

By *[Signature]*
ORIGINAL

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re: :
: Chapter 11
BURLINGTON INDUSTRIES, INC., :
: Jointly Administered
a Delaware corporation, et al., :
: Case No. 01-11282 (PJW)
: Debtors. : Ref. No. 16

**ORDER AUTHORIZING DEBTORS AND DEBTORS IN POSSESSION
TO: (A) CONTINUE THEIR WORKERS' COMPENSATION INSURANCE
PROGRAMS; AND (B) PAY CERTAIN PREPETITION WORKERS'
COMPENSATION CLAIMS, PREMIUMS AND RELATED EXPENSES**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession for an Order Authorizing Them to: (A) Continue Their Workers' Compensation Insurance Programs; and (B) Pay Certain Prepetition Workers' Compensation Claims, Premiums and Related Expenses (the "Motion") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and the Debtors' supporting consolidated memorandum of law (the "Memorandum of Law") and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

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

3. The Debtors are authorized, in the Debtors' sole discretion, to (a) continue the Insured Programs; and (b) take such steps as are necessary or appropriate to process and pay (i) the Prepetition Premiums, (ii) the Prepetition Insured Claims, (iii) the Prepetition Self-Insured Claims and (iv) the Prepetition Processing Costs.

4. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

Dated: Nov. 15, 2001


UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:	:	
	:	Chapter 11
BURLINGTON INDUSTRIES, INC.,	:	
a Delaware corporation, <u>et al.</u> ,	:	Jointly Administered
	:	Case No. 01-_____ ()
Debtors.	:	

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER
AUTHORIZING THEM TO: (A) CONTINUE THEIR WORKERS' COMPENSATION
INSURANCE PROGRAMS; AND (B) PAY CERTAIN PREPETITION WORKERS'
COMPENSATION CLAIMS, PREMIUMS AND RELATED EXPENSES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move the Court for the entry of an order: (i) authorizing the Debtors to (a) continue their existing workers' compensation programs in all states in which they have employees and (b) pay certain prepetition workers' compensation claims, premiums and related expenses; and (ii) granting certain related relief. In support of this Motion, the Debtors respectfully represent as follows:

Background

1. On November 15, 2001 (the "Petition Date"), the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").
2. The Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Burlington Industries, Inc., a Delaware corporation ("Burlington"), is the direct or indirect parent of each of the other Debtors. The Debtors and their nondebtor affiliates (collectively, the "Burlington Companies") are one of the world's largest and most diversified manufacturers of softgoods for apparel and interior furnishings.

5. Founded in 1923, the Burlington Companies started out with one small plant in Burlington, North Carolina, and 200 employees, weaving typical cotton fabrics for flags, curtains, dresses and diapers. Since that time, the Burlington Companies have grown into one of the world's leading manufacturers of softgoods for apparel and interior furnishings. In particular, in the United States, the Burlington Companies are the largest manufacturers of worsted wool and jacquard fabrics, the second largest manufacturer of synthetic fabrics and the third largest manufacturer of denim fabrics. The Burlington Companies also are one of the top four producers of commercial carpets and a leading manufacturer of mattress ticking and ready-made drapery.

6. Headquartered in Greensboro, North Carolina, the Burlington Companies operate 16 various-purpose manufacturing plants in the United States. In addition, on an international scale, the Burlington Companies operate three textile manufacturing plants and two finished-product assembly plants in Mexico, not including the facilities in Mexico and India utilized by the joint ventures described below. The Burlington Companies also own interests in: (a) Nano-Tex, LLC, a California limited liability company engaged in research and development of products that enhance the performance characteristics of textile products; (b) Unifi Textured Polyester, LLC, a North Carolina limited liability company engaged in the manufacture and sale of natural textured polyester yarn; (c) Strategic Technical Alliance, LLC, a Delaware limited

liability company engaged in development, production and sales of special-purpose synthetic fiber products; and (d) four joint ventures, one in India, one in Japan and two in Mexico.

