

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| In re: |) | Chapter 11 |
| |) | |
| FLYING J INC., <u>et al.</u> , ¹ |) | Case No. 08-13384 (MFW) |
| |) | |
| Debtors. |) | Jointly Administered |
| |) | |
| |) | Hearing Date: May 7, 2009 at 2:00 p.m. (ET) |
| |) | Objection Deadline: April 27, 2009 at 4:00 p.m. (ET) |

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO IMPLEMENT AN ASSET SALE INCENTIVE
PROGRAM AND TO MAKE ALL PAYMENTS THEREUNDER**

Flying J Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to implement an asset sale incentive program in connection with the sale of substantially all of the assets of Longhorn Pipeline Holdings, LLC (the “Longhorn Business”) and to make all payments thereunder. In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Flying J Inc. (3458); Big West of California, LLC (1608), Big West Oil, LLC (6982); Big West Transportation, LLC (6984); Longhorn Partners Pipeline, L.P. (0554); Longhorn Pipeline Holdings, LLC (0226), Longhorn Pipeline Inc. (0654). The location of the Debtors’ corporate headquarters and the service address for all Debtors is: 1104 Country Hills Drive, Ogden, UT 84403.

3. The statutory bases for the relief requested herein are sections 363(b) and 503(c) of title 11 of the United States Code (the "Bankruptcy Code").

Relief Requested

4. By this Motion, the Debtors request entry of an order authorizing them to implement the Asset Sale Incentive Program (as defined herein) and to make all payments thereunder.

Background

5. On December 22, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of title 11 of the Bankruptcy Code. On January 5, 2009, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Creditors' Committee").

6. The Debtors and their wholly owned non-debtor subsidiaries (collectively, the "Flying J Group") are a fully integrated oil company with operations in the field of exploration, production, refining, transportation, wholesaling and retailing of petroleum products. Debtor Flying J Inc. is one of the 20 largest privately held companies in America with 2007 consolidated sales in excess of \$16.2 billion and is the direct or indirect parent corporation of each of the other members of the Flying J Group.

7. The Flying J Group operates over 240 retail locations, including state-of-the-art travel plazas, convenience stores, restaurants, motels and truck service centers in 41 states and six Canadian provinces. In addition to usual rest stop services (food, fuel, shower facilities), the Flying J Group offers banking, bulk-fuel programs, communications (wireless Internet

connections), fuel cost analysis, insurance and truck fleet sales. Furthermore, the Flying J Group explores for, refines and transports petroleum products and is likely the largest retail distributor of diesel fuel in North America. Other operations of the Flying J Group include online banking, card processing, truck and trailer leasing, and payroll services. In these widespread operations, the Flying J Group employs approximately 16,000 people.

8. Each of the Debtors in these chapter 11 cases is involved in or associated with the Flying J Group's core businesses of petroleum refining, supply and distribution. In particular, Debtors Big West Oil LLC and Big West of California LLC own and operate two refineries in North Salt Lake City, Utah and Bakersfield, California, respectively, which have the combined capacity to refine over 100,000 barrels of crude oil per day. These Debtors also are responsible for purchasing and transporting crude oil in parts of California, Utah, Wyoming and Colorado. Debtor Longhorn Pipeline, Inc. and its Debtor subsidiaries own and operate a 700-mile common carrier pipeline with installed capacity of over 70,000 barrels per day from the Gulf Coast near Houston to El Paso, Texas.

9. The Debtors have filed these chapter 11 cases to address near-term liquidity constraints brought on by the precipitous drop in the price of oil beginning in September of 2008 and continuing through the present as well as the recent tightening credit markets. The Debtors believe that their businesses are fundamentally sound and profitable and that these chapter 11 cases will allow them to resolve their liquidity constraints and emerge as stronger, healthier companies.

