

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

In re

ARMSTRONG FLOORING, INC., et al.,

Debtors.¹

Chapter 11

Case No. 22-10426 (___)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO (A) PAY CERTAIN PREPETITION EMPLOYEE
OBLIGATIONS AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS
AND (II) GRANTING RELATED RELIEF**

Armstrong Flooring, Inc. and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**” or “**Armstrong**,”), hereby move (this “**Motion**”) this Court for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively), granting the relief described below. In support of this Motion, the Debtors rely upon and incorporate by reference the contemporaneously filed *Declaration of Michel S. Vermette in Support of Chapter 11 Petitions and First-Day Papers* (the “**First-Day Declaration**”),² and further represent as follows:

RELIEF REQUESTED

1. A critical objective of the first-day relief sought by the Debtors in this Motion is to ensure that the Employees are provided for, which protects the value of the Debtors' business for

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Armstrong Flooring, Inc. (3305); AFI Licensing LLC (3265); Armstrong Flooring Latin America, Inc. (2943); and Armstrong Flooring Canada Ltd. (N/A). The address of the Debtors’ corporate headquarters is PO Box 10068, 1770 Hempstead Road, Lancaster, PA 17065.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First-Day Declaration.

the benefit of all stakeholders. The Employees perform a wide variety of critical services for the Debtors. Moreover, the vast majority of the Employees rely exclusively on their compensation and benefits from the Debtors to pay their daily living expenses and support their families. Absent an order granting the requested relief, many of the Employees may, by necessity, seek other employment alternatives. Replacing the Employees would require significant time and expense, causing severe disruption and harm to the Debtors' operations and the sale process, and would be particularly challenging given these Chapter 11 Cases. Accordingly, to ensure the uninterrupted operation of the Debtors' businesses, enable compliance with local laws outside of the United States, prevent undue harm to the Employees and maximize the value of the Debtors' estates, it is critical that the Debtors be authorized to pay the Prepetition Employee Obligations (defined below) and to continue to pay and provide their Employee Compensation and Benefits (defined below) as described herein in the ordinary course postpetition.

2. By this Motion, the Debtors request entry of the Interim Order and the Final Order under sections 105(a), 363(b), 507(a), 1107(a), and 1108 of title 11 of the United States Code (the "**Bankruptcy Code**") authorizing, but not directing, the Debtors, to: (a) pay and/or perform, as applicable, prepetition obligations to current employees (collectively, the "**Employees**"), including accrued prepetition wages, salaries, other cash, and non-cash compensation claims, except as otherwise set forth herein (collectively, the "**Employee Claims**"), and pay obligations to or on account of temporary employees and independent contractors (collectively, the "**Independent Contractor/Temporary Employee Claims**"); (b) honor and continue in the ordinary course of business, until further notice, and pay (but not assume) the prepetition amounts associated with the Debtors' vacation and holiday-time policies, accrued but unpaid bonuses, employee benefit plans and programs, savings and retirement plans, worker's compensation plans

and programs, and severance agreements, the most significant of which are described below, and to pay all fees and costs in connection therewith, except as otherwise set forth herein (collectively, the “**Employee Benefit Obligations**”); (c) reimburse Employees for prepetition Reimbursable Expenses (as defined below) consisting of out-of-pocket expenses incurred in the ordinary course of business and pay business expenses charged to Corporate Credit Cards and P-Cards (as defined below) (the “**Employee Expense Obligations**”); and (d) pay over to the appropriate parties all prepetition withholdings from Employees and payroll-related taxes associated with the Employee Claims and the Employee Benefit Obligations (the “**Withholding Obligations**” and, together with the Employee Claims, the Independent Contractor/Temporary Employee Claims, the Employee Benefit Obligations, and the Employee Expense Obligations, the “**Prepetition Employee Obligations**”).