7. The Burlington Companies conduct their business operations through four principal operating segments: PerformanceWear, CasualWear, Interior Furnishings and Carpets (formerly part of Interior Furnishings). Each of the Burlington Companies' four operating segments is a leader in the markets that it serves and focuses on specialty, value-added products, including: (a) fabrics supplied to manufacturers of a wide variety of apparel under various trade names, such as Raeford® and Maxima®; (b) interior furnishings, including draperies, window coverings, bedding ensembles and table linens under the Burlington House® and American Lifestyle™ brand names; and (c) tufted synthetic carpets for commercial use under the Lees® brand name. The Burlington Companies also are a leading developer, marketer and manufacturer of fabrics and other textile products used in a wide variety of apparel and interior furnishings end uses.

8. For their fiscal year ended September 29, 2001, the Burlington Companies, on a consolidated basis, generated net sales of approximately \$1.4 billion. As of September 29, 2001, the Burlington Companies, on a consolidated basis, had approximately \$1.2 billion in assets and approximately \$1.1 billion in liabilities. The Debtors' workforce currently consists of approximately 10,500 full- and part-time employees in 35 domestic states, Canada, France, Germany and Mexico.

**Request for Authority to Continue Workers' Compensation Programs
and Pay Certain Prepetition Workers' Compensation Claims and Premiums**

9. The Debtors maintain workers' compensation coverage for current employees in thirty-five states, including California, Georgia, Texas, Mississippi, Massachusetts, New Jersey, New York, North Carolina and Virginia. By this Motion, the Debtors are seeking authority to continue their workers' compensation programs in all of these jurisdictions (collectively, the "Covered States") and to pay certain related prepetition claims, premiums and expenses. In addition, the Debtors are seeking authority to make payments on account of prepetition workers' compensation claims arising under (a) certain third-party insured workers' compensation programs formerly maintained by the Debtors in all of the Covered States and (b) a self-insured workers' compensation program formerly maintained by the Debtors in the State of North Carolina.

The Insured Programs

10. Since October 2000, the Debtors have maintained a high-deductible workers' compensation program (the "Kemper Program") in all of the Covered States with the Kemper Insurance Companies and certain of its affiliates (collectively, "Kemper"). Under the Kemper Program: (a) insurance coverage is provided for workers' compensation claims for losses up to \$2 million per claim, with a \$1 million deductible (the "Deductible"); and (b) the Debtors are obligated to pay an annual premium of \$199,711.00 (the "Annual Premium"). The Annual Premium, together with the annual premiums on various other liability insurance policies issued to the Debtors by Kemper (collectively with the Kemper Program, the "Kemper Policies"),¹ was paid in October 2001 by Cananwill, Inc. ("Cananwill"), pursuant to a premium

¹ The Kemper Policies include the Kemper Program, general and automobile liability policies, an umbrella liability policy, excess liability policies and a foreign liability policy.

financing agreement (the "Premium Financing Agreement") between the Debtors and Cananwill.² To secure the Debtors' obligations under the Kemper Policies, Kemper has required the Debtors to post collateral, in the form of an irrevocable letter of credit issued by The Chase Manhattan Bank ("Chase") for the benefit of Kemper, in the amount of \$2,910,000.00 (the "Kemper Letter of Credit").

11. The Debtors reinsure the Deductible (the "Deductible Program" and, collectively with the Kemper Program, the "Insured Programs") through the Debtors' nondebtor insurance affiliate, Insuratex, Ltd., a Bermuda corporation ("Insuratex"). The annual premium for the Deductible Program is \$3,124,000.00 and is payable in quarterly installments of approximately \$781,000.00 (collectively, the "Prepetition Premiums"). The next quarterly installment is due December 15, 2001.

