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Proposed Attorneys for the Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

COYNE INTERNATIONAL ENTERPRISES
CORP.,

Case No. _____

Debtor.¹

-----X

MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING, ON AN EMERGENCY BASIS, PAYMENT OF CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS; (II) AUTHORIZING, BUT NOT DIRECTING, AFTER NOTICE AND A HEARING, THE DEBTOR TO PAY CERTAIN OBLIGATIONS ARISING IN CONNECTION WITH GOODS RECEIVED WITHIN THE TWENTY DAY PERIOD BEFORE THE PETITION DATE; AND (III) SCHEDULING A FINAL HEARING

Coyne International Enterprises Corp., the above-captioned debtor and debtor in possession (the “Debtor”), by its proposed counsel, Herrick, Feinstein LLP, as and for its motion

¹ The last four numbers of the Debtor’s taxpayer identification number are 0758. The Debtor’s address is 140 Cortland Avenue, Syracuse, New York 13202.

(the “Motion”), pursuant to sections 105(a), 363, 364, 503(b), 507(a), 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an interim order substantially in the form annexed hereto as Exhibit A (the “Interim Order”), and a final order (the “Final Order”), (i) authorizing, on an emergency basis, the Debtor to pay, in its discretion, certain prepetition claims of critical vendors of the Debtor; (ii) authorizing, but not directing, after notice and a hearing, the Debtor, in its discretion, to pay certain obligations arising under section 503(b)(9) of the Bankruptcy Code in connection with goods and/or services supplied by vendors that were received by the Debtor in the ordinary course of its business within the twenty day period before the Petition Date (as defined herein); and (iii) scheduling a final hearing (the “Final Hearing”) with respect to the relief requested herein, and respectfully represent as follows:

INTRODUCTION

1. On July 31, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court, and an order for relief under section 301 of the Bankruptcy Code was entered in this case.

2. The Debtor has been authorized to remain in possession of its property and to continue in the operation and management of its businesses as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No official committee of unsecured creditors has been appointed by the Office of the United States Trustee for the Western District of New York (the “U.S. Trustee”) in the Debtor’s chapter 11 case.

4. The Debtor is one of the largest privately owned commercial laundry companies in the United States. It is a leading route-based service provider, selling and renting a

wide variety of work garments, shop towels, floor mats, dust mops, and other accessories in the eastern half of the United States.

5. Founded by J. Stanley Coyne, the Debtor has been family owned and operated since 1929. The Debtor serves customers in 24 states through nine commercial laundry plants and 16 service centers. Coyne's plants are located at Bristol, Tennessee; Buffalo, New York; Cleveland, Ohio; Greenville, South Carolina; London, Kentucky; New Bedford, Massachusetts; Richmond, Virginia; Syracuse, New York; and York, Pennsylvania.

6. Additional information about the Debtor's businesses and the events leading up to the Petition Date can be found in the Affidavit of the Debtor's Chief Executive Officer, Mark Samson (the "Samson Affidavit"), filed on the Petition Date, and incorporated herein by reference.

JURISDICTION AND VENUE

7. The Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

RELIEF SOUGHT

9. By this Motion, the Debtor seeks (A) entry of the Interim Order, pursuant to sections 105(a), 363, 364, 503(b), 507(a), 1107 and 1108 of the Bankruptcy Code, authorizing the Debtor, (i) on an emergency basis, in its discretion, to pay the prepetition claims of critical vendors that delivered materials, supplies, goods, products and related items to the Debtor before the Petition Date and to pay the prepetition claims of critical service providers; and (ii) authorizing, after notice and a hearing, the Debtor to pay, in its discretion, certain administrative expense priority claims for obligations arising in connection with goods and/or services supplied by certain vendors that were received by the Debtor in the ordinary course of

business within the twenty day period before the Petition Date (the “Twenty Day Period”); and (B) following the Final Hearing, entry of the Final Order in substantially the same form as the Interim Order.

10. The Motion further seeks authorization for all applicable banks and other financial institutions asked to process, honor and pay any and all checks and transfer requests with respect to Critical Vendor Claims and Twenty Day Claims (each as defined below) to rely on the representations of the Debtor as to which checks are issued or authorized to be paid in accordance with this Motion without any further duty of inquiry and without liability for following the Debtor’s instructions.