The Asset Sale Incentive Program

A. Proposed Sale of the Longhorn Business

10. The Debtors have concluded, in their business judgment, that the most viable option to bolster liquidity and preserve the value of their estates is to facilitate a sale of all or

substantially all of the Longhorn Business. Accordingly, the Debtors and the Creditors' Committee are currently working towards finalizing a process by which the Debtors will seek to execute a going-concern sale of the Longhorn Business (the "Sale Process").²

11. The Sale Process will be critical for stakeholders in the chapter 11 cases, and the certain of the Debtors' employees must play a critical role in the Sale Process, especially those responsible for the operations of Longhorn Pipeline Holdings, LLC ("LPH") and its subsidiaries (together with LPH, the "Longhorn Entities"). The success of the sale of the Longhorn Business hinges on the hard work and dedication of these employees.

12. Certain of the Debtors' employees will continue to: (a) comply with due diligence requests from potential buyers; (b) respond to buyer inquiries in a timely and thorough manner; (c) conduct presentations, as necessary, to potential purchasers and the Debtors' board of directors on the Longhorn Business and the sale process; (d) review, analyze and negotiate the terms of potential offers; and (e) assist in the resolutions of various claims against the Longhorn Entities. In short, the Debtors' ability to preserve and maximize the value of their estates has required and will continue to require substantial commitments of time, energy and effort from certain of the Debtors' employees, and these employees efforts are expected to provide a material benefit to the Sale Process. Additionally, these key employees must perform at a high level throughout the Sale Process in order for the Debtors to obtain the best result for their creditors.

² The specific terms of the Sale Process will be set forth in a future motion to approve the Sale Process and bidding procedures (the "Bidding Procedures Motion").

B. Design of the Asset Sale Incentive Program

13. The Debtors, in concert with their advisors, as well as the Creditors' Committee and its advisors, have developed a sale bonus program that properly incentivizes certain of the Debtors' employees (the "Asset Sale Incentive Program"). The relevant terms of the Asset Sale Incentive Program are as follows:

- (a) **Eligible Participants.** Fourteen key employees (the "Eligible Participants") are eligible for incentive compensation in the form of cash awards (the "Incentive Compensation") under the Asset Sale Incentive Program. The identities of the Eligible Participants and their respective titles are set forth on the exhibit attached hereto as **Exhibit B.**
- (b) **Participation Requirements.** The Debtors have identified the Eligible Participants based on:
 - (i) each Eligible Participant's unique ability to contribute to the successful execution of the Sale Process (as described more fully below); and
 - (ii) the Debtors' need to incentivize such Eligible Participant in order to maximize opportunities for value creation through the Sale Process.
- (c) **Incentive Compensation Levels.** Each Eligible Participant's Incentive Compensation consists of a percentage of his or her annual base salary upon a successful close of a sale transaction at an aggregate transaction value greater than \$225 million (the "Threshold"). There is no guaranteed minimum bonus pool; Eligible Employees will receive no compensation under the Asset Sale Incentive Program in the event that a sale transaction is not completed or if the aggregate value for a sale transaction is less than the Threshold. Eligible Participants receive a pro rata increase in their proposed incentive compensation based on an increase in the aggregate transaction value over and above the Threshold.³

³ The Debtors' senior management, in consultation with its advisors, defined the threshold sale price and lockstep increases in sale price for purposes of the Asset Sale Incentive Program. These thresholds – and their development process – are explained in further detail in the Declaration of John Boken, Chief Restructuring Officer of Flying J Inc., In Support of Debtors Motion for Entry of an Order Authorizing the Debtors to Make Certain Payments Pursuant to an Asset Sale Incentive Program (the "Boken Asset Sale Declaration"), attached hereto as **Exhibit C.** The Boken Asset Sale Declaration includes, among other things, specific information regarding the Debtors' analysis of the appropriate sale price targets (both for the Asset Sale Incentive Program and the asset sale itself). This information – although relevant to the relief requested herein – is highly sensitive. Indeed, if such information became public, it would unfairly prejudice (Continued...)