3. The following chart sets forth the approximate amounts outstanding for the Prepetition Employee Obligations.

Category	Prepetition Outstanding Amount
Employee Wages	\$1.76 million
Independent Contractor/Temporary Employee Wages	\$207,601
Payroll Processing Fees	\$115,417
North American Sales Commission Plans	\$1.17 million
North American Corporate Bonus Plans	\$1.18 million
Exceptional Performance Bonus Plan	\$83,932
Long-Term Bonus Plan	\$193,491
U.S. Medical Plans & Prescription Drug Benefits	\$325,000
U.S. Dental Plan	\$12,000
U.S. Life & AD&D Insurance	\$220,423
U.S. Short- and Long-Term Disability	\$13,530
Canadian Employee Benefit Plans	\$1,564
Employee Assistance Program	\$1,234

401(k) Matching Contributions	\$32,224
Reimbursable Expenses	\$5,389
Total	\$5.3 million

4. Following entry of the requested Interim Order and prior to the entry of the Final Order (the “**Interim Period**”), none of the Debtors’ Employees will receive payments in excess of the amount entitled to priority under Bankruptcy Code section 507(a)(4) or 507(a)(5), as applicable.

5. In addition, the Debtors request that the Interim Order and the Final Order authorize, but not direct, the Debtors to continue their ordinary-course Employee compensation, benefits and related programs described in this Motion after the Petition Date (together, the “**Employee Compensation and Benefits**”), as such were in effect as of the commencement of these Chapter 11 Cases and as may be modified or supplemented from time to time in the ordinary course of business.

6. Finally, the Debtors request entry of the Interim Order and the Final Order (a) authorizing all applicable banks and other financial institutions (collectively, the “**Banks**”), when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers, on account of the Prepetition Employee Obligations, whether such checks or other requests were submitted before, on, or after the Petition Date; (b) authorizing the Banks to rely on the representations of the Debtors as to which checks are subject to this Motion, *provided* that any such Bank shall not have any liability to any party for relying on such direction and representations by the Debtors; (c) providing that the Banks shall, at the direction of the Debtors, receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Prepetition Employee Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on

deposit in the applicable accounts to cover such payments and that any such Bank shall not have any liability to any party for relying on such direction by the Debtors; and (d) authorizing the Debtors to issue new postpetition checks or effect new postpetition fund transfers to replace any checks, drafts and other forms of payment which may be inadvertently dishonored or rejected.

7. Nothing in the proposed Interim Order or Final Order authorizes the Debtors to make any payment or incur any obligation or liability that would violate section 503(c) of the Bankruptcy Code.

JURISDICTION AND VENUE

8. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

9. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 507(a), 1107(a), and 1108, Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Bankruptcy Rules**”).

10. Pursuant to Local Bankruptcy Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

I. The Chapter 11 Cases

11. On the date hereof (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

12. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

13. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed a creditors’ committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

14. Armstrong (together with its non-Debtor affiliates, the “**Company**”) is a leading global producer of resilient flooring products used primarily in the construction and renovation of commercial, residential, and institutional buildings. The Company designs, manufactures, sources, and sells flooring products primarily in North America and the Pacific Rim. The Company’s business operations, corporate and capital structure, and restructuring efforts are described in greater detail in the First-Day Declaration.

II. The Debtors’ Workforce

15. As of the Petition date, the Debtors employ approximately 1,216 Employees.³ The Debtors’ Employees are located in the United States and Canada, with approximately 1,212 in the United States (the “**U.S. Employees**”) and four in Canada (the “**Canadian Employees**” or the “**Non-U.S. Employees**”). Approximately 1,212 of the Debtors’ Employees work full-time, and the

³ The Debtors and their non-debtor affiliates employ approximately 1,707 employees worldwide as of the Petition Date; however, this Motion does not address individuals employed by non-Debtor entities.

remaining Employees work part-time. Approximately 277 of the Debtors' Employees are represented (the "**Represented Employees**") by various unions (the "**Unions**"); all of the Represented Employees are in manufacturing roles.

