

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
AT CANTON**

-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60702
SCHWAB INDUSTRIES, INC., ¹	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60703
MEDINA CARTAGE CO.,	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60704
MEDINA SUPPLY COMPANY,	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60705
QUALITY BLOCK & SUPPLY, INC.,	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

In re: : Chapter 11
: :
O.I.S. TIRE, INC., : Case No. 10-60706
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X
In re: : Chapter 11
: :
TWIN CITIES CONCRETE COMPANY, : Case No. 10-60707
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X
In re: : Chapter 11
: :
SCHWAB READY-MIX, INC., : Case No. 10-60708
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X
In re: : Chapter 11
: :
SCHWAB MATERIALS, INC., : Case No. 10-60709
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X
In re: : Chapter 11
: :
EASTERN CEMENT CORP., : Case No. 10-60710
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION PURSUANT TO
SECTION 105(a) AND 363(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY
RULE 6003, FOR ENTRY OF AN ORDER (A) AUTHORIZING DEBTORS TO PAY
PREPETITION CLAIMS OF SHIPPERS AND OTHER LIEN CLAIMANTS
AND (B) GRANTING CERTAIN RELATED RELIEF**

Schwab Industries, Inc (“SII”), Medina Cartage Co. (“MCC”), Medina Supply Company (“MSC”), Quality Block & Supply, Inc. (“QBS”), O.I.S. Tire, Inc. (“OIS”), Twin Cities Concrete Company (“TCC”), Schwab Ready-Mix, Inc. (“SRM”), Schwab Materials, Inc. (“SMI”) and Eastern Cement Corp. (“ECC”, and together with SII, MCC, MSC, QBS, OIS, TCC, SRM and SMI, the “Debtors”), the debtors and debtors in possession in the above-captioned Chapter 11 cases (the “Cases”), by and through their undersigned proposed counsel, hereby move (the “Motion”) pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order (a) authorizing Debtors to pay prepetition claims of shippers and other lien claimants and (b) granting certain related relief. In support of the Motion, Debtors rely upon the *Affidavit of David R. Exley in Support of Chapter 11 Petitions and First Day Motions* (the “Exley Affidavit”) filed concurrently herewith and respectfully state as follows:

BACKGROUND

1. On the date hereof (the “Petition Date”), Debtors commenced the Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors have concurrently filed a motion seeking to jointly administer their estates.
2. Debtors are continuing in possession of their properties and assets and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107 and

1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Cases.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. Venue of this case in this district is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

Debtors and Debtors' Businesses

4. Debtors' businesses produce, supply and distribute ready-mix concrete, concrete block, cement and related supplies to commercial, governmental and residential contractors throughout Northeast Ohio and Southwest Florida. Debtors employ approximately 350 workers (all of whom are non-union) who are stationed across Ohio and Florida either at Debtors' Dover, Ohio headquarters or at one of twenty ready-mix plants (13 in Ohio and 7 in Florida) or three Ohio plants which produce concrete block.

5. With more than 40 years experience in the construction industry, Debtors have built a reputation of success and quality. Debtors' competitive advantages flow from their attention to timeliness and an emphasis on geographic positioning of its locations near to interstates and high traffic areas to allow for expedient delivery of materials, concrete, concrete block and cement.

6. As a result of its reputation and relationships, Debtors benefit from many longstanding and continuing relationships with all levels of government. Projects from federal, state and municipal agencies, in Ohio and Florida, provide a material portion of Debtors' work.

7. In addition to those operations in Ohio and Florida described above, through Debtor ECC, Debtors hold exclusive access to a deep-water terminal at Port Manatee on the Gulf of Mexico. The strategic positioning of Port Manatee allows Debtors to both (i) efficiently

distribute imported cement and aggregates throughout Florida; and (ii) export material throughout the Gulf of Mexico region.

8. Their geographic advantages, existing relationships, reputation and import/export capabilities, uniquely situate Debtors to take advantage of opportunities resulting from Federal stimulus money over the next few years.

Individual Debtors

9. Debtor SII is an Ohio corporation headquartered in Dover, Ohio which serves as the holding company of the other Debtors. As the parent organization, SII owns, either directly or through another Debtor, all the equity interests of the other Debtors. SII is owned entirely by four members of the Schwab family.

10. Debtor MCC is an Ohio corporation headquartered in Dover, Ohio. MCC operates certain transportation systems which support the other Ohio Debtors. MCC is a wholly owned subsidiary of SII.

