intended to be or should be construed as (a) an admission as to the validity or priority 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 would constitute a Premium or Prepetition Insurance Claim; or (e) the assumption of an executory contract or unexpired lease.

Consent to Jurisdiction

37. 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

38. Notice of this Motion shall be provided to (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' fifty largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; and (c) 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, substantially in the form attached as Exhibit A, granting the relief requested herein on an interim basis; (ii) enter a final order granting the relief requested herein on a final basis; and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: August 30, 2020
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel J. DeFranceschi
Daniel J. DeFranceschi (No. 2732)
Paul N. Heath (No. 3704)
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-and-

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

INTERIM ORDER GRANTING MOTION
OF THE DEBTORS FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING THEM TO (A) CONTINUE THEIR INSURANCE,
WORKERS' COMPENSATION AND SURETY BOND PROGRAMS AND
(B) PAY RELATED OBLIGATIONS AND (II) GRANTING RELATED RELIEF

This matter coming before the Court on the Motion of the Debtors for Interim and
Final Orders (I) Authorizing Them to (A) Continue Their Insurance Program, Workers'
Compensation and Surety Bond Programs and (B) Pay Related Obligations and (II) Granting
Related Relief (the "Motion"),2 filed by the above-captioned debtors (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

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.

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 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 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 (vi) there is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) to the extent that 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 on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to (a) continue their Insurance Policies (including their Workers' Compensation Program) and Surety Bond Program; (b) pay any Prepetition Insurance Claims or Surety Bond Obligations up to \$450,000 on an interim basis, including, without limitation, any (i) Prepetition Workers' Compensation Claims, (ii) IBNR Claims and (iii) payments to the Insurance Carriers, any letter of credit issuer or employees required as result of any claims against the Debtors and any Prepetition Workers' Compensation Claims, as such obligations become due in the ordinary course of the Debtors' businesses; and (c) litigate in an appropriate forum or settle such Prepetition Insurance Claims.

3. The Debtors are authorized, but not directed, in their sole discretion, to continue and honor the terms of their PFA and to renew the PFA or enter into new PFAs in the ordinary course of business without the need for further authority or approval of the Court.

4. Any party holding a letter of credit to secure any of the Debtors' obligations under the Insurance Policies is authorized to use such letter of credit to secure the Debtors' postpetition insurance obligations.

5. Nothing in the Motion or this Interim Order, nor the Debtors' payments pursuant to this Order, shall be deemed or construed as (a) an admission as to the validity or priority 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 a claim of a type specified or defined hereunder; or (e) the assumption of any executory contract or unexpired lease.

6. The Banks are authorized when requested by the Debtors in the Debtors' sole discretion, 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. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order.

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

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

11. The Debtors may seek further relief related to these obligations.

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).

13. Notwithstanding anything to the contrary included 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.

EXHIBIT B

Summary of Debtors' Outstanding Insurance Policies

SUMMARY OF DEBTORS' OUTSTANDING INSURANCE POLICIES				
COVERAGE	INSURER	POLICY NUMBER	COVERAGE PERIOD	ANNUAL PREMIUM
Automobile Liability and Auto Physical Damage	Travelers Property Casualty Company of America	TJ-CAP-8B3565-6-TIL-20	6/30/2020 - 6/30/2021	\$13,650
Business Travel Accident	National Union Fire Ins Co PA (AIG)	GTP9113368B	6/30/2020 - 6/30/2021	\$3,265
Commercial Property	Zurich American Insurance Company	PPR9297971-19	6/30/2020 - 6/30/2021	\$419,115
D&O – Crime	Beazley Insurance Company, Inc.	V23A10290301	6/30/2020 - 6/30/2021	\$34,132
D&O - Employment Practices / Fiduciary	Beazley Insurance Company, Inc.	V23A01200301	6/30/2020 - 6/30/2021	\$50,000
D&O - Excess Liability	Allied World Specialty Insurance Company	0311-9604	7/30/2020 - 9/13/2020	\$2,096
			9/15/2020 - 3/15/2021	\$250,000
D&O - Excess Liability	Allied World Specialty Insurance Company	0311-9606	7/30/2020 - 9/13/2020	\$7,890
			9/15/2020 - 3/15/2021	\$115,000
D&O - Excess Liability	CNA - Continental Casualty Company	652012122	7/30/2020 - 9/13/2020	\$4,305
			9/15/2020 - 3/15/2021	\$160,000
D&O - Excess Liability	QBE Insurance Corporation	QPL0990220	7/30/2020 - 9/13/2020	\$5,763
			9/15/2020 - 3/15/2021	\$200,000
D&O - Excess Liability (Advanced Boardroom)	Beazley Insurance Company, Inc.	V15U6X191101	7/30/2020 - 9/13/2020	\$10,763
			9/15/2020 - 3/15/2021	\$350,000
D&O - Excess Liability (Armour Boardroom)	Beazley Syndicate 2623/623 at Lloyd's	W1F40E190301	7/30/2020 - 9/13/2020	\$7,011
			9/15/2020 - 3/15/2021	\$310,000
D&O - Special Crime	Hiscox Insurance Company	UKA3013815.20	6/30/2020 - 6/30/2021	\$7,140

Employers Liability - Workers Comp - All Other	The Standard Fire Insurance Company	UB-9P257852-20-NC-T	6/30/2020 - 6/30/2021	\$142,897
Employers Liability - Workers Comp - WI Retro	Travelers Property Casualty Company of America	UB-9P256530-20-NC-R	6/30/2020 - 6/30/2021	\$326,820
Excess Fiduciary	ACE American Insurance Co.	DOX G70157615 001	6/30/2020 - 6/30/2021	\$9,100
Excess Liability - Layer 2	The Ohio Casualty Insurance Company	ECO(21)58047400	6/30/2020 - 6/30/2021	\$40,500
Excess Liability - Layer 3	American Guarantee and Liability Insurance Company	AEC 7864447-01	6/30/2020 - 6/30/2021	\$27,500
Excess Work Comp – OH	Arch Insurance Company	WCX 0059864 01	6/30/2020 - 6/30/2021	\$87,265
Foreign Business Auto Liability	The Insurance Company of the State of Pennsylvania	80-0277973	6/30/2020 - 6/30/2021	\$2,500
Foreign Commercial General Liability	The Insurance Company of the State of Pennsylvania	80-0277972	6/30/2020 - 6/30/2021	\$4,591
Foreign US Suits	The Insurance Company of the State of Pennsylvania	GL389-38-25	6/30/2020 - 6/30/2021	\$2,525
Foreign Voluntary Compensation and Employers Liability	The Insurance Company of the State of Pennsylvania	83-74506	6/30/2020 - 6/30/2021	\$2,459
General / Employee Benefits Liability	The Travelers Indemnity Company of Connecticut	HC2E-GLSA-8B355644-TCT-20	6/30/2020 - 6/30/2021	\$90,391
Ocean Cargo	AGCS Marine Insurance Company	OC91555100	6/30/2020 - 6/30/2021	\$3,623

Site Pollution	Navigators Specialty Insurance Company	NY20ESP0BDJULIC	6/30/2020 - 6/30/2021	\$10,490
Umbrella/Excess Layer 1	Travelers Property Casualty Company of America	ZUP13S2004620NF	6/30/2020 - 6/30/2021	\$93,287