16. The Debtors relationships with the Unions are reflected in three collective bargaining agreements ("**CBAs**"). The CBAs cover the Debtors' Represented U.S. Employees: one with United Steelworkers, covering Represented Employees at the Debtors' Jackson, Mississippi plant; one with the International Association of Machinists and Aerospace Workers, covering certain of the Represented Employees at the Debtors' Lancaster, Pennsylvania plant; and one with United Steelworkers, covering the other Represented Employees at the Debtors' Lancaster, Pennsylvania plant.

17. To supplement its workforce, certain of the Debtors utilize individuals who provide a range of services to the Debtors on a contractual basis, some of whom are paid through integrated networks that the Debtors draw from in certain markets to reduce costs while supplementing critical parts of their operations (the "**Independent Contractors**"). The Debtors utilize approximately 265 full- and part-time Independent Contractors, and approximately 18 temporary employees (the "**Temporary Employees**").

III. The Debtors' Employee Compensation

A. Wages, Salaries, and Bonus Plans

(i) Wages and Salaries

18. Approximately 496 of the Debtors' Employees are salaried or salaried nonexempt⁴, while approximately 720 are paid on an hourly basis. Salaried U.S. Employees are paid biweekly, one week in arrears. Hourly U.S. Employees are paid on a weekly basis, one week in arrears.

⁴ Salaried, nonexempt Employees are paid on an hourly basis.

Salaried Canadian Employees are paid current (i.e., not in arrears) in biweekly payments. The average monthly payroll for the Debtors' Employees is approximately \$9.24 million including Employee Payroll Taxes (as defined below).

19. The U.S. Debtors use Ultimate Kronos Group ("**UKG**") to process payroll for U.S. Employees; the Canadian Debtor uses Nethris ("**Nethris**" and, together with UKG, the "**Payroll Processors**") to process payroll for Canadian Employees. The payroll processing services are crucial to the smooth functioning of the Debtors' payroll system because they ensure that (a) the Employees are paid on time, (b) source deductions are appropriately determined, (c) payroll reporting is accurate, and (d) appropriate amounts are remitted to taxing authorities and other payees. As of the Petition Date, the Debtors estimate they owe approximately \$115,417 to the Payroll Processors on account of payroll services (the "**Payroll Processing Fees**").

20. The Debtors estimate that as of the Petition Date, approximately \$1.76 million is accrued and owed in the aggregate on account of Employee wage claims and approximately \$207,601 for Independent Contractor/Temporary Employee wage claims. The Debtors request authorization, but not direction, to pay the Employee Claims and the Independent Contractor/Temporary Employee Claims up to the \$15,150 priority cap provided for under Bankruptcy Code section 507(a)(4) (the "**Priority Cap**"),⁵ pursuant to the Interim Order, and, pursuant to the Final Order, to pay such claims in the ordinary course of business, including any amounts that were not paid under the Interim Order on account of the Priority Cap.

21. Periodically, the states in which the Debtors have Employees are permitted to adjust their unemployment tax rates and, in doing so, additional, unforeseen Employee Payroll Taxes (as

⁵ Specifically, Bankruptcy Code sections 507(a)(4) and (a)(5) grant priority status respectively to "wages, salaries, or commissions" and "contributions to any employee benefit plan," which together are capped at \$15,150. 11 U.S.C. §§ 507(a)(4), (a)(5).

defined below) may be owed by the Debtors. To the extent this occurs, the Debtors seek permission to pay any additional Employee Payroll Taxes (as defined below) owed as a result.

(ii) *Sales Commission Plans*

22. The Debtors maintain various sales commission plans (the “**Sales Commission Plans**”) designed to award non-insider sales Employees for achieving certain sales quotas. None of the Employees participating in the Sales Commission Plans are involved in the management of the Debtors’ business. The objective of the Sales Commission Plans is to communicate the Company’s selling strategies and direct sales Employees toward selling activities that result in increased Company financial performance. Accordingly, the Sales Commission Plans provide substantial value to the Debtors’ estates by aligning the compensation of sales Employees with the Debtors’ most important business performance goals, and thereby encouraging the most successful sales Employees to remain with the Debtors.

