

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	Chapter 11
)	
COMPLETE HYDRAULIC SERVICE)	CASE NO. 13-04677-JKC-11
& SALES, INC.,)	
)	
Debtor.)	

**EMERGENCY MOTION FOR ENTRY OF ORDER UNDER 11 U.S.C. §366(A)
PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING
SERVICES, AND (B) DETERMINING ADEQUATE ASSURANCES OF PAYMENT
FOR FUTURE SERVICES**

Comes now Complete Hydraulic Service & Sales, Inc., debtor and debtor-in-possession (“CHSSI”), by counsel, and for its *Emergency Motion for Entry of Order under 11 U.S.C. §366(A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services, and (B) Determining Adequate Assurances of Payment for Future Services* (the “Utilities Motion”), states as follows:

JURISDICTION

1. On May 2, 2013 (the “Petition Date”), CHSSI filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101 *et seq.*, as amended (the “Bankruptcy Code”). CHSSI continues to operate its businesses and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed, and no committee has yet been appointed or designated.

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

4. The statutory predicates for the relief requested herein are sections 105 and 366 of the Bankruptcy Code.

GENERAL BACKGROUND

1. CHSSI owns and operates an equipment distributor and service center specializing in commercial, industrial and residential hydraulic and pneumatic equipment. CHSSI currently employs approximately 9 regular employees.

7. In the normal conduct of its business, CHSSI uses electric, water/sewage, energy, telephone, internet, satellite and other services provided by certain utility companies with average monthly expenses as is set forth below (the "Utility Companies")¹

- i. AT&T - \$620.00
- ii. Centurylink - \$30.00
- iii. Cintas - \$30.00
- iv. DirecTV - \$250.00
- v. Duke Energy - \$1,300.00
- vi. Comcast - \$650.00
- vii. Ferrell Gas - \$500.00
- viii. Indiana American Water - \$70.00
- ix. Southern Scavenger - \$80.00
- x. Nelson Alarm - \$306.00
- xi. Vectren - \$600.00
- xii. Verizon - \$300.00

8. The Utility Companies provide service to CHSSI's business. Naturally, those

¹ CHSSI reserves the right to update and supplement this list of Utility Companies, as necessary.

services are essential to CHSSI's ability to sustain its operations and maintain sales and service activities during the pendency of its chapter 11 case. An interruption of such utility service would severely disrupt CHSSI's business operations.

9. CHSSI pays the Utility Companies directly, after receiving an invoice for the prior month's service.

RELIEF REQUESTED

A. Summary of Relief

10. By this Utilities Motion, CHSSI seeks entry of an Order prohibiting the Utility Companies from altering, refusing or discontinuing services, and determining that a one month services cash deposit with the Utility Companies constitutes adequate assurance to the Utility Companies of payment for future services as required under section 366 of the Bankruptcy Code.

B. Bases for Relief

11. In the normal conduct of its business, CHSSI uses electric, water/sewage, energy, telephone, internet, satellite and other services provided by the various Utility Companies. All or substantially all of CHSSI's Utility Companies are listed above. An interruption of utility service would severely disrupt CHSSI's business operations.

12. Prior to the Petition Date, CHSSI endeavored to pay for its utility services in a timely fashion and is current in utility payments as of this date, except for those payments that would have been made in the ordinary course of CHSSI's business but for the filing of these chapter 11 cases.

13. Pursuant to section 366(b) of the Bankruptcy Code, a utility may alter, refuse or discontinue service to a debtor only if, within 20 days after the filing of a petition commencing a case under chapter 11 of the Bankruptcy Code, such utility has not been provided with adequate

assurance of payment for services provided post-petition. Further, pursuant to section 366(c) of the Bankruptcy Code, as added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, in a chapter 11 case a utility may alter, refuse or discontinue service to a debtor only if, within 30 days after the filing of a petition commencing a case under chapter 11 of the Bankruptcy Code, such utility has not received from the debtor adequate assurance of payment for utility service that is satisfactory to the utility.