12. Claims under the Kemper Program (collectively, the "Kemper Claims") are submitted to the Debtors' current third-party administrator, Risk Innovations Service and Consulting, Inc. ("RISC"). RISC (a) processes the Kemper Claims, (b) debits the Debtors' general operating account on a daily basis for the amount of Kemper Claims to be paid that day and (c) pays the Kemper Claims.³ Insuratex, in turn, reimburses the Debtors on a monthly basis for amounts paid by the Debtors on account of the Kemper Claims. As of the Petition Date, the aggregate amount of Kemper Claims outstanding was approximately \$466,126.00.

² Under the Premium Financing Agreement, the Debtors were required to pay Cananwill (a) \$56,117.10 upon execution of the Premium Financing Agreement and (b) \$56,117.10 a month for the next nine months. The next monthly installment is due December 1, 2001. Contemporaneously with the filing of this Motion, the Debtors have filed a separate motion seeking authority from the Court to continue, among other things, payments to Cananwill under the Premium Financing Agreement.

³ Since the third-party administrator contract with RISC is between the Debtors and RISC, RISC is unable to seek the payment of the Kemper Claims directly from Insuratex.

The Prior Insured Programs

13. Between 1990 and October 2000, the Debtors maintained high-deductible workers' compensation insurance programs in all of the Covered States⁴ with: (a) the American Insurance Group and certain of its affiliates (collectively, "AIG"), from 1990 through 1995 (the "AIG Program"); and (b) Reliance National Indemnity Company and certain of its affiliates (collectively, "Reliance"), from 1995 through October 2000 (the "Reliance Program" and, collectively with the AIG Program, the "Prior Insured Programs"). The Debtors reinsured the deductibles under the Prior Insured Programs with Insuratex.

14. Claims under the Prior Insured Programs (collectively, the "Prior Insured Claims") continue to be submitted to the Debtors' former third-party administrator, Crawford & Company ("Crawford").⁵ Crawford (a) processes the Prior Insured Claims, (b) debits the Debtors' general operating account on a daily basis for the amount of Prior Insured Claims to be paid that day and (c) pays the Prior Insured Claims.⁶ Insuratex, in turn, reimburses the Debtors on a monthly basis for amounts paid by the Debtors on account of the Prior Insured Claims. To secure the Debtors' obligations under the Prior Insured Programs, the Debtors have posted collateral, in the form of irrevocable letters of credit issued by Chase for the benefit of: (a) AIG, in the amount of \$1,610,000.00; and (b) Reliance, in the amount of \$2,090,000.00 (collectively

⁴ As discussed in further detail below, however, between 1990 and 1997, the Debtors' employees in the State of North Carolina were insured under self-insured workers' compensation programs maintained by the Debtors.

⁵ The Prior Insured Claims and the Kemper Claims that arose prior to the Petition Date are referred to herein collectively as the "Prepetition Insured Claims."

⁶ Because the third-party administrator contract is between Crawford and the Debtors, Crawford is unable to seek the payment of the Prior Insured Claims directly from Insuratex.

with the Kemper Letter of Credit, the "Letters of Credit"). The aggregate amount of Prior Insured Claims outstanding as of the Petition Date was approximately \$1,808,299.07.⁷

Self-Insured Programs

15. Between 1990 and 1997, the Debtors operated as self-insured employers in the State of North Carolina and maintained self-insured workers' compensation programs (collectively, the "Self-Insured Programs") in that state. Claims under the Self-Insured Programs (collectively, the "Self-Insured Claims") continue to be submitted to Crawford, which (a) processes the Self-Insured Claims, (b) debits the Debtors' general operating account on a daily basis for the amount of Self-Insured Claims to be paid that day and (c) pays the Self-Insured Claims. To secure the Debtors' obligations under the Self-Insured Programs, the State of North Carolina required the Debtors to post a bond (the "Workers' Compensation Bond") in the amount of \$800,000.00. The Workers' Compensation Bond, in turn, is secured by a letter of credit issued by Chase in the amount of \$157,000.00. The Debtors estimate that the aggregate amount of Self-Insured Claims accrued but not yet paid as of the Petition Date (collectively, the "Prepetition Self-Insured Claims") was approximately \$123,000.00.