11. Debtor MSC is an Ohio corporation headquartered in Dover, Ohio. MSC operates eight (8) ready-mix plants in Northeast Ohio. MSC is a wholly owned subsidiary of SII.

12. Debtor TCC is an Ohio corporation headquartered in Dover, Ohio. TCC operates three (3) ready-mix plants in Northeast Ohio. TCC is a wholly owned subsidiary of SII.

13. Debtor OIS is an Ohio corporation headquartered in Dover, Ohio. OIS' operations have been substantially wound down and OIS is administering its remaining assets and liabilities. OIS is a wholly owned subsidiary of SII.

14. Debtor QBS is an Ohio corporation headquartered in Dover, Ohio. QBS operates two (2) ready-mix plants and a block plant in Northeast Ohio. QBS is a wholly owned subsidiary of SII.

15. Debtor SRM is a Florida corporation with a mailing address in Dover, Ohio. SRM operates seven (7) ready-mix plants along the gulf coast of Florida. SRM is a wholly owned subsidiary of SII.

16. Debtor SMI is a Florida corporation with a mailing address in Dover, Ohio. SMI wholly owns both ECC and a 2,100 acre plot of land (the "Orange Grove") on the gulf coast of Florida near Fort Myers that has been identified as a primary future source of aggregates (mineral materials such as sand or stone, used in making concrete) that can be mined once proper approvals are obtained. The Orange Grove is currently profitable, producing fruit and other perishables sold to third parties. SMI is a wholly owned subsidiary of SRM.

17. Debtor ECC is a Florida corporation with a mailing address in Dover, Ohio. ECC operates a modern 40,000 metric ton terminal in Port Manatee, the largest deep water port near the Panama Canal. Located on the Gulf of Mexico, Port Manatee provides outstanding access for Debtors to export and import cement and aggregates to other non-American markets. ECC uses this port access to support the sales efforts of Debtors both directly and indirectly. Specifically, ECC sells 40% of cement imported through ECC directly to SRM, and sells all other imported cement to independent companies that do not directly compete with Debtors. ECC is a wholly owned subsidiary of SMI.

Events Leading to the Chapter 11 Filing

18. Debtors are leaders in the production, supply and distribution of ready-mix concrete, concrete block, cement and related supplies to commercial, municipal and residential contractors throughout Northeast Ohio and Southwest Florida. In fiscal year 2006, they provided more than \$208 million worth of product to their customers.

19. During fiscal year 2007 and thereafter, as a result of the nationwide real estate crash and the consequential dramatic slow down in the construction industry, Debtors'

operations, particularly in Southwest Florida (where real estate and new construction has steeply declined), suffered.² The decrease in sales negatively impacts Debtors' working capital availability and cash flows.

20. As of December 31, 2009, Debtors report a book value of total assets of \$104,915,117, with cash of \$672,698 and total "working capital"³ assets of \$15,854,211.

21. Similarly, as of December 31, 2009, Debtors owe their Secured Lenders⁴ pursuant to that certain Amended and Restated Credit Agreement dated October 18, 2007 (i) \$8,582,950 on account of a certain revolving line of credit (the "Revolving Line of Credit"); (ii) \$19,125,245 on account of that certain "Term A" Loan (the "Term A Loan"); and (iii) \$31,995,586 on account of that certain "Term B" Loan (the "Term B Loan" and together with the Revolving Line of Credit and the Term A Loan, the "Secured Loans"). Upon information and belief, a first priority security interest in substantially all the personal property assets of Debtors and a first priority mortgage interest in substantially all the real property of the Debtors secures repayment of the Secured Loans.

22. Also, as of December 31, 2009, Debtors' financial statements report trade payables of \$13,390,149.

23. On or about January 13, 2010, the Secured Lenders notified Debtors of their default of certain obligations pursuant to the Secured Loans.

24. Debtors present cash needs are at their seasonal peak due to the slowdown in construction activity in winter and the inability to create concrete at certain temperatures.

² For fiscal year ending April 30, 2007, Debtors had approximately \$197,000,000 in sales. For fiscal year ending April 30, 2008, Debtors had approximately \$144,000,000 in sales. For fiscal year ending April 30, 2009, Debtors had approximately \$103,000,000 in sales. Debtors' fiscal year ends each April 30. The decrease in sales was significantly sharper for Debtors' Florida operations.

³ "Working capital" assets are understood to be comprised of cash, accounts receivable, inventory and prepaid expenses.

⁴ The "Secured Lenders" are KeyBank, National Association, Bank of America, N.A. and The Huntington National Bank.

