

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

Case No. 09-12616-MAM

BENDER SHIPBUILDING AND
REPAIR CO., INC.

DEBTOR

**DEBTOR'S MOTION TO INCUR POST-PETITION
UNSECURED INDEBTEDNESS AND TO GRANT AN
ADMINISTRATIVE PRIORITY PURSUANT TO 11 U.S.C. §364**

NOW INTO COURT, through undersigned counsel, comes Bender Shipbuilding and Repair Co., Inc. (the "Debtor") and respectfully requests, pursuant to 11 U.S.C. §364, authority, *nunc pro tunc* to July 1, 2009, to incur post-petition unsecured indebtedness and to grant administrative priority to the creditor and for an expedited hearing regarding same pursuant to Rule 4001(c)(2):

1.

On June 9, 2009, an involuntary Chapter 7 petition was filed against the Debtor. An Order for Relief was entered on July 1, 2009 ("Conversion Date") and the case was converted to a proceeding under Chapter 11 pursuant to an Order entered thereafter.

2.

The Debtor operates docks and shipbuilding, repair, and manufacturing facilities.

3.

The Debtor continues to manage its business as debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108. No trustee or examiner has been appointed, and no official committee has yet been established in this case.

4.

The Debtor presently has insufficient funds and revenues available to fund its payroll for July 2009. Payment of wages and salaries is critical to the Debtor's business and necessary to preserve the estate.

5.

In order to maintain current business operations and to fund the payroll of the Debtor, the Debtor's principal, Thomas P. Bender, Jr., has provided, on an emergency basis, an advance to the Debtor in the amount of \$300,000.00 to fund the Debtor's payroll.

6.

Specifically, Mr. Bender has provided this post-petition financing by means of an advance on the following terms and conditions:

- (1) the advance of \$300,000.00 of his personal funds to the Debtor;
- (2) the loan or advance is on an unsecured and no interest basis, with Mr. Bender to receive priority as an administrative expense claim pursuant to 11 U.S.C. §§364(b) and 503(b)(1), but subordinate to any priority administrative claim granted to Marquette Commercial Finance ("Marquette") any priority administrative claim granted to a future debtor-in-possession post-petition lender, the payment of allowed professional fees in the case, and the fees of the Bankruptcy Administrator and court costs; and
- (3) payment of the advance is due within thirty (30) days subject to any cash collateral arrangement with Marquette.

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7.

Debtor believed the emergency advance made by Mr. Bender was necessary to insure that the Debtor could maintain its current operations and preserve the estate and was in the best interests of all creditors.

8.

The Debtor seeks *nunc pro tunc* approval to July 1, 2009 authorizing the advance made by Mr. Bender on an emergency basis and recognizing an administrative priority claim in favor of Mr. Bender for the advance subordinate to the administrative priority claims described above.

WHEREFORE, the above-premises considered, the Debtor prays as follows:

1. That an expedited hearing on the approval of the advance by Thomas P. Bender, Jr., *nunc pro tunc* to July 1, 2009 – the date the case was converted to Chapter 11 and the date the advance was made – be set pursuant to Bankruptcy Rule 4001(c)(2);
2. That at such expedited hearing the emergency advance made by Mr. Bender to the Debtor be approved and authorized , *nunc pro tunc* to July 1, 2009, with Mr. Bender receiving an administrative priority claim for the amount of the advance subordinate to all allowed administrative priority claims described herein above; and
3. All other and further relief as is just and equitable.

LUGENBUHL, WHEATON, PECK,
RANKIN & HUBBARD

Respectfully Submitted,



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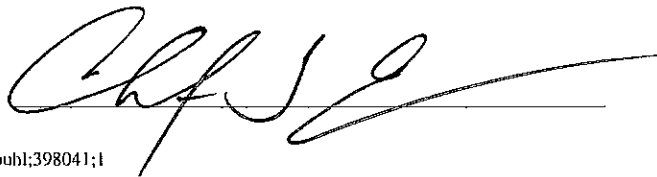
AND

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Debtor's Motion to Incur Post-Petition Unsecured Indebtedness and to Grant an Administrative Priority Pursuant to 11 U.S.C. §364 have been served upon the parties receiving CM/ECF notice including parties appearing and requesting service and upon the twenty largest creditors and Bankruptcy Administrator by depositing a copy of same in the United States mail, properly addressed, and first class postage prepaid, this 1st day of July 2009.



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