

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

Vanderbilt Minerals, LLC.,

Case No. 26-60110-5 (WAK)
Chapter 11

Debtor.

**UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S MOTION FOR
AUTHORIZATION TO PAY PREPETITION CLAIMS**

TO: THE HONORABLE WENDY A. KINSELLA, UNITED STATES CHIEF
BANKRUPTCY JUDGE:

Pursuant to 28 U.S.C. § 586, 11 U.S.C. §§ 105(a), and 363(b), 503(b)(9), and Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") 6003 and 6004, William K. Harrington, the United States Trustee for Region 2 ("United States Trustee"), submits this objection to the Debtor's ("Vanderbilt") motion for authorization to pay prepetition claims of certain critical vendors, lien claimants, and 503(b)(9) claimants ("Critical Vendor Motion") as follows:

BACKGROUND

1. On February 16, 2026 ("Petition Date"), Debtor filed a skeletal voluntary chapter 11 petition for relief under chapter 11 of the United States Code.

2. The Debtor mines, processes, and distributes industrial minerals that are used in pharmaceutical, agriculture, personal care, coating, adhesive, construction, industrial and household products. (ECF 3).

3. On the Petition Date, among other "first day" motions, the Debtor filed the Critical Vendor Motion on shortened notice, seeking authorization to pay certain prepetition claims of unidentified vendors which provide various goods and services essential to the Debtor's operations, whose claims total \$1,075,000. Of this amount, the Debtor estimates that

they owe certain vendors and/or suppliers \$350,000 for goods that were delivered within 20 days of the Petition Date. (ECF 12).

4. The Debtor's schedules, statements, and other required documents have not yet been filed.

APPLICABLE LEGAL AUTHORITY

5. Bankruptcy Rule 6003 prohibits the entry of an order granting a motion for the payment of pre-petition creditors within 21 days of the filing of a bankruptcy case, absent a finding of immediate and irreparable harm:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following:...

(b) a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition....

Fed. R. Bankr. Proc. 6003(b).

6. No provision of the Bankruptcy Code expressly authorizes the payment of pre-petition debts before the confirmation of a chapter 11 plan of reorganization, nor does the Bankruptcy Code define "critical vendor." *In re Jeans.com, Inc.*, 502 B.R. 250, 252 (Bankr. D. P.R. 2013). The "judge-made rule that courts rely upon to justify permitting a debtor in possession in a Chapter 11 case, prior to the confirmation of a plan of reorganization, to pay certain creditors the full amount of their pre-bankruptcy [petition] unsecured claims" is referred to by courts as the "doctrine of necessity." *Id.* at 252-253 (citation omitted).

7. Bankruptcy Courts that have allowed the payment of claims under the doctrine of necessity "have recognized that it should only be invoked 'under extraordinary circumstances' and ... is 'a device to be used only in rare cases.'" *In re Zenus is Jewelry, Inc.*,

378 B.R. 432, 433 -434 (Bankr. D. N.H. 2007) (citing *In re CoServ, L.L.C.*, 273 B.R. 487, 491 (Bankr. N.D. Tex. 2002)). The doctrine is “reserved for those vendors and other creditors who are critical to the survival of the debtor because of the goods or services they provide.” *In re Jeans.com, Inc.*, 502 B.R. at 252-253 (citations omitted).

8. Bankruptcy courts applying the doctrine of necessity, however, have required debtors to satisfy multi-pronged tests establishing the extraordinary circumstances justifying the payment of prepetition claims. *See, e.g., In re Kmart Corp.*, 359 F3d 866, 873 (7th Cir 2004) (debtor must demonstrate that: (1) vendors would have ceased doing business with debtor if outstanding debts were not paid; (2) disfavored creditors would be better off, or at least not worse off, as a result of preference); *In re CoServ, L.L.C.*, 273 B.R. *supra* at 498 (debtor must show: (1) that it is critical that debtor deal with claimant; (2) that unless it deals with claimant, debtor risks probability of harm, or, alternatively, loss of economic advantage to estate or debtor’s going concern value, disproportionate to amount of prepetition claim; (3) there is no practical or legal alternative by which debtor can deal with claimant other than by payment of claim); and *In re Jeans.com, Inc.*, 502 B.R. *supra* at 258-259 (debtor must show by evidentiary record (1) that payments are necessary to debtor’s reorganization; (2) that sound business justification exists for these payments in that vendors will refuse to continue to do business with debtor unless they are afforded “critical vendor” status; and (3) that disfavored creditors are at least as well off as they would have been had “critical vendor” order not been entered).