BASIS FOR RELIEF

11. Certain vendors (the “Critical Vendors”) have claims for providing essential goods to the Debtor that were received by the Debtor before the Petition Date and/or essential services that were rendered to, or on behalf of, the Debtor prior to the Petition Date (the “Critical Vendor Claims”). By this Motion, the Debtor seeks entry of an order authorizing the Debtor, in its discretion, to pay the prepetition claims of such Critical Vendors in an aggregate amount not to exceed \$1 million, subject to availability of funds and in accordance with the terms of the debtor in possession post-petition financing that the Debtor has sought contemporaneously herewith (the “Critical Vendor Cap”).² The payment of Critical Vendor Claims as provided herein shall be in full satisfaction of such Critical Vendors’ prepetition claims against the Debtor, and the amount that such Critical Vendors may receive hereunder may be greater than they may receiver under a chapter 11 plan.

² The Debtor conducts certain of its business with its vendors through the payment of invoices by check. The Debtor has endeavored to determine which of the checks issued to the Critical Vendors have yet to be honored, and to the best of its ability, such amounts (related to goods that were delivered outside the twenty day period before the Petition Date) are included in its request for authority to pay, in its discretion, the Critical Vendor Claims. However, the Debtor reserves the right to seek to increase the Critical Vendor Cap at a later date if necessary, subject to this Court’s approval, for this or any other reason.

12. The Debtor estimate that approximately 95%, or \$950,000, of this total is on account of Critical Twenty Day Goods (as defined below) and, accordingly, approximately 95% of the Critical Vendor Cap will be dedicated to Critical Vendor Claims that are entitled to administrative priority status pursuant to section 503(b)(9) of the Bankruptcy Code. Given the paramount importance of the goods and services provided by the Critical Vendors, it is imperative that the Debtor be authorized to pay the Critical Vendor Claims on an emergency basis.

13. The Debtor believes that payment of the Critical Vendor Claims is vital to the Debtor's reorganization efforts because the Critical Vendors are the only source from which the Debtor can procure certain goods and/or services within a timeframe and at a price that will permit the Debtor to avoid service delays, and the failure to pay the Critical Vendor Claims could result in many of the Critical Vendors refusing to provide goods and/or services to the Debtor on a postpetition basis.³

14. The Debtor and its advisors have examined whether the payment of Critical Vendor Claims is necessary and will ensure that the Debtor has access to adequate amounts of trade credit on a post-petition basis. Specifically, the Debtor and its advisors have reviewed its accounts payable and undertaken a process to identify those vendors who are essential to the Debtor's operations. The Debtor has further developed certain procedures (for which it seeks this Court's approval) that, when implemented, will ensure that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtor's operations on a post-petition basis.

³ Nothing in this Motion should be construed as a waiver of the Debtor's right to compel performance of any non-debtor under any agreement.

15. The Debtor consulted with appropriate members of its management team to identify those vendors that are most likely essential to the Debtor's operations using the following criteria: (a) whether the vendor in question is a "sole-source" provider, or one of an extremely limited pool ("limited-source") of providers; (b) whether certain quality requirements or other specifications of the Debtor's customers prevent the Debtor from obtaining a vendor's products from alternative sources within a reasonable timeframe; (c) if a vendor is not a sole or limited-source provider, whether the Debtor has sufficient product in inventory to continue operations while a replacement vendor is secured; (d) whether a vendor meeting the standards of (a) or (b) is likely to refuse to continue providing goods and/or services to the Debtor post-petition if its prepetition balances are not paid; and (e) whether a refusal by the Debtor to pay a vendor's prepetition claim could result in a further contraction of trade terms from that vendor.

16. After carefully assessing the universe of vendors against the foregoing criteria, the Debtor estimated the total payments that would be necessary to ensure the continued supply of critical goods and performance of essential services to the Debtor in calculating the Critical Vendor Cap.

17. The Debtor proposes to condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and/or services to the Debtor on terms that are as or more favorable to the Debtor as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtor in the six months prior to the Petition Date (the "Customary Trade Terms"), or such other trade terms as are agreed to by the Debtor and the Critical Vendor. The Debtor reserves the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim.