25. Debtors have sought financing from numerous possible lending services, including key customers, such as National Lime and Stone Company, among others. Unfortunately, these efforts have been unsuccessful.

26. Debtors' unsuccessful efforts to obtain refinancing result in their current liquidity crisis. This liquidity crisis necessitates Debtors' petition for relief under Chapter 11 of the Bankruptcy Code.

REQUEST FOR AUTHORITY TO PAY CERTAIN PREPETITION OBLIGATIONS OF SHIPPERS, WAREHOUSEMEN AND OTHER APPLICABLE LIEN CLAIMANTS

27. By this Motion, Debtors seek the entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6003, (a) authorizing Debtors to pay the prepetition claims of Shippers, Warehousemen and Lien Claimants (each as defined below) which have (or may have) valid state law remedies available to secure the payment of their respective claims (collectively, the "Prepetition Lien Claims"); and (b) granting certain related relief.

28. Debtors produce, supply and distribute ready-mix concrete, concrete block, cement and related supplies to commercial, governmental and residential contractors throughout Northeast Ohio and Southwest Florida. In order to produce and deliver these goods to their customers, Debtors rely on a system for the receipt of materials, parts and components used in Debtors' operations and production of finished goods. Further, in order to ensure the timely delivery of finished goods to their customer, Debtors rely upon certain domestic carriers, shippers and truckers (collectively, the "Shippers"). A non-exclusive list of certain carriers used from time to time by Debtors is attached to this Motion as Exhibit A. It is possible that Debtors may use warehousemen from time to time (collectively, "Warehousemen").

29. It is essential to Debtors' businesses and their efforts to maximize value for all creditors that they maintain a reliable and efficient supply and distribution system. Because

Debtors are dependent upon third parties, it is essential that Debtors' filing for protection under Chapter 11 not be a reason or excuse for any third-party to cease performing timely services or to retain materials, parts or goods. For example, if Debtors are unable to receive deliveries of materials or supplies on a timely basis, their operations could be severely impeded. Similarly, if Debtors are unable to provide finished product to their customers on a timely basis, Debtors will likely suffer, at a minimum, a significant loss of customer goodwill and, potentially, harm to Debtors' customers who depend upon Debtors to make timely shipments.

30. Debtors seek authority to pay certain prepetition claims relating to shipping and other lien claimants in amounts, that in their business judgment, Debtors determine necessary or appropriate to (a) obtain the release of important materials, parts or goods that may be subject to liens, (b) maintain a reliable and efficient distribution system and (c) induce Shippers and other Lien Claimants to continue to carry finished goods and make timely delivery both to and from Debtors. Debtors propose the payment of such claims, when, in Debtors' sole discretion, a creditor's exercise of such state law rights would unduly disrupt Debtors' business. In order to ensure that Debtors' businesses are not disrupted, Debtors request authority to pay Prepetition Lien Claims in their sole business discretion as needed to maintain seamless operations. Debtors reserve the right to seek modification or enlargement of this amount at any time, upon proper motion to the Court.

Shipping and Warehouse Claimants

31. Under some state laws, a Shipper or the Warehousemen may have a lien on goods in its possession (or the right to lien), which secure the charges or expenses incurred in connection with the transportation or storage of the goods.⁵ Pursuant to section 363(e) of the

⁵ For example, section 7-307 of the Uniform Commercial Code, as codified in title 13 of the Ohio Revised Code, provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and

Bankruptcy Code, the Shippers or the Warehousemen, as bailees, may be entitled to adequate protection of a valid possessory lien.

32. Debtors expect that, as of the Petition Date, certain Shippers and Warehousemen will have outstanding invoices for the delivery of goods that were delivered to Debtors or Debtors' customers prior to the Petition Date (the "Shipping and Warehousing Charges"). As a result the Shippers and Warehousemen likely will argue that they are entitled to possessory liens for the transportation and storage, as applicable, of goods in their possession and may refuse to deliver or release such goods before their claims have been satisfied and their liens redeemed.

33. Debtors seek an order authorizing them, among other things, to make non-disputed prepetition payments to the Shippers and the Warehousemen relating to the Shipping and Warehouse Charges as Debtors, in their business judgment, determine are necessary or appropriate to obtain the release of goods held by such Shippers and Warehousemen. Debtors represent that they will only pay Shipping and Warehousing Charges where they believe, in their business judgment, that the benefit to their estates and creditors from making such payments will exceed the cost that their estates would incur by bringing an action to compel the turnover of such goods and the delays associated with such actions.