9. In the Second Circuit, the Bankruptcy Court is empowered under § 105 to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor. *See In re Ionosphere Clubs, Inc.*, 922 F2d 984 (2d Cir 1990). Commonly referred to as the “doctrine of necessity” or “necessity of payment”, debtors may be authorized to pay a prepetition claim where such payment is essential to the continued operation

of the debtor. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989), *aff'd in part, rev'd in part on other grounds sub nom* 922 F.2d 984 (2d Cir 1990)

10. It is also well settled law in the Second Circuit that the debtor must demonstrate sound business judgment when using estate property outside the ordinary course of business pursuant to § 363 of the Bankruptcy Code. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d. Cir. 1992).

11. In this case, the Court should deny the Critical Vendor Motion because the Debtor has not satisfied its burden of proving that the elements of the doctrine of necessity have been met by a preponderance of the evidence.

ARGUMENT

12. First, the Debtor has failed to establish the facts and circumstances required to justify the payment of the prepetition creditors as set forth in the Critical Vendor Motion and therefore, failed to meet the high burden required in seeking such extraordinary relief.

13. Not only does the Debtor fail to identify the vendors they believe to be critical to their operations, the Debtor's explanation of the necessity of the payment is insufficient. The Debtor concludes generally that the loss of one or more of the vendors could have a material negative impact on the Debtor's operations. Without specifics, the Debtor similarly states that the vendors provide unique services or specialized goods that could not be easily or quickly obtained from another vendor. However, "mere convenience, without necessity, is insufficient" for the Debtor to meet their burden. *See In re C.A.F. Bindery, Inc.* 199 B.R. 828, 836 (Bankr. S.D.N.Y. 1996).

14. Moreover, the projections in the budget included in the Debtor's motion to obtain postpetition financing warrant scrutiny. ("DIP Budget") (ECF 17). The assumptions underlying

those projections are insufficiently supported and appear speculative as further explained in the United States Trustee's Objection to the Debtor's motion for postpetition financing. The DIP Budget also raises concern as to whether paying prepetition vendors comports with the Debtor's fiduciary obligations and the best interests of the estate and its creditors.

15. According to the First Day Declaration of Dean Vomero, the Debtor had approximately \$1 million in trade debt outstanding ("Vomero First Day Declaration") (ECF 3). The total amount that the Debtor seeks to pay through its Critical Vendor Motion is \$1,075,000. The Court should scrutinize the relationship between the Debtor's prepetition trade debt and the relief sought through the proposed Critical Vendor Motion. Absent a clear evidentiary showing identifying the specific vendors, and the amounts owed to each, and why each vendor satisfied the stringent standard to allow critical vendor payments, the Court cannot determine whether the requested relief is truly necessary to preserve value or instead constitutes an impermissible end-run around the Bankruptcy Code's distribution framework.

16. The Debtor's refusal to disclose the identities of the intended critical vendors or to specify what goods were provided by them in the 20 days preceding the Petition Date precludes the Court from making the findings required to permit the payment of prepetition claims under the doctrine of necessity, 11 U.S.C. § 503(b)(9) or Bankruptcy Rule 6003(b). What limited information the Debtor provided on the record fails to establish the extraordinary circumstances required to justify the payment of prepetition claims outside the priority established by the Bankruptcy Code.

WHEREFORE the United States Trustee requests that the Court deny the Motion, together with any other and further relief the Court may deem just and necessary.

Dated: February 24, 2026
Syracuse, New York

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE FOR REGION 2

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