18. The Debtor further propose to take appropriate efforts, in its discretion, to cause each Critical Vendor to enter into an agreement (the "Trade Agreement") that includes, without limitation, the following terms:

- (i) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtor (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);
- (ii) The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtor, subject to the terms and conditions as set forth in this Court's Order;
- (iii) The Critical Vendor's agreement to provide goods and/or services to the Debtor based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtor and such Critical Vendor, and the Debtor's agreement to pay the Critical Vendor in accordance with such terms;
- (iv) The Critical Vendor's agreement not to file or otherwise assert against the Debtor, its estate or any of its assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtor arising from goods and/or services provided to the Debtor prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (v) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (vi) The Critical Vendor's agreement that the Trade Agreement may be assigned to Coyne Acquisition LLC, the stalking horse bidder for six of the Debtor's nine facilities;
- (vii) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

- (viii) If a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods and/or services to the Debtor on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtor any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of setoff or reclamation.

Such Trade Agreements may be in addition to any other agreements between the parties.

19. For those Critical Vendors who have agreed to provide goods and/or services to the Debtor on terms different from their Customary Trade Terms, the Debtor reserves the right to seek written acknowledgment of such terms on a case-by-case basis. Nothing in this Motion or any order of this Court approving this Motion should be construed as a waiver by the Debtor of its rights to contest any invoice of a Critical Vendor under applicable non-bankruptcy law.

20. If a Critical Vendor refuses to supply goods and/or services to the Debtor on Customary Trade Terms following payment of any portion of its Critical Vendor Claim, or fails to comply with any Trade Agreement it enters into with the Debtor, the Debtor hereby seeks authority to, in its discretion and without further order of the Court, (i) terminate any Trade Agreement between the Debtor and such Critical Vendor (if applicable), and (ii) deem any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, to have been in payment of then-outstanding post-petition claims of such Critical Vendor (the "Terminated Critical Vendor") without further order of the Court. If, however, the Debtor chooses not to terminate a Trade Agreement immediately upon a refusal by the participating Critical Vendor party to provide goods and/or services in

accordance with such Trade Agreement, it shall not be deemed to have waived the ability to terminate such Trade Agreement.

21. In the event the Debtor exercises either of the rights set forth in the preceding paragraph, the Debtor requests that the Terminated Critical Vendor be required to immediately return any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the post-petition amounts then owed to such Terminated Critical Vendor, without giving effect to any rights of setoff or reclamation. In the event that a Terminated Critical Vendor refuses to acknowledge such recharacterization and to issue the repayment, the Debtor proposes that it be authorized to compel such recharacterization and repayment by a motion (on such notice as is required by this Court or by the Local Rules for the United States Bankruptcy Court for the Northern District of New York).

A. PAYMENT OF THE CRITICAL VENDOR CLAIMS IS CRITICAL TO THE DEBTOR'S REORGANIZATION EFFORTS

22. The Debtor believes that authority to pay the Critical Vendor Claims is vital to its reorganization efforts. If this Motion is not granted, the Debtor believes that its access to trade credit on a post-petition basis will be severely limited and that certain of the Critical Vendors could withhold shipments or take other action that could cause immediate and irreparable damage to the Debtor and its estate.

23. The continued availability of trade credit in amounts and on terms consistent with the Debtor's prepetition trade terms is advantageous to the Debtor because it allows the Debtor to preserve working capital. Further, the retention or reinstatement of Customary Trade Terms will enable the Debtor to maximize the value of its business as a going concern. Conversely, a deterioration in post-petition trade credit available to the Debtor and a disruption or cancellation of deliveries of goods and/or services—many of which are not readily

replaceable—would adversely impact the Debtor’s business operations, increase the amount of funding needed by the Debtor post-petition, and ultimately impede the Debtor’s ability to service its customers, thereby placing its customer base, as well as the Debtor’s successful reorganization, at risk.

24. The Critical Vendors provide goods and other services essential to the operation of the Debtor’s business. Any interruption in the Debtor’s operations would impede its ability to service its customers in a timely manner. If any of the Critical Vendors either refuses to deal with the Debtor or elects to withhold shipments and/or services to the Debtor on a post-petition basis, the Debtor’s ability to continue to operate would be severely curtailed. Thus, absent this Court’s authorization to pay the Critical Vendor claims, the Debtor would face a significant obstacle to a successful reorganization of its business.