⁷ Of this amount, approximately \$605,999.47 is attributable to claims arising under the AIG Program and approximately \$1,202,299.60 is attributable to claims arising under the Reliance Program.

Relief Requested and Supporting Justifications

16. The Debtors hereby request authority, in the Debtors' sole discretion, to (a) continue the Insured Programs and (b) take such steps as are necessary or appropriate to process and pay any Prepetition Premiums, Prepetition Insured Claims and Prepetition Self-Insured Claims that become payable postpetition.

17. It is critical that the Debtors be permitted to continue the Insured Programs and ensure that any Prepetition Premiums, Prepetition Insured Claims and Prepetition Self-Insured Claims are paid.⁸ If the Insured Programs are not maintained, 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 all applicable state workers' compensation 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 for potentially unlimited damages, (b) the Debtors' ongoing business operations in certain states could be enjoined and (c) the Debtors' officers could be subject to criminal prosecution.⁹

⁸ As noted above, although the Prepetition Insured Claims are paid by the Debtors, the Debtors are promptly reimbursed for the amount of the Prepetition Insured Claims by Insuratex. Accordingly, the continued payment of the Prepetition Insured Claims by the Debtors would have a negligible effect on the Debtors' estates.

⁹ See, e.g., Cal. Lab. Code §§ 3706, 3708 (1989) (permitting employee lawsuits against non-complying employers for on-the-job injuries and providing for a presumption of employer negligence and a deemed waiver of certain common law defenses); 820 Ill. Comp. Stat. 305/26 (1993) (establishing criminal penalties for violations of workers' compensation statute); N.C. Gen. Stat. §§ 97-94, 97-95 (1999) (providing for civil and criminal penalties and expanded liability against non-complying employers); N.Y. Workers Comp. Law §§ 213, 220 (1982 & Supp. 2001) (permitting employee lawsuits against non-complying employers for on-the-job injuries and providing for criminal liability on the part of the officers of a non-complying corporation); Va. Code Ann. §§ 65.2-805, 65.2-806 (1995) (permitting employee lawsuits against non-complying

18. Moreover, the Debtors anticipate that their failure to pay the Prepetition Self-Insured Claims (a) would result in North Carolina drawing down the Workers' Compensation Bond and (b) could endanger the Debtors' ability to continue to operate in North Carolina. Similarly, if the Debtors fail to pay the Prepetition Insured Claims, the Debtors anticipate that AIG, Reliance and Kemper, being the ultimate obligors for the Prepetition Insured Claims, would simply draw down the Letters of Credit to pay such claims.

19. Furthermore, the Debtors believe that any delay in the timely payment of the Prepetition Self-Insured Claims and the Prior Insured Claims would have a negative impact on the morale of the Debtors' current employees at a time when the support of such employees is most critical. In contrast, (a) the payment of the Prepetition Insured Claims will not harm the Debtors' estates because any amounts paid by the Debtors on account of the Prepetition Insured Claims will be reimbursed by Insuratex and (b) the payment of the Prepetition Self-Insured Claims will permit the Debtors to continue their operations in North Carolina without interruption.

20. Accordingly, for all of the reasons described above, the relief requested herein is necessary and appropriate and in the best interests of the Debtors' respective estates. Moreover, similar relief has been granted in comparable chapter 11 cases in this District and elsewhere.¹⁰

(continued . . .)

employers for on-the-job injuries and providing for a deemed waiver of certain common law defenses and civil and criminal penalties).