34. Debtors submit that the total amount to be paid to the Shippers and Warehousemen, if the requested relief is granted, is minimal compared to the importance and necessity of receiving shipments and the goods held by Warehousemen and the losses Debtors may suffer if such operations are disrupted. Moreover, Debtors do not believe that there are viably timely alternatives to the Shippers or the Warehousemen.

for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." See Ohio Rev. Code Ann. §1307.22(A).

Lien Claimants

35. Debtors routinely transact business with a number of other third parties who have the potential to assert liens against Debtors or their property (or the property of Debtors' customers) if Debtors fail to pay for the goods or services rendered (the "Lien Claimants"). The Lien Claimants perform various services for Debtors, including subcontracting for Debtors from time-to-time, on an as needed basis, that are necessary for Debtors' operations.

36. Although Debtors generally have made timely payments to the Lien Claimants, as of the Petition Date, a number of Lien Claimants may not have been paid for certain prepetition goods and services, which may result in such of the Lien Claimants asserting a right to lien and to perfect mechanics' or artisans' liens (collectively, the "Mechanics' Liens") against the property of Debtors or Debtors' customers, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code. Indeed, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Mechanics' Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection. . . ." 11 U.S.C. §546(b)(1)(A).

37. Further, many states provide certain parties with other statutory liens on property owned by Debtors, or Debtors' customers (collectively, as applicable, the "Statutory Liens").⁶ These Statutory Liens often allow such parties to retain possession of such lien property or impair title of the property by filing a security interest, until Debtors satisfy the outstanding

⁶ See, e.g., Ohio Rev. Code Ann. §1333.33(A)(1) ("A moldbuilder has a lien on all molds produced (by it and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the molds produced by it until the moldbuilder is paid in full all amounts due the moldbuilder for the production of the mold or these proceeds.").

amounts owed. Arguably, these Statutory Liens also may be unaffected by the automatic stay under section 362 of the Bankruptcy Code.⁷

38. In order to avoid undue delay and facilitate the continued operation of Debtors' businesses, Debtors seek immediate authority to pay and discharge, on a case-by-case basis and in their sole discretion, the claims of all Lien Claimants that hold either Mechanics' Liens or Statutory Liens against Debtors' property, regardless or whether such Lien Claimants have already perfected their interests (the "Lien Claimant Claims"), *provided, however*, that with respect to each Lien Claimant Claim, Debtors will not be authorized to pay a Lien Claimant Claim unless the Lien Claimant has perfected or, in Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim. Such a payment shall not be deemed a waiver of rights regarding the extent, validity, priority or possible avoidance of such liens.

39. Debtors further intend to condition the payment of any Lien Claimant Claim, in their sole discretion, on the written acknowledgment, obtained at the sole discretion of Debtors, of the individual Lien Claimant to continue supplying goods and services to Debtors on the trade terms that, at a minimum, such Lien Claimant provided to Debtors on an historical basis prior to the Petition Date, or such other trade practice and programs that are at least as favorable to Debtors as those in effect during such time. Debtors reserve the right to negotiate new trade terms with any Lien Claimant as a condition to payment of any Lien Claimant Claim.

40. Therefore, because Debtors will only pay Lien Claimants that have perfected secured claims or are capable of having perfected secured claims, such payment will not affect the amount of the creditors' distribution (although perhaps mitigating interest expense and other

⁷ Debtors do not concede that any liens (contractual, common law, statutory or otherwise) described in this Motion are valid, and Debtors expressly reserve the right to contest the extent, validity, perfection or possible avoidance of all such liens.

costs), but only the timing. As a result, the relief requested herein is in the best interests of Debtors, their estates and their creditors.

BASIS FOR RELIEF

41. The Court may authorize Debtors to pay the Prepetition Lien Claims under section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). If the debtor’s determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 482-483 (Bankr. N.D. Ohio 1992) (a section 363 sale may be authorized when a sound business purpose dictates such action); *In re Federated Dep’t Stores*, 1990 Bankr. LEXIS 122 (Bankr. S.D. Ohio 1990) (section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances, but the debtor must articulate some business justification); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (section 363 of the Bankruptcy Code request that the debtor’s decision be supported by a “sound business purpose”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999). Once a debtor articulates a valid business judgment, “the business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 288 A.2d 858, 872 (Del. 1985)); *In re Engman*, 331 B.R. 277, 289 (Bankr. D. Mich. 2005) (the business judgment rule creates a presumption in favor of the fiduciary). As stated above, Debtors’ request to pay the Shippers, the Warehousemen and Lien Claimants easily meets this standard because the failure to satisfy the Shipping and Warehousing Charge, as well as the Lien

Claimant Claims, could have a material adverse impact on the day-to-day operations of Debtors' businesses.