B. CASE LAW AND STATUTORY SUPPORT FOR AUTHORIZATION TO PAY CRITICAL VENDOR CLAIMS

Certain of the Critical Vendor Claims are Eligible for Administrative Expense Status Pursuant to Section 503(b)(9) of the Bankruptcy Code

25. Certain of the Critical Vendor Claims are on account of the delivery of goods and/or services that were received by the Debtor in the ordinary course during the Twenty Day Period, which are entitled to priority status under section 503(b)(9) of the Bankruptcy Code (the “Critical Twenty Day Goods”). Section 503(b)(9) of the Bankruptcy Code provides that “there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9). Moreover, pursuant to section 507(a)(2) of the Bankruptcy Code, administrative expenses allowed under section 503(b) are granted priority status. Accordingly, those Critical Vendor Claims related to the delivery of Critical Twenty Day Goods should

ultimately be allowed administrative expense priority claims in order to allow the Debtor to negotiate better terms with these vendors going forward.

26. By satisfying the Critical Vendor Claims, which are comprised of some of the claims related to Critical Twenty Day Goods, the Debtor is not, with respect to the Critical Vendor Cap, seeking authority to alter the priority scheme created by the Bankruptcy Code in a manner which prejudices the rights of the Debtor's general unsecured creditors with respect to those claims, but rather the Debtor is merely seeking authority to alter the timing of such payments. Moreover, satisfying the Critical Twenty Day Goods portion of the Critical Vendor Claims in exchange for the implementation of favorable trade terms, at the Debtor's discretion, will greatly benefit the Debtor's estate. Thus, the Debtor believes that this relief is in the best interests of the Debtor's estate because (i) favorable trade terms will prevent the contraction of the Debtor's liquidity, and (ii) this Court's time and resources will not be burdened with numerous motions from individual Critical Vendors requesting payment of administrative expenses on account of a large portion of their Critical Priority Claims.

This Court May Authorize Payment of the Critical Vendor Claims Pursuant to Sections 363 and 364 of the Bankruptcy Code

27. The Court may grant the relief requested herein pursuant to sections 363 and 364 of the Bankruptcy Code. *See, e.g., In re UAL Corp.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (an essential trade motion generated by section 363 is "completely consistent with the Bankruptcy Code" and such payments have further support where the Debtor seeks "the extension of credit under section 364 on different than usual terms, terms that might include payment of a prepetition obligation"); *In re James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to section 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the

general contractors to release funds owed to the debtors). The relief requested in this Motion contemplates the payment of Critical Vendors Claims of those Critical Vendors who agree to provide post-petition goods and/or services to the Debtor on Customary Trade Terms or other terms acceptable to the Debtor. As a result, the payment of such Critical Vendor Claims is consistent with and appropriate under sections 363 and 364 of the Bankruptcy Code.

28. As discussed, maintaining the supply of the goods and/or services provided by the Critical Vendors is vital to the Debtor's continuing business operations and the success of the chapter 11 case. In addition, the Debtor has conducted an extensive analysis and review of its immediate trade needs and supplier base and have concluded that there is a significant risk that if the Debtor is not granted authority to pay the Critical Vendor Claims, the Critical Vendors could, among other things, (i) withhold shipments of critical goods and refuse to provide services; (ii) further contract existing trade terms; or (iii) cease doing business with the Debtor altogether. Should any Critical Vendor stop supplying the Debtor— or choose to significantly downgrade the Debtor's trade terms—its business would be significantly and disrupted.

29. Accordingly, not only will the Debtor's other creditors be unimpaired by payment of the Critical Vendor Claims, such creditors will in fact benefit by this Court's empowering the Debtor to negotiate payment to Critical Vendors to achieve a smooth transition into bankruptcy with minimal disruption to its operations. In light of the foregoing, the Debtor submits that payment of the Critical Vendor Claims is plainly in the best interests of its estate and creditors.

The Court May Also Grant the Motion Pursuant to Its General Equitable Powers under Section 105(a) of the Bankruptcy Code and the Necessity of Payment Doctrine

30. The Court’s general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The use of these equitable powers to authorize “payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 105(a), the Court “can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999).