- (d) **Incentive Compensation Requirements.** Incentive Compensation under the Asset Sale Incentive Program is conditioned upon the achievement of key milestones in the Sale Process:
- (i) An initial payment equal to 50 percent of such Eligible Participant's Incentive Compensation under the Asset Sale Incentive Program shall be payable upon closing of a sale transaction. This provision will address the need for certain employees to continue post-closing for transition purposes and to assist with the resolution of other issues regarding a sale transaction.
 - (ii) A final payment equal to 50 percent of such Eligible Participant's Incentive Compensation under the Asset Sale Incentive Program shall be payable on the earlier of (a) a mutually agreed upon termination date of the applicable Eligible Participant or (b) transition of the designated Eligible Participant to a different position within the Flying J Group. This final payment is conditioned on the full cooperation of the designated Eligible Participant, including taking any necessary actions and fulfilling any duties associated with the resolution of claims regarding the Longhorn Business.
 - (iii) Any Eligible Participant who voluntarily terminates his or her employment or who is terminated for cause prior to the successful closing of a sale transaction or a mutually agreed upon termination date will forfeit rights to any unpaid Incentive Compensation under the Asset Sale Incentive Program.
- (e) **Critical Eligible Participant Incentive Pool.** Additionally, there are four key Eligible Participants who are considered to be particularly valuable to a successful completion of a sale transaction and whose efforts can assist in creating incremental value in the sale transaction (the "Critical Eligible Participants"). In addition to the above described Incentive Compensation, and subject to the same requirements and restrictions, the Critical Eligible Participants are also eligible for additional compensation for achieving a sale price for the Longhorn Business in excess of [REDACTED].

14. Individuals designated as Eligible Participants have been selected for the indispensable roles they must play to obtain a successful outcome through the Sale Process.

Eligible Participants are those individuals: (a) most directly responsible for interfacing

the Debtors' ability to negotiate improved pricing and other sale terms with potential purchasers. For such reasons, the Debtors are seeking to file select portions of the Boken Asset Sale Declaration and this Motion under seal.

directly with potential buyers or their advisers and (b) who have intimate knowledge about the Longhorn Business, its infrastructure and its financial affairs.

15. By participating in the Asset Sale Incentive Program, Eligible Participants are forfeiting any eligibility to participate in any other of the Debtors' ordinary course bonus programs, with the exception of [REDACTED], who have approximately \$6,250 and \$7,500 respectively in vested and unpaid bonuses due in 2009 under the Debtors' deferred compensation plan, otherwise known as the "Special Bonus Plan."⁴ [REDACTED] will remain eligible for payment of those vested balances, which payment will be subject to this Court's approval of the Special Bonus Plan after proper motion and hearing. [REDACTED] and other Eligible Participants have unvested balances in the Special Bonus Plan. In accordance with the provisions of the Special Bonus Plan, Eligible Participants who are terminated as an outcome of the Sale Process will not retain any rights to any future unvested payouts under the Special Bonus Plan. However, any Eligible Participant offered a position within the Flying J Group in some other capacity after the completion of the Sale Process will retain their rights to future unvested payouts under the Special Bonus Plan as and when such payments would be due.

16. Eligible Participants will receive the greater of (a) their Incentive Compensation or (b) severance obligations as calculated under the Debtors' severance

⁴ The Debtors will provide notice and an opportunity to object in accordance with the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules if they determine to seek authority to pay any amounts under the Special Bonus Plan.

program (the “Severance Program”).⁵ Eligible Participants may not receive both Incentive Compensation and severance payments under the Severance Program.

C. Benefits of the Asset Sale Incentive Program

17. The Asset Sale Incentive Program is an incentive-based bonus plan that properly incentivizes the Eligible Participants to maximize the potential purchase price of the Longhorn Business. Payments to the Eligible Participants under the Asset Sale Incentive Program are keyed to the ultimate sale price of the Longhorn Business. The Eligible Participants do not receive any bonus if a sale transaction is not consummated or the sale transaction has an aggregate transaction value of less than the Threshold. Moreover, the compensation for the Eligible Participants increases only if higher sales prices are achieved, thus aligning the interests of the Eligible Participants and LPH’s creditors.