23. In the United States and Canada, the Debtors provide Sales Commission Plans to all sales Employees (the “**North American Sales Commission Plans**”). Newly hired sales Employees become eligible for participation in a North American Sales Commission Plan beginning the first full month following their employment or date of hire. Employees who transfer from positions eligible for the North American Corporate Bonus Plan (as defined below) to a position eligible for a North American Sales Commission Plan become eligible to participate in a North American Sales Commission Plan upon assignment to an eligible sales role. Participants in a North American Sales Commission Plan are ineligible to participate in a North American Corporate Bonus Plan and vice versa.

24. The Company assigns a North American Sales Commission Plan to each sales Employee based on the sales Employee’s role. There is both a performance- and time-based component (contributing 50% each to target payouts) to the North American Sales Commission

Plan. Payment of the performance-based component is calculated based on the sales Employee's performance over a period of time (each, a "**Commission Period**"). The metrics used to calculate a sales Employee's performance varies by the sales Employee's title and role, and the specific goals and objectives for each metric are set by the Employee's manager at the beginning of each Commission Period; sales Employee performance is measured at the end of each Commission Period.

25. Once an Employee's performance, as it relates to the metrics set by the Employee's manager, is determined, the commission payment, where earned, is calculated as a percentage of each participant's eligible earnings⁶ as of February 15, 2022, with payouts occurring in July/August 2022, October/November 2022, and early 2023. Subject to certain exceptions,⁷ an Employee must be an active Employee on the payment date to receive a payout.

26. The other fifty percent of the target payout under the Sales Commission Plans is time-based, with payments occurring as follows: 50% on June 30, 2022; 25% on September 30, 2022; and 25% on December 31, 2022. As with the performance-based payouts, subject to certain exceptions, an Employee must be an active Employee on the payment date in order to receive a payout.

27. Aggregate commission payments under the North American Sales Commission Plans for the year 2021 were approximately \$2.4 million. As of the Petition Date, approximately

⁶ Eligible earnings include regular base salary, lump sum merit payments, and military makeup pay where applicable.

⁷ The Sales Commission Plan provides four specific exceptions: (1) Employees who are on family and medical leave or military leave of absence; (2) Employees who transfer to temporary employment status; (3) Employees who transfer to a subsidiary or affiliate company; and (4) Employees who retire or die, become totally disabled, or are involuntarily terminated for reasons other than deliberate gross misconduct. In these cases, Employees are paid pursuant to the Sales Commission Plan for the portion of the Commission Period during which the Employee was an active participant in the Sales Commission Plan.

\$445,567 is accrued, but not owed, for the time-based component of the North American Sales Commission Plans, all of which will come due on June 30, 2022. It is difficult to approximate amounts that will be owed to sales Employees under the performance-based component of the North American Sales Commission Plans. However, if all participants were to receive their maximum payout, the Debtors estimate that they will pay such participants approximately \$705,442 for the first pay period occurring in July/August 2022.

28. Payments made under the Sales Commission Plans are an integral part of the aggregate compensation package for sales Employees and thereby critical to maintaining the morale and productivity of the Debtors' sales force and to maximizing the value of the Debtors' estates. The Sales Commission Plans are designed such that sales Employees meeting their sales targets receive a total cash compensation (salary *plus* commission payment) that is competitive with prevailing market rates. Accordingly, to the extent that the Debtors cannot pay commission pursuant to the Sales Commission Plans, the sales Employees may receive below market compensation, negatively impacting the Debtors' ability to retain the sales Employees necessary to operate their businesses. Retaining the Debtors' sales Employees is particularly important given that, leading up to these Chapter 11 Cases, the Debtors experienced the most attrition (by number) amongst their salesforce.

29. The Debtors, therefore, request authority to continue the Sales Commission Plans in the ordinary course of business. More specifically, under the proposed Interim Order, the Debtors request authority to continue administering the Sales Commission Plans in the ordinary course of business, but not, for the avoidance of doubt, to make payments thereunder, none of which would, in any event, come due in the ordinary course during the interim period. Under the proposed Final Order, the Debtors seek authority, at their discretion, to pay all amounts due under

the Sales Commission Plans to the applicable sales Employees, in the ordinary course of business, irrespective of whether such amounts (a) relate to the prepetition period and/or (b) exceed the Priority Cap.