31. When such payment is necessary to effectuate the “paramount purpose” of chapter 11, *i.e.* to preserve the debtor’s potential for reorganization and prevent liquidation, numerous courts have used their section 105(a) equitable powers to authorize payment of a debtor’s prepetition obligations under the “necessity of payment” doctrine.⁴ *See Ionosphere Clubs*, 98 B.R. at 176-77 (the “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor”). *See also In re Lehigh Co. & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (“[I]f payment of a claim which arose prior to reorganization is essential to the continued operation of the ... [business] during reorganization, payment may be authorized even if it is made out of [the] corpus.”); *Just for Feet*, 242 B.R. at 825 (“[T]o invoke the necessity of payment doctrine, a debtor must show that payment of the

⁴ This doctrine, first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

prepetition claims is critical to the debtor's reorganization."); *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987); *In re James A. Phillips, Inc.*, 29 B.R. 391, 394-95 (S.D.N.Y. 1983) (upholding the bankruptcy court's order authorizing the debtor to make post-petition payment of prepetition claims in the ordinary course without notice and a hearing).

32. In addition, bankruptcy courts have used their equitable powers to authorize a debtor to pay the prepetition claims of certain critical vendors under the doctrine of necessity. *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that "[i]f payment of a prepetition claim is essential to the continued operation of [the debtor], payment may be authorized"). Courts in the Second Circuit have, not infrequently, authorized the payment of critical trade claims when the payment is essential to the debtor's continued operations. *See, e.g., In re AMR Corporation*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. November 29, 2011); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. April 14, 2008).

The Court May Also Authorize the Relief Requested As a Valid Exercise of the Debtor's Fiduciary Duties

33. The Debtor, operating its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, is a fiduciary "holding the bankruptcy estate and operating the business for the benefit of ... its creditors and (if the value justifies) equity owners." *In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including operating business's going-concern value." *Id.*

34. In addition, there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The CoServ court specifically noted that satisfaction of prepetition claims prior to the filing of a plan of

reorganization would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" and also when the payment was to "sole suppliers of a given product." *Id.* at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

35. Payment of the Critical Vendor Claims satisfies the *CoServ* test. As described above, the Debtor has narrowly tailored the Critical Vendor Cap to encompass only those Critical Vendors that are essential to the business and operation of the Debtor. The shutdown of the Debtor's operations would jeopardize the Debtor's ability to maximize value as a going concern. Accordingly, the harm that would stem from the failure to pay any of the Critical Vendors is disproportionate to the amount of the prepetition claims that the Debtor is seeking to pay hereunder. Moreover, the Debtor does not have contracts in place with, and thus cannot compel performance from, most of its critical vendors.⁵ Finally, with respect to each Critical Vendor, the Debtor has examined other options short of payment of such Critical Vendor Claims and have determined that to avoid significant disruption of the Debtor's business operations, there exists no practical or legal alternative to payment of the Critical Vendor Claims. Therefore, the Debtor can only meet its fiduciary duties as a debtor in possession under sections

⁵ Certain of the Critical Vendors do have contracts. However, the time and cost that would be encompassed in seeking to enforce those contracts would likely exceed the damages that would be suffered by the Debtor as a result of a failure to pay those vendors.

1107(a) and 1108 of the Bankruptcy Code by payment of the Critical Vendor Claims. Accordingly, the Court should grant the relief requested herein.

The Court Should Authorize the Debtor to Satisfy the Critical Vendor Claims Within Twenty Days After the Petition Date as Requested

36. Pursuant to Bankruptcy Rule 6003, the Court may authorize payment of a prepetition claim within 21 days after the Petition Date if such relief is necessary to avoid immediate and irreparable harm. As explained above, satisfying the Critical Vendor Claims is essential to the continued, uninterrupted operation of the Debtor's business. Without such payment, the Debtor believes that the Critical Vendors will significantly downgrade trade terms and may stop supplying the Debtor with critical products and services necessary in its operations.

37. For the foregoing reasons, the Debtor submits that it has satisfied the requirements of Bankruptcy Rule 6003 and, accordingly, the Court should grant the relief requested herein.