Basis for Relief

I. The Asset Sale Incentive Program Does Not Implicate Section 503(C)(1) Or Section 503(C)(2) Of The Bankruptcy Code

18. Sections 503(c)(1) and (c)(2) of the Bankruptcy Code impose significant restrictions on a debtor’s ability to provide severance or retention payments to its executives. Neither provision applies to the proposed Asset Sale Incentive Program. “Sections 503(c)(1) and (2) are plainly high hurdles to clear if payments are primarily designed for retention. The entire analysis changes if a bonus plan is not primarily motivated to retain personnel or is not in the nature of severance.” In re Global Home Prods., 369 B.R. 778, 785 (Bankr. D. Del. 2007).

⁵ The Debtors’ Severance Program was proposed and approved by the Order Authorizing the Debtors to Implement a Severance Program, entered on February 19, 2009 [Docket No. 545].

A. Section 503(C)(1) Of The Bankruptcy Code Does Not Apply Because The Asset Sale Incentive Program Is Primarily Intended To Motivate Eligible Participants To Maximize The Value Of The Debtors' Estates

19. Compensation plans intended to incentivize enhanced performance from debtor personnel are not subject to section 503(c)(1). See In re Nellson Nutraceutical, Inc., 369 B.R. 787, 803 (Bankr. D. Del. 2007); Global Home Prods., 369 B.R. at 787 (“[T]he beneficiaries were performing in response to a financial incentive and not merely to remain with [the] Debtors.”). Section 503(c)(1) of the Bankruptcy Code applies only to “pay to stay” plans that do not motivate participants “to produce and increase the value of the estate.” In re Dana Corp., 358 B.R. 567, 584 (Bankr. S.D.N.Y. 2006). This distinction recognizes that every form of payment—be it a wage, salary or bonus—has at least some retentive effect. Thus, the incidental retentive effects of an incentive plan do not trigger section 503(c)(1). “The fact that . . . all compensation has a retentive element does not reduce the Court’s conviction that the Debtors’ primary goal [is] to create value by motivating performance.” Global Home Prods., 369 B.R. at 786; see Dana Corp., 358 B.R. at 571.

20. Any Incentive Compensation provided pursuant to the Asset Sale Incentive Program is primarily intended to incentivize the Eligible Participants to maximize value for the Debtors’ creditors. The Eligible Participants will not receive Incentive Compensation under the Asset Sale Incentive Program unless the Debtors obtain court approval for, and subsequently close, a sale of the Longhorn Business at an aggregate transaction value in excess of the Threshold. Embedded in this overall goal are specific operational challenges that must be overcome by the Eligible Participants. There is no guaranty these goals will be achieved. Rather, the goals set by the Asset Sale Incentive Program contemplate that significant and additional efforts will be required by the Eligible Participants before any

Incentive Compensation is available. These efforts will be in addition to the Eligible Participants' regular duties.

21. This incentive-based structure is categorically different from a "pay to stay" retention plan subject to section 503(c)(1), under which payments are driven only by a participant's ongoing employment. Cf. In re Dana Corp., 351 B.R. 96, 102 (Bankr. S.D.N.Y. 2006) ("Without tying this portion of the bonus to anything other than staying with the company until the Effective Date, this Court cannot categorize a bonus of this size and form as an incentive bonus."). Indeed, incentive programs predicated on the achievement of performance targets, such as the Asset Sale Incentive Program, are consistently distinguished from "retention" plans otherwise subject to section 503(c)(1). See, e.g., In re Leiner Health Prods. Inc., No. 08-10446 (Bankr. D. Del. Apr. 14, 2008) (authorizing asset sale incentive program under section 503(c)(3) of the Bankruptcy Code); In re Dura Auto. Sys., Inc., No. 06-11202 (Bankr. D. Del. June 28, 2007) (same); In re Nobex Corp., No. 05-20050, 2006 WL 4063024, at *3 (Bankr. D. Del. Jan. 19, 2006) (finding that "sale-related incentive pay . . . is not governed by sections 503(c)(1) or 503(c)(2)").