42. In addition, the Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). The "doctrine of necessity" functions in a Chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. "It is well established that a bankruptcy court has authority to authorize payment of pre-petition claims where the payment of such claims is necessary to facilitate reorganization." *In re Federated Dep't Stores*, No. 1-90-00130, 1990 Bankr. LEXIS 122, *3 (Bankr. S.D. Ohio Jan. 15, 2990) (citations omitted). For example, under the "necessity of payment" doctrine, a bankruptcy court can exercise its equitable powers to permit the payment of prepetition claims of those parties whose goods or services are critical to the debtor's reorganization. *See id.*; *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (supporting principle that bankruptcy court can authorize payment of pre-petition claims where such payment is necessary to survival of debtor); *In re SIS Corp.*, 108 B.R. 608, 609-10 (Bankr. N.D. Ohio 1989) (recognizing that courts may authorize payments on account of pre-petition claims "premised upon overriding practical and policy reasons"); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 932-32 (Bankr. S.D. Ohio 1988) (agreeing in "principle that a bankruptcy court may exercise its equitable powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately") (citation omitted); *see also In re Lehigh & 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 railroad during reorganization, payment may be authorized even if it is made out of corpus”); *In re Boston & Main Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to Debtors’ continued operation); *In re Columbia Gas Sys.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (necessity of payment doctrine is applicable where “payment is essential to continued operation of business”); *In re Ionosphere Clubs*, 98 B.R. 197, 175-76 (Bankr. S.D.N.Y. 1989) (stating that the rationale of the necessity of payment rule corresponds with the paramount goal under Chapter 11 or reorganizing the debtor and that section 105(a) allows the bankruptcy court to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor”) (citation omitted).

43. Additionally, Bankruptcy Rule 6003 provides that a court may enter an order on a motion to use property of the estate to pay all or part of a claim that arose before the filing of the petition if such relief “is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003.

44. Debtors strongly believe that the continuation of their relationship with the Shippers, the Warehousemen and Lien Claimants is imperative to their continued operation and reorganization efforts, and that the payment of the Prepetition Lien Claims is essential to assure the maintenance of the value of their estates and avoid immediate and irreparable harm. The Court, therefore, should exercise its equitable powers under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003 to grant the relief requested in this Motion.

45. Relief similar to the relief requested herein has been granted by courts in this District and elsewhere in other chapter 11 cases. *See, e.g., In re CEP Holdings, LLC*, No. 06-51848 (MSS) (Bankr. N.D. Ohio Sept. 26, 2006); *In re Nexpak Corp.*, No. 04-63816

(RK) (Bankr. N.D. Ohio July 19, 2004); *In re LTV Steel Co.*, No. 00-43866 (WTB) (Bankr. N.D. Ohio Jan. 16, 2001); *In re Excello Engineered Systems, LLC*, (MSS) No. 08-51424 (Bankr. N.D. Ohio April 25, 2008).⁸

**REQUEST FOR AUTHORITY FOR BANKS TO HONOR AND
PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS TO
PAY THE PREPETITION EMPLOYEE OBLIGATIONS**

46. Debtors further request that the Court authorize and direct all banks and other financial institutions where Debtors maintain payroll or disbursement accounts to honor and pay all prepetition and postpetition checks issued or to be issued, and fund transfers requested or to be requested, by Debtors concerning the Prepetition Lien Claims that were not honored or paid as of the Petition Date. Debtors also seek authority to issue new postpetition checks, or effect new fund transfers, on account of the Prepetition Lien Claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

47. As a result of the commencement of Debtors' chapter 11 cases, and in the absence of an order of the Court providing otherwise, Debtors' checks, wire transfers and direct deposit transfers in respect of the Prepetition Lien Claims may be dishonored or rejected by the disbursement banks. Debtors represent that each of these checks or transfers is or will be drawn on Debtors' payroll and general disbursement accounts and can be readily identified as relating directly to payment of the Prepetition Lien Claims. Accordingly, Debtors believe that prepetition checks and transfers other than those for Prepetition Lien Claims will not be honored inadvertently.