C. PAYMENTS TO VENDORS RELATED TO SECTION 503(B)(9) ADMINISTRATIVE EXPENSE PRIORITY CLAIMS

38. In the ordinary course of its business, the Debtor receives goods on a daily basis that are used in its operations. As such, the Debtor has received goods (the "Twenty Day Goods") from various vendors, including certain Critical Vendors (the "Twenty Day Vendors"), in the ordinary course of its business within the Twenty Day Period for which payment has not yet been made. In order to maintain and ensure timely delivery of post-petition goods from the Twenty Day Vendors, and to help ensure that the Debtor has access to post-petition trade credit from the Twenty Day Vendors, the Debtor also seeks entry of an order, after notice and a hearing, authorizing payment in the ordinary course of certain prepetition claims of Twenty Day Vendors entitled to administrative priority under Bankruptcy Code sections 503(b)(9) and

507(a)(2) for those undisputed obligations arising from Twenty Day Goods received by the Debtor (the "Twenty Day Claims").

39. Although Twenty Day Claims are not required to be paid prior to the general payment of administrative claims in connection with confirmation of a chapter 11 plan, nothing in the Bankruptcy Code prohibits the Debtor from paying such claims sooner if they choose to do so, and courts have held that timing of such payments is within the discretion of the Court. *See e.g., In re Global Home Products, LLC*, 2006 Bankr. LEXIS 3608 (Bankr. D. Del. Dec. 21, 2006) (timing of payment of section 503(b)(9) claim is within discretion of court).

40. As described above, with respect to the Critical Vendor Claims, the Debtor submits that it will, in its discretion, attempt to condition any payment on account of a Twenty Day Claim on the written acknowledgement from the applicable Twenty Day Vendor that it will continue to provide goods to the Debtor on trade terms that, at a minimum, such Twenty Day Vendor provided to the Debtor six (6) months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtor as those in effect prior to the Petition Date.⁶ Furthermore, the Debtor reserves the right to negotiate more favorable trade terms with any Twenty Day Vendor as a condition to payment of any such Twenty Day Claim. Moreover, the Debtor is not seeking authority to alter the priority scheme created by the Bankruptcy Code in a manner which prejudices the rights of its general unsecured creditors, but rather the Debtor is merely seeking authority to alter the timing of payments of administrative expense claims that the Twenty Day Vendors are entitled to be paid under the Bankruptcy Code. Accordingly, the Debtor should be authorized, in its discretion, after notice

⁶ Any payment made by the Debtor on account of section 503(b)(9) of the Bankruptcy Code will be conditioned upon the Vendor's agreement to refrain from asserting, or to withdraw, any reclamation claim with respect to the priority goods.

and hearing, to pay the Twenty Day Claims pursuant to section 503(b)(9) of the Bankruptcy Code.⁷

41. Notice of this Motion has been provided to (i) the Office of the United States Trustee, (ii) the Debtor's prepetition secured creditors, and (iii) the holders of the twenty (20) largest unsecured claims against the Debtor by CM/ECF, facsimile, e-mail, telephone, or overnight courier. In light of the nature of the relief requested herein, the Debtor submits that no other further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter the Interim Order, in substantially the form attached hereto as Exhibit A (i) authorizing, on an emergency basis, the Debtor to satisfy, in its discretion, the Critical Vendor Claims; (ii) authorizing, after notice and a hearing, the Debtor to satisfy, in its discretion, the Twenty Day Claims as they come due; (iii) scheduling a final hearing to consider the relief sought herein on a final basis; (iv) granting such other and further relief as the Court deems just and proper; (v) and immediately following the Final Hearing, enter the Final Order on substantially the same terms as the Interim Order.

⁷ To the best of the Debtor's knowledge, any Twenty Day Claims that the Debtor seeks to satisfy under this Motion, pursuant to section 503(b)(9), do not exceed the value of the underlying goods, as required by section 503(b)(9) of the Bankruptcy Code.