B. Section 503(C)(2) Of The Bankruptcy Code Does Not Apply To The Asset Sale Incentive Program Because The Asset Sale Incentive Program Is Not A Severance Plan

22. Section 503(c)(2) of the Bankruptcy Code sets specific limits on a debtor's ability to make severance payments to company executives. See 11 U.S.C. § 503(c)(2). "Severance" is not defined by the Bankruptcy Code. Hence, courts may turn to judicially-created definitions of "severance" to determine whether section 503(c)(2) governs a particular bonus program. See Dana Corp., 358 B.R. at 576. "Severance" typically refers to payments made to a terminated employee in lieu of notice or based on the length of the terminated employee's service. See In re Hechinger Investment Co. of Del., 298 F.3d 219, 227 (3d Cir.

2002) (Alito, J.); In re Roth Am., Inc., 975 F.2d 949, 958 (3d Cir. 1992). Payments due under an employment contract in the event of termination may also be construed as “severance.” See In re M Group, Inc., 268 B.R. 896, 901 (Bankr. D. Del. 2001).

23. Payments due under the Asset Sale Incentive Program cannot reasonably be construed as “severance.” No payment under the Asset Sale Incentive Program is triggered by the termination of employment. The Eligible Participants may be entitled to a distribution only upon the achievement of key milestones in the Sale Process. Indeed, the termination of employment could result in the disgorgement of Incentive Compensation provided under the Asset Sale Incentive Program. And, as noted above, sales-based incentive plans are consistently distinguished from “severance” plans subject to section 503(c)(2). See, e.g., Nobex, 2006 WL 4063024, at *3.

II. The Asset Sale Incentive Program Should Be Implemented Under Sections 503(C)(3) And 363(B) Of The Bankruptcy Code

24. The Asset Sale Incentive Program may be approved under either section 503(c)(3) of the Bankruptcy Code, as to insiders, or section 363(b) of the Bankruptcy Code, as to non-insiders. See Dana Corp., 358 B.R. at 576; see also Plusfunds Group, No. 06-10402 (Bankr. S.D.N.Y. Apr. 19, 2006) (approving payments to key management under incentive plan upon sale); In re Musicland Holding Corp., No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2006). Under the Asset Sale Incentive Program, several of the potential recipients of Incentive Compensation are “insiders” and, therefore, the Asset Sale Incentive Program implicates section 503(c).⁶

⁶ Section 101(31)(B) of the Bankruptcy Code defines an “insider” of a corporation as (a) director, (b) officer, (c) “person in control” of the debtor, (d) partnership in which the debtor is a partner, (e) general partner of (Continued...)

25. Under section 503(c)(3) of the Bankruptcy Code, a sales-based incentive plan may be authorized where a debtor has determined, in the exercise of its business judgment, that such a plan will motivate certain employees to preserve or enhance the value of its estate. Section 503(c)(3) authorizes “transfers or obligations that are outside the ordinary course of business” that are “justified by the facts and circumstances of the case.” In determining whether a particular payment is “justified” under this standard, the Court has broad discretion to approve incentive-based bonus plans that “are not primarily motivated by retention or in the nature of severance.” Dana, 358 B.R. at 576 (citing Nobex, 2006 WL 4063024). Section 503(c)(3) is “quite frankly nothing more than a reiteration of the standard under 363 . . . under which courts had previously authorized transfers outside the ordinary course of business . . . that is, based on the business judgment of the debtor” In re Nobex Corp., No. 05-20050 (Bankr. D. Del.), Hr’g. Tr. Jan. 12, 2006, 86–87:23–25, 1–2; see also 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 503.17[3] (15th rev. ed.) (“[T]he standard for approval to be employed under section 503(c)(3) is unlikely to be much different than the standard for approval that would otherwise be applied by the court.”).