48. Authorization to pay all amounts on account of the Prepetition Lien Claims are not intended to be deemed to constitute postpetition assumption or adoption of any contract, program or policy pursuant to section 365. Debtors are in the process of reviewing these matters

⁸ Because of the voluminous nature of these unreported orders, they are not attached to this Motion. Copies of

and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of the Prepetition Lien Claims shall not affect Debtors' right to contest the amount or validity of any of the Prepetition Lien Claims.

NOTICE

49. Notice of this Motion has been provided to (i) the office of the United States Trustee for Region IX; (ii) each of the Debtors' secured lenders (KeyBank, National Association, Huntington National Bank and Bank of America, NA); (iii) counsel for the Agent for Debtors' secured lenders; (iv) the additional creditors identified on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (v) counsel for EFO Financial Group, LLC; (vi) other known claimants having liens or security interests in property of the Debtors; (vii) each of the Debtors' depository banks; (viii) the Internal Revenue Service; (ix) the United States Department of Justice; and (x) the parties identified on the attached Exhibit A. In light of the nature of the relief requested, Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

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

such orders will be made available to parties upon request from Debtors' counsel.

CONCLUSION

51. WHEREFORE, Debtors respectfully request entry of an order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and granting such other and further relief as the Court deems just and proper.

Dated: February 28, 2010
Cleveland, Ohio

Respectfully Submitted,

/s/ Lawrence E. Oscar

Lawrence E. Oscar (0022696)
Daniel A. DeMarco (0038920)
Christopher B. Wick (0073126)
Christopher W. Peer (0076257)
HAHN LOESER & PARKS LLP
200 Public Square, Suite 2800
Cleveland, Ohio 44114
Telephone: (216) 621-0150
Facsimile: (216) 241-2824
E-mail: leoscar@hahnlaw.com
dademarco@hahnlaw.com
cwick@hahnlaw.com
cpeer@hahnlaw.com

Proposed Counsel to Debtors

EXHIBIT A

SHIPPERS AND CARRIERS AS OF FEBRUARY 3, 2010

Name	Address	City	State	Zip
A M E TRANSPORT	GEORGE BARNER	WOOSTER	OH	44691-9999
ALBRECHT TRUCKING CO	6809 SPENCER LAKE RD	MEDINA	OH	44256-8542
B & B EXCAVATING	3020 OLDTOWN VALLEY RD SW	NEW PHILADELPHIA	OH	44663-9531
BARRY LAND DEVELOPMENT	3463 PINE RIDGE RD STE.101	NAPLES	FL	34109
BEECHY'S INC	P O BOX 206	WINESBURG	OH	44690-0206
BEITZEL TRUCKING MARK	1175 STONECREEK ROAD SW	NEW PHILADELPHIA	OH	44663-7584
BERNER TRUCKING INC	P O BOX 660	DOVER	OH	44622-0660
BESSEMER SUPPLY	P O BOX 6	BESSEMER	PA	16112-9999
BEST AGGREGATE CARRIER	12164 TAMIAAMI TRAIL	PUNTA GORDA	FL	33955
BONITA GRANDE MINING	25501 BONITA GRANDE DRIVE	BONITA SPRINGS	FL	34135
BURGESS TRUCKING	165 BALTZLEY VALLEY ROAD N	NEW PHILADELPHIA	OH	44663-8002
CARRIER, REGINA	4468 DIOR RD	SPRING HILL	FL	34609-9999
CLAPPER, RICK	4157 HEIN AVE SE	EAST CANTON	OH	44730-9309
CRAMBLETT TRUCKING	2232 AVALON ROAD NW	CARROLLTON	OH	44615-9317
DAX TRUCKING	P O BOX 337	SEVILLE	OH	44273-9999
DEVAUL TRUCKING	5029 PLEASANT VALLEY ROAD	DENNISON	OH	44621-9999
DEVAUL, HARRY JAY	4950 PLEASANT VALLEY RD S	DENNISON	OH	446921-999
EDWARDS RICK A	509 KADERLY AVE SW	STRASBURG	OH	44680-9999
ELIO, WILLIAM	703 ELEANORA DRIVE	CUYAHOGA FALLS	OH	44223-2735
FRUTIG TRUCKING D M	1423 ST RT 39 NW	DOVER	OH	44622-9999
GRIFFETH TRUCKING	1161 ROSWELL RD N W	CARROLLTON	OH	44615-9204
HAURY, BRENT C	18815 S AVON-BELDEN RD	GRAFTON	OH	44044-9677
HOFSTETTER INC, ORRAN	P O BOX 237	ORRVILLE	OH	44667-9999
K & H TRUCKING	PO BOX 107	KIDRON	OH	44836-9999
KNAUF, WILLIAM	12613 DAVIS BLVD	FT MYERS	FL	33905
KNISELY INC	P O BOX 660	DOVER	OH	44622-0660
L & H BULK SERVICES	P O BOX 1256	FINDLAY	OH	45839-1258
LEATHERMAN TRUCKING INC	9587 ACME ROAD	SEVILLE	OH	44273-9999
N J R T INC	2087 GREENWICH RD	WADSWORTH	OH	44281-9999
NEW LIFE TRANSPORTERS	3216 GREENBRIER DRIVE	NORTON	OH	44203-5040
NEWTON TRUCKING, DOUG	3271 YORK VIEW RD SW	NEW PHILADELPHIA	OH	44663-1151
NORTHEAST OHIO OILFIELD SERV	SERVICE INC	GARRETTSVILLE	OH	44231-3107
P G BULK INC	12164 TAMIAAMI TRAIL	PUNTA GORDA	FL	33955
PARKER KATHLEEN	DBA CHRIS SAMIKOS TRUCKING	MEDINA	OH	44256-9999
PROCHAZKA, DONALD G	15080 RICKEL RD	WEST SALEM	OH	44287-9551
PROFESSIONAL BULK TRANSFER	925 CALLENDAR BLVD SUITE B	PAINESVILLE	OH	44077-9999
RATTA TRUCKING INC	10080 BLACK DIAMOND RD	MARSHSVILLE	OH	44645-9999
REBMAN TRUCK SERVICE INC	P O BOX 7155	MANSFIELD	OH	44905-0555