Dated: Syracuse, New York
July 31, 2015

HERRICK, FEINSTEIN LLP
*Proposed Attorneys for the Debtor and
Debtor-in-Possession*

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EXHIBIT A
PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

-----X
In re

Chapter 11

COYNE INTERNATIONAL ENTERPRISES
CORP.,

Case No. _____

Debtor.¹
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INTERIM ORDER GRANTING THE DEBTOR’S MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING, ON AN EMERGENCY BASIS, PAYMENT OF PREPETITION CLAIMS OF CRITICAL VENDORS; AND (II) AUTHORIZING, BUT NOT DIRECTING, AFTER NOTICE AND A HEARING, THE DEBTOR TO PAY CERTAIN OBLIGATIONS ARISING IN CONNECTION WITH GOODS RECEIVED WITHIN THE TWENTY DAY PERIOD BEFORE THE PETITION DATE

Upon the Motion,² of the above-captioned Debtor for entry of an interim order (this “Interim Order”) (i) authorizing, on an emergency basis, the Debtor to pay, in its discretion, the prepetition claims of critical vendors (the “Critical Vendors”) and (ii) authorizing, but not directing, after notice and a hearing, the Debtor, in its discretion, to pay certain obligations arising under section 503(b)(9) of the Bankruptcy Code in connection with goods and/or services supplied by vendors that were received by the Debtor in the ordinary course of its business within the twenty day period before the Petition Date (the “Twenty Day Vendors”), pending a final hearing to be held before the Court (the “Final Hearing”), and following the Final Hearing, a final order granting the relief requested in the Motion (the “Final Order”); and upon consideration of the Motion and all pleadings related thereto, including the Samson Affidavit; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2),

¹ The last four numbers of the Debtor’s taxpayer identification number are 0758. The Debtor’s address is 140 Cortland Avenue, Syracuse, New York 13202.

² Capitalized terms used but otherwise not defined herein shall have the meaning ascribed to such terms in the Motion.

and (c) notice of the Motion was due and proper under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation and good and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted to the extent provided herein; and it is further

ORDERED, that the Debtor is authorized, in its discretion and in the reasonable exercise of its business judgment, to pay the prepetition claims of Critical Vendors (the "Critical Vendor Claims") subject to the conditions set forth in this Interim Order provided, however, that any amounts to be paid pursuant to this Interim Order shall be subject to, and consistent with, any budget approved by any debtor-in-possession financing order entered in this chapter 11 case, and further provided that the Debtor is not authorized to accelerate payments not otherwise due and owing as of the Petition Date; and it is further

ORDERED, that the Debtor's payment of the Critical Vendor Claims shall not exceed \$1 million in the aggregate unless otherwise ordered by the Court; and it is further

ORDERED, that after the date hereof, the Debtor shall determine who is a Critical Vendor by considering, among other things, whether failure to pay such creditor's prepetition claims will have a material impact on the Debtor's operations; and it is further

ORDERED, that the Debtor shall undertake all appropriate efforts to cause each Critical Vendor to enter into a Trade Agreement with the Debtor, including, but not limited to, the following terms:

- (i) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtor (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in

interest to object to such claim shall be fully preserved until further order of the Court);

- (ii) The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtor, subject to the terms and conditions as set forth in this Court's Order;
- (iii) The Critical Vendor's agreement to provide goods and/or services to the Debtor based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtor and such Critical Vendor, and the Debtor's agreement to pay the Critical Vendor in accordance with such terms;
- (iv) The Critical Vendor's agreement not to file or otherwise assert against the Debtor, its estate or any of its assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtor arising from goods and/or services provided to the Debtor prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (v) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (vi) The Critical Vendor's agreement that the Trade Agreement may be assigned to Coyne Acquisition LLC, the stalking horse bidder for six of the Debtor's nine facilities;
- (vii) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (viii) If a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods and/or services to the Debtor on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtor any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of setoff or reclamation;

and it is further

ORDERED, that the Debtor may, in its discretion, enter into a Trade Agreement with an individual Critical Vendor and the terms of any such Trade Agreement are hereby incorporated by reference and approved; and it is further

ORDERED, that the Debtor may, in its discretion, terminate a Trade Agreement with an individual Critical Vendor (a "Terminated Critical Vendor"), together with the other benefits to the Terminated Critical Vendor as contained in this Interim Order, at its discretion; and it is further

ORDERED, that if the Debtor chooses not to immediately terminate a Trade Agreement upon a refusal by the participating Critical Vendor party to provide goods and/or services in accordance with such Trade Agreement, the Debtor shall not be deemed to have waived its right to terminate such Trade Agreement; and it is further