26. Similarly, courts have long held that the use, sale or lease of property of the estate outside the ordinary course of business should be authorized under section 363(b) of the Bankruptcy Code when there is a “sound business purpose” that justifies such use of estate property. See In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D. Del. 1991) (adopting the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)); Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward

the debtors, and (f) a relative of a general partner, director, officer, or person in control of the debtor. 11 U.S.C. § 101(31).

Holding Corp.), 242 B.R. at 153 (same); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143 (3rd Cir. 1986) (same); see also Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983).

27. The proposed Asset Sale Incentive Program is justified by a sound business purpose. In the upcoming days and weeks, the Eligible Participants will be asked to assume significantly increased responsibilities in connection with the Sale Process. Eligible Participants will be required to quickly respond to diligence inquiries, guide potential buyers through all aspect of the Debtors' businesses and ensure that the Sale Process does not disrupt ongoing operations. In short, the Debtors' ability to obtain value for the benefit of all stakeholders in these chapter 11 cases will depend on the Eligible Participant's ability to effectively present the Longhorn Businesses in the best possible light.

28. Consequently, the Debtors have determined to implement the Asset Sale Incentive Program in order to properly incentivize the Eligible Participants since their performance is essential to the success of their Sale Process. Such a decision falls squarely within the Debtors' sound business judgment. See Montgomery Ward Holding Corp., 242 B.R. at 155; Global Home Prods., 369 B.R. at 784 ("The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment."). Moreover, the total amounts of potential Incentive Compensation are relatively modest compared with either the value that may be realized upon the successful completion of the Sale Process or the potential consequences of failure.

29. The proposed Asset Sale Incentive Program is also generally consistent with incentive plans regularly approved by courts in this district to enhance the likelihood of success for a sale process such as the one proposed by the Debtors. See, e.g., In re Boscov's,

Inc., No. 08-11637 (Bankr. D. Del. Sept. 5, 2008); In re Diamond Glass, Inc., No. 08-10601 (Bankr. D. Del. June 6, 2008); In re Leiner Health Prods. Inc., No. 08-10446 (Bankr. D. Del. Apr. 14, 2008); In re Dura Auto. Sys., Inc., No. 06-11202 (Bankr. D. Del. June 28, 2007); In re New Century TRS Holdings Inc., No. 07-10416 (Bankr. D. Del. May 25, 2007); In re Riverstone Networks, Inc., No. 06-10110 (Bankr. D. Del. March 28, 2006). Similarly, courts in this district and others have regularly approved management bonus plans under section 503(c)(3) in order to provide incentives for increased performance from key personnel. See, e.g., In re Sharper Image Corp., No. 08-10322 (Bankr. D. Del. June 25, 2008); In re Kimball Hill, Inc., No. 08-10095 (Bankr. N.D. Ill. June 1, 2008); In re Movie Gallery, Inc., No. 07-33849 (Bankr. E.D. Va. Feb. 29, 2008); In re Dura Auto. Sys., Inc., No. 06-11202 (Bankr. D. Del. Feb. 26, 2008); In re Calpine Corp., No. 05-60200 (Bankr. S.D.N.Y. May 15, 2006).

30. Moreover, the Debtors, with the assistance of their advisors, developed the Asset Sale Incentive Program through negotiations with the Creditors' Committee, who represents some of the largest direct beneficiaries of any increase in the sale price. Through those negotiations and other discussions, the Debtors determined that a sale-related incentive program is vital to maintaining the full support of the Eligible Employees during the Sale Process.

The Debtors' Reservation of Rights

31. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

Notice

32. The Debtors have provided notice of this Motion via first class mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Creditors' Committee; (c) counsel for the agents for the Debtors' prepetition secured and unsecured lenders; and (d) any persons who have filed a request for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

33. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein and in the Boken Asset Sale Declaration, the Debtors respectfully request that the Court enter an order, substantially in the forms attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as the Court deems appropriate.

Dated: April 9, 2009
Wilmington, Delaware

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