SHIPPERS AND CARRIERS AS OF FEBRUARY 3, 2010

Name	Address	City	State	Zip
REDLINE TRUCKING	PO BOX 366	GNADENHUTTEN	OH	44629-9999
REYNOLDS TRUCKING	9101 STRASBURG-BOLIVAR RD	STRASBURG	OH	44680-9999
RIDENOUR, JOSEPH R	1134 TALLMADGE RD	KENT	OH	44240-6458
RIDENOUR, RICHARD J	3616 GREENWICH RD	SEVILLE	OH	44273-9999
RINGLER, BRAD	211 CO 1181	NOVA	OH	44859-9999
SAVICK TRUCKING SERV INC	9116 PAWNEE RD	HOMERVILLE	OH	44235-9710
STOCKER TRUCKING INC	P O BOX 689	GNADENHUTTEN	OH	44629-0689
SWAIN EXPRESS INC	3311 ROHRER RD	WADSWORTH	OH	44281-8314
TRIDENT TRUCKING	DON JOHNSON	OLMSTED TWP	OH	44138-9999
VENEZIA	P O BOX 909	ROYERSFORD	PA	19468-9999
WARNER, DAVID A	2655 CURTIS RD SE	NEW PHILA	OH	44663-7814
WEAVER AGGREGATE TRANSPORT,	P.O.BOX 39	SUMTERVILLE	FL	33585
WESTHAFFER	6333 E MESSNER ROAD	APPLE CREEK	OH	44606-9999

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
AT CANTON**

-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60702
SCHWAB INDUSTRIES, INC., ¹	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	
	:	Chapter 11
In re:	:	
	:	Case No. 10-60703
MEDINA CARTAGE CO.,	:	
	:	Judge Russ Kendig
Debtor.	:	
	:	Joint Administration Pending
-----	X	

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

ORDER RE: SHIPPERS - CLE - 2254111.1

In re: : Chapter 11
 :
 : Case No. 10-60704
 :
 MEDINA SUPPLY COMPANY, :
 :
 : Judge Russ Kendig
 :
 Debtor. :
 :
 : Joint Administration Pending

----- X
 In re: : Chapter 11
 :
 : Case No. 10-60705
 :
 QUALITY BLOCK & SUPPLY, INC., :
 :
 : Judge Russ Kendig
 :
 Debtor. :
 :
 : Joint Administration Pending

----- X
 In re: : Chapter 11
 :
 : Case No. 10-60706
 :
 O.I.S. TIRE, INC., :
 :
 : Judge Russ Kendig
 :
 Debtor. :
 :
 : Joint Administration Pending

----- X
 In re: : Chapter 11
 :
 : Case No. 10-60707
 :
 TWIN CITIES CONCRETE COMPANY, :
 :
 : Judge Russ Kendig
 :
 Debtor. :
 :
 : Joint Administration Pending