ORDERED, that if a Trade Agreement is terminated as set forth above, or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply goods and/or services to the Debtor on Customary Trade Terms during the pendency of the chapter 11 case, the Debtor may, in its discretion, deem provisional payments made to the Critical Vendor on account of prepetition Trade Claims to have been in payment of then outstanding post-petition amounts owed to such Terminated Critical Vendor without further order of the Court or action by any person or entity. Such Terminated Critical Vendor shall then immediately repay to the Debtor any payments made to them on account of its Critical Vendor Claim to the extent that such payments exceed the post-petition amounts then owing to such Critical Vendor, without the right of setoff or reclamation; and it is further

ORDERED, that upon termination of a Trade Agreement by the Debtor, and any related recovery by the Debtor from the Terminated Critical Vendor of amounts paid by the

Debtor to the Terminated Critical Vendor, the claim for which such payment initially was made shall be reinstated as a prepetition claim in the amount disgorged as a result of the termination, subject to objection by the Debtor and other parties-in-interest and the claims allowance process; and it is further

ORDERED, that the execution of the Trade Agreement by the Debtor shall not be declared a waiver of any other cause of action, including avoidance actions, that may be held by the Debtor; and it is further

ORDERED, that the Debtor is authorized, but not directed, in its discretion and in the reasonable exercise of its business judgment, to pay and/or effect a cancellation to satisfy any such obligations to the Twenty Day Vendors as they become due provided, however, that any amounts to be paid pursuant to this Order shall be subject to, and consistent with, any budget approved by any debtor-in-possession financing order entered in these cases; and it is further

ORDERED, that the Debtor, in its discretion, shall undertake appropriate efforts to cause the Twenty Day Vendors to acknowledge in writing that payment of their Twenty Day Claims is conditioned upon the applicable Twenty Day Vendor continuing to supply goods to the Debtor on trade terms that, at a minimum, such Twenty Day Vendor provided to the Debtor six (6) months prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtor as those in effect prior to the Petition Date, and the Debtor reserves the right to negotiate more favorable trade terms with any Twenty Day Vendor as a condition to payment of any such Twenty Day Claim; and it is further

ORDERED, that nothing in this Order shall be deemed either a grant of administrative expense priority status to, or authority to pay, any amounts that are disputed by the Debtor; and it is further

ORDERED, that any payment made by the Debtor on account of section 503(b)(9) of the Bankruptcy Code is conditioned upon the Twenty Day Vendor's agreement to refrain from asserting, or to withdraw, any reclamation claim with respect to the goods that are the subject of any such payment; and it is further

ORDERED, that nothing in this Interim Order shall prohibit the Debtor from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder; and it is further

ORDERED, that all applicable banks and other financial institutions are hereby authorized and required to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtor under this Interim Order whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtor's instructions; and it is further

ORDERED, that notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is intended to constitute, the assumption or adoption of any contract or agreement under 11 U.S.C. § 365; and it is further

ORDERED, that the Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order; and it is further

ORDERED, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements and prohibitions imposed on the Debtor under any approved postpetition financing facility, any

order regarding the use of cash collateral approved by this Court in these cases, any confirmed chapter 11 plan, or as otherwise ordered by this Court, as applicable; and it is further

ORDERED, that the Debtor shall, on or before [], serve by facsimile, e-mail or regular mail, copies of this Interim Order and the proposed Final Order and a notice of the hearing to be held on [] (the "Final Hearing") to consider entry of the proposed Final Order on: (a) counsel to the Committee or, barring timely appointment of a Committee, the entities set forth on the list of the twenty-five (25) largest unsecured creditors of the Debtor; (b) the Office of the United States Trustee; (c) counsel to the Debtor's prepetition lenders; and (d) all parties who have timely filed requests for notice under Rule 2002 of the Bankruptcy Rules. The Final Hearing notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the United States Bankruptcy Court Clerk for the Northern District of New York no later than 4 p.m. [], which objections shall be served so that the same are received on or before such date by:

- (a) counsel to the Debtor;
- (b) counsel to the Debtor's prepetition lenders; and
- (c) the Office of the United States Trustee, Northern District of New York;

and it is further

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

Dated: Syracuse, New York
[], 2015

UNITED STATES BANKRUPTCY JUDGE