(iii) Corporate Bonus Plans

30. In the United States and Canada, certain non-insider, salaried Employees⁸ who do not participate in a North American Sales Commission Plan or other bonus plan are eligible to participate in an annual bonus plan (the “**North American Corporate Bonus Plan**”). None of the Employees participating in the Corporate Bonus Plans are involved in the management of the Debtors’ business. The North American Corporate Bonus Plan provides a cash reward to eligible Employees when the Employee remains employed by the Debtors through milestone dates.

31. Target payouts under the North American Corporate Bonus Plan range from 10% to 30% of an Employee’s base salary,⁹ depending on the Employee’s job grade: Employees with a job grade of 12 or 13 have a target payout of 10%; Employees with a job grade of 14 have a target payout of 15%; Employees with a job grade of 15 have a target payout of 20%; Employees with a job grade of 16 or 17 have a target payout of 25%; and Employees with a job grade of 18 or 19 have a target payout of 30%.

32. Payouts under the North American Corporate Bonus Plan for Employees grade 12 and above are scheduled as follows: 50% on June 30, 2022; 25% on September 30, 2022; and 25%

⁸ In the ordinary course of business, the Debtors maintain an annual bonus plan for Senior Vice Presidents and other Employees who are designated by the CEO as members of the executive leadership team (including the CEO) (the “**ELT Corporate Bonus Plan**”), and who do not otherwise participate in any Sales Commission Plan or other bonus plan. The Debtors are not seeking to make payments to insiders under the ELT Corporate Bonus Plan pursuant to this Motion.

⁹ Calculations under the Corporate Bonus Plan use the base salary an Employee was earning on February 15, 2022.

on December 30, 2022. Subject to certain exceptions,¹⁰ an Employee must be an active Employee on the payment date in order to receive a payout.

33. As of the Petition Date, approximately \$1.18 million is accrued and unpaid on account of the North American Corporate Bonus Plans, none of which will come due and owing during the Interim Period. The Debtors request authority, but not direction, to continue the Corporate Bonus Plans in the ordinary course of business, and, pursuant to the Final Order, to pay all prepetition amounts accrued and outstanding in the ordinary course of business, irrespective of whether such amounts exceed the Priority Cap.

(iv) Exceptional Performance Bonus Plan

34. Certain non-insider, salaried Employees with an employee grade of 11 or below, and who do not participate in any other bonus plan, are eligible to participate in a time-based annual bonus plan (the “**Exceptional Performance Bonus Plan**”) with a target payout of 1% of the Employee’s base salary. Payouts under the Exceptional Performance Bonus Plan are scheduled for September 30, 2022. To receive a payout under the Exceptional Performance Bonus Plan, an Employee must be employed with the Company on the date of the payout. As of the Petition Date, approximately \$83,932 is accrued and unpaid on account of the Exceptional Performance Bonus Plan, none of which will come due and owing during the Interim Period.

(v) Long-Term Bonus Plan

¹⁰ The Corporate Bonus Plan provides four specific exceptions: (1) Employees who are on family and medical leave or military leave of absence; (2) Employees who die or become totally disabled are eligible for a *pro rata* payout; (3) Employees who retire in 2022 will retain any payouts already made and will be ineligible for any payouts scheduled for after the retirement date; and (4) Employees who are terminated for any reason other than cause will be eligible for a *pro rata* payout.

35. In the United States and Canada, the Debtors provide certain non-insider, full-time salaried Employees with an annual long-term bonus grant (the “**Long-Term Bonus Plan**”, and together with the Sales Commission Plans, the Exceptional Performance Bonus Plan, and the Corporate Bonus Plans, the “**Bonus Plans**”). None of the Employees participating in the Long-Term Bonus Plan are involved in the management of the Debtors’ business. The Long-Term Bonus Plan provides participants with a cash award when they remain employed with the Company or its successors through the milestone dates described below. Target payouts under the Long-Term Bonus Plan range from 15% to 30% of the Employee’s base salary as of February 15, 2022,¹¹ depending on the Employee’s job grade.