¹⁰ See, e.g., In re USG Corp., No. 01-2094 (RJN) (D. Del. June 27, 2001) (Judge Farnan) (order authorizing debtors, among other things, to pay prepetition workers' compensation claims and insurance premiums); In re Pillowtex, Inc., No. 00-4211 (SLR) (D. Del. Nov. 14, 2000) (same); In re Purina Mills, Inc., No. 99-3938 (SLR) (D. Del. Oct. 29, 1999) (same); In re Loewen Group Int'l, Inc., No. 99-1244 (PJW) (D. Del. June 1, 1999) (Judge Farnan) (same); In re Borden Chems. & Plastics Operating Ltd. P'ship, No. 01-

Request for Authority to Pay Prepetition Processing Costs

21. In addition, the Debtors request that they be authorized, in the Debtors' sole discretion, to pay all costs incident to the Insured Programs, such as processing costs and accrued but unpaid charges for the administration of the Insured Programs (collectively, the "Prepetition Processing Costs"). In the ordinary course of their businesses, the Debtors prepay these types of processing and administration charges. As a result, the Debtors believe that the amount of any Prepetition Processing Costs outstanding as of the Petition Date was minimal.

22. Payment of the Prepetition Processing Costs is justified because the failure to pay any such amounts might disrupt services of third-party providers with respect to the Insured Programs. By paying the Prepetition Processing Costs, the Debtors may avoid even a temporary disruption of such services and thereby ensure that (a) their current and former employees obtain all workers' compensation benefits without interruption and (b) they remain in compliance with applicable state law at all times.

(continued ...)

1268 (RRM) (Bankr. D. Del. Apr. 5, 2001) (Judge Newsome) (same); In re The Imperial Home Decor Group, Inc., No. 00-19 (MFW) (Bankr. D. Del. Jan. 5, 2000) (same); In re Trans World Airlines, Inc., No. 92-115 (HSB) (Bankr. D. Del. Mar. 9, 1992) (same); accord In re LTV Steel Co., Inc., No. 00-43866 (Bankr. N.D. Ohio Dec. 29, 2000) (same); In re The Elder-Beerman Stores Corp., No. 95-33643 (Bankr. S.D. Ohio Oct. 17, 1995) (same); In re Herman's Sporting Goods, Inc., No. 93-31529 (Bankr. D.N.J. Aug. 2, 1993) (same); In re Federated Dep't Stores, Inc., No. 1-90-00130 (Bankr. S.D. Ohio) (orders dated January 18, 1990 and January 25, 1990 authorizing the debtors to pay prepetition workers' compensation benefits under self-insurance programs). Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of these unreported orders are available upon request from the Debtors' counsel.

23. The Debtors represent that they have sufficient cash reserves, together with anticipated access to sufficient debtor in possession financing,¹¹ to pay the amounts described herein in the ordinary course of their businesses.

24. The Debtors have filed a separate consolidated memorandum of law in further support of this Motion.

25. Nothing contained herein is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease, pursuant to section 365 of the Bankruptcy Code.

Notice

26. No trustee, examiner or creditors' committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (a) the United States trustee; (b) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) counsel to the DIP Lenders; (d) counsel to the administrative agents for the Debtors' prepetition secured lenders; and (e) the indenture trustees with respect to the Debtors' senior notes. As this Motion is seeking first day relief, notice of this Motion and any order entered hereon will be served as required by Rule 9013-2(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

¹¹ Concurrently with the filing of this Motion, the Debtors have filed a motion seeking approval of a \$190 million debtor in possession financing facility from JPMorgan Chase Bank as agent for the Debtors' proposed postpetition lenders (collectively, the "DIP Lenders").

No Prior Request

27. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A: (a) authorizing the Debtors, in the Debtors' sole discretion, to (i) continue the Insured Programs and (ii) take such steps as are necessary or appropriate to process and pay the Prepetition Premiums, Prepetition Insured

Claims, Prepetition Self-Insured Claims and Prepetition Processing Costs; and (b) granting such other and further relief as the Court may deem proper.

Dated: November 15, 2001
Wilmington, Delaware

Respectfully submitted,



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