14. CHSSI is concerned that the Utility Companies may terminate, alter or refuse to provide service, or may demand an unreasonably large deposit in order to continue providing service. Section 366(c)(3) of the Bankruptcy Code allows a court, after notice and a hearing, to order the modification of the amount of adequate assurance of payment under section 366(c)(1)(2). 11 U.S.C. §366(c)(3)(A). Accordingly, by this motion, CHSSI respectfully requests the entry of an order (a) prohibiting the Utility Companies from discontinuing, altering or refusing service to CHSSI, and (b) determining adequate assurances of payment for future services under section 366 of the Bankruptcy Code.

15. For the purpose of section 366(c) of the Bankruptcy Code, “assurance of payment” is defined to mean one of the following:

- i. a cash deposit;
- ii. a letter of credit;
- iii. a certificate of deposit;
- iv. a surety bond;
- v. a prepayment of utility consumption; or
- vi. another form of security that is mutually agreed on between the utility and the debtor or trustee.

11 U.S.C. §366(c)(1)(A). CHSSI proposes to provide the following adequate assurance of payment to the Utility Companies: Debtor proposes to provide the Utility Companies with a one month services cash deposit as each Utility Company's adequate assurance of payment without further deposit made by CHSSI. To the extent any of the Utility Companies currently holds a deposit, CHSSI requests that such deposit be deemed adequate assurance of payment without further deposit to be made by CHSSI.

16. To the extent any of the Utility Companies seeks other or additional assurances, CHSSI respectfully requests that this Court enter an Order pursuant to section 366(c)(3) of the Bankruptcy Code establishing procedures for determining requests for adequate assurance of future payment. CHSSI will serve the Order, within five business days of its entry, on all of the Utility Companies. If any of the Utility Companies objects to the Order and seeks additional assurances within 20 days of the date that the Order is entered, and CHSSI believes that the assurances requested are unreasonable, CHSSI shall schedule a prompt hearing to determine adequate assurance as to the objecting Utility Company (the "Determination Hearing"). Pending resolution of any such Determination Hearing, any objecting Utility Company shall be restrained from discontinuing, altering or refusing service to CHSSI on account of unpaid charges for pre-petition services. If a Utility Company does not object to an Order approving the Utilities Motion, does not request additional assurances as provided herein, and does not seek a Determination Hearing, then the proposed form of assurance of payment shall be deemed to satisfy the requirements of section 366(b) and (c) of the Bankruptcy Code.

17. CHSSI believes the granting of the relief requested will not prejudice the rights of Utility Companies under section 366 of the Bankruptcy Code.

NOTICE

18. Notice of this Motion has been made in compliance with Local Rule B-9013-3(d).

19. CHSSI will provide, on the date this motion is filed, copies of this Utilities Motion and notice of the hearing on this and other first day motions by fax, e-mail or hand delivery to the following:

- i. The Office of the United States Trustee for the Southern District of Indiana;
- ii. CHSSI's 20 largest unsecured creditors (to the extent practicable);
- iii. All secured creditors;
- iv. The relevant and affected Utilities Companies;
- v. Any indenture trustees; and,
- vi. Any party who has filed an appearance and served same on CHSSI prior to service of this Utilities Motion.

COORDINATION WITH THE UNITED STATES TRUSTEE

20. Prior to the filing of the Utilities Motion, CHSSI's counsel conferred with United States Trustee concerning the intent of this Utilities Motion.

NO PRIOR REQUESTS

21. No prior request for the relief requested herein has been made to this Court in this chapter 11 case.

WHEREFORE, Complete Hydraulic Service & Sales, Inc., by counsel, respectfully request entry of an Order (i) prohibiting Utility Companies from altering, refusing or

discontinuing services, (ii) determining adequate assurance of payment for future services, and (iii) granting such other and further relief as the Court deems necessary and proper.

Respectfully submitted,

TUCKER HESTER BAKER & KREBS, LLC

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