----- X
 In re: : Chapter 11
 :
 : Case No. 10-60708
 :
 SCHWAB READY-MIX, INC., :
 :
 : Judge Russ Kendig
 :
 Debtor. :
 :
 : Joint Administration Pending

----- X

In re: : Chapter 11
: :
SCHWAB MATERIALS, INC., : Case No. 10-60709
: :
Debtor. : Judge Russ Kendig
: :
: Joint Administration Pending

----- X
: Chapter 11
In re: : :
: Case No. 10-60710
EASTERN CEMENT CORP., : :
: Judge Russ Kendig
Debtor. : :
: Joint Administration Pending
----- X

**ORDER PURSUANT TO SECTION 105(a) AND 363(b) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 6003, FOR ENTRY OF AN ORDER
(A) AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF SHIPPERS
AND OTHER LIEN CLAIMANTS AND
(B) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the *Motion of Debtors and Debtors in Possession, Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6003, for Entry of an Order (A) Authorizing Debtors to Pay Prepetition Claims of Shippers and Other Lien Claimants and (B) Granting Certain Related Relief* (the “Motion”), filed by Debtors and Debtors in Possession (the “Debtors”) in the above-captioned cases (the “Cases”); the Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein at a hearing before the Court (the “Hearing”); and upon the Exley Affidavit; and the Court having found and concluded that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (ii) this is a core proceeding, (iii) notice of the Motion was sufficient under the circumstances, (iv) the payment of the Prepetition Lien Claims on the terms and conditions set forth below is necessary and appropriate to avoid irreparable harm to Debtors’ estates and prevent serious disruption to Debtors’ reorganization efforts, will serve to protect and

preserve Debtors' estates for the benefit of all stakeholders and will facilitate the reorganization of Debtors' businesses, and (v) the legal and factual bases set forth in the Motion, the Exley Affidavit and at the Hearing establish just cause for the relief granted herein; and this Court having determined that granting the relief requested in the Motion is in the best interests of Debtors, their estates and their creditors; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Motion.
3. Debtors are authorized in their sole discretion, to pay in the ordinary course of business, prepetition Shipping and Warehousing Charges and Lien Claimant Claims (together, the "Prepetition Lien Claims") in their business discretion without further Court order, *provided, however*, that Debtors will only pay (a) Shipping and Warehouse Charges where Debtors believe, in their business judgment, that the benefit to their estates and creditors from making such payments would exceed the costs that their estates would incur by bringing actions to compel the turnover of goods and the delays associated with such actions and (b) Lien Claimant Claims where the Lien Claimant has perfected or, in Debtors' sole business judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; *provided, further*, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, priority or possible avoidance of the related liens.
4. Debtors, in their sole discretion, shall undertake appropriate efforts to cause Shippers, the Warehousemen and Lien Claimants to acknowledge in writing that payment of such claims is conditioned upon the Shipper, Warehousemen or Lien Claimant continuing to

supply goods and services to Debtors on trade terms that, at a minimum, such Shipper, Warehousemen or Lien Claimant provided to Debtors on an historical basis prior to the Petition Date, or such other trade practices and programs that are at least as favorable to Debtors as those in effect during such time, and Debtors reserve the right to negotiate new trade terms with any Shipper, Warehousemen or Lien Claimant as a condition to payment of any such claim.

5. Debtors' banks and other financial institutions (collectively, the "Banks") are authorized and directed when requested by Debtors in Debtors' sole discretion, to receive, process, honor and pay all checks presented for payment of, and to honor all funds transfer requests made by Debtors related to Prepetition Lien Claims, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in Debtors' accounts to cover such checks and funds transfers.

6. Debtors do not concede that any liens (contractual, common law, statutory or otherwise) paid pursuant to this Order are valid, and Debtors expressly reserve the right to contest the extent, validity, perfection or possible avoidance of all such liens.

7. Nothing in the Motion or this order, nor 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 Debtors; (b) a waiver of Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for Prepetition Lien Claims; or (e) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

IT IS SO ORDERED.

###

Prepared and Submitted By,

/s/ Lawrence E. Oscar

Lawrence E. Oscar (0022696)

Daniel A. DeMarco (0038920)

Christopher B. Wick (0073126)

Christopher W. Peer (0076257)

HAHN LOESER & PARKS LLP

200 Public Square, Suite 2800

Cleveland, Ohio 44114

Telephone: (216) 621-0150

Facsimile: (216) 241-2824

E-mail: leoscar@hahnlaw.com

dademarco@hahnlaw.com

cwick@hahnlaw.com

cpeer@hahnlaw.com

Proposed Counsel to Debtors