36. The long-term bonus grants are in the form of time-based lump-sum cash awards. Payments are scheduled as follows: 33.3% on June 30, 2022; 33.3% on December 30, 2022; and 33.3% on June 30, 2023. Subject to certain exceptions,¹² a recipient must be an active Employee on the payment date in order to receive a payout.

37. As of the Petition Date, approximately \$193,491 is accrued and outstanding on account of the Long-Term Bonus Plan, none of which will come due during the Interim Period. Accordingly, pursuant to the Interim Order, the Debtors request authority, but not direction, to continue the Long-Term Bonus Plan in the ordinary course of business, but not to make payments thereunder. Under the proposed Final Order, the Debtors seek authority to pay all

¹¹ Base salary increases and promotions to a job grade with a higher target do not change the 2022 payout.

¹² The Long-Term Bonus Plan provides four specific exceptions: (1) Employees who are on family and medical leave or military leave of absence; (2) Employees who die or become totally disabled are eligible for a *pro rata* payout; (3) Employees who retire in 2022 will retain any payouts already made and will be ineligible for any payouts scheduled for after the retirement date; and (4) Employees who are terminated for any reason other than cause will be eligible for a *pro rata* payout.

prepetition amounts accrued and outstanding in the ordinary course of business, irrespective of whether such amounts exceed the Priority Cap.¹³

(vi) ***2022 Executive Retention Program and Supplemental Retention Program***

38. In February 2022, the Board approved a Retention Program (the “**2022 Executive Retention Program**”) for certain key employees, including the Company’s named executive officers. The 2022 Executive Retention Program was adopted in an effort to retain key employees while the Debtors explored strategic alternatives. Participants in the 2022 Executive Retention Program received (i) accelerated payment of certain outstanding long-term cash incentive compensation opportunities and (ii) prepayment of 25% of each named executive officer’s target 2022 annual and long-term incentive compensation totaling approximately \$3.4 million.

39. Such amounts are generally required to be repaid by the participant if he or she voluntarily resigns employment or is terminated for cause prior to the periodic vesting dates provided for in the individual retention agreements. As provided for in the individual retention agreements, any remaining repayment obligation under the 2022 Executive Retention Program lapses upon the consummation of a sale of the Company.

40. In addition, under the 2022 Executive Retention Program, in lieu of the remainder of each named executive officer’s 2022 annual and long-term incentive opportunities, he or she may earn an incentive bonus equal to 75% of his or her target 2022 annual incentive and 25% of

¹³ In the ordinary course of business, the Debtors maintain an annual Long-Term Bonus Plan for Senior Vice Presidents and other Employees who are designated by the CEO as members of the executive leadership team (including the CEO) (the “**ELT Long-Term Bonus Plan**”). The Debtors are not seeking to make payments to insiders under the ELT Long-Term Bonus Plan pursuant to this Motion.

his or her 2022 target long-term incentive award upon a consummation of a sale of the Company, and, in the case of the portion of the bonus replacing his or her annual incentive opportunity, subject to the achievement of certain performance metrics established by the Company's compensation committee.

41. In April 2022, the Board approved a supplemental retention program (the "**Supplemental Retention Program**") for certain key employees, including the Company's named executive officers. The Supplemental Retention Program, like the 2022 Executive Retention Program, was adopted in an effort to retain key employees while the Debtors explored strategic alternatives. Participants in the Supplemental Retention Program received a payment on May 5, 2022, conditioned on the participant's continued employment through September 30, 2022. Total payments under the Supplemental Retention Program totaled approximately \$1.4 million.

42. The Debtors are not seeking authority to continue, or to make payments on account of, the 2022 Executive Retention Program or Supplemental Retention Program.

B. Vacation, Holiday, and Sick Time

43. The Debtors offer their Employees other forms of compensation, including vacation time and paid holidays. This form of compensation is usual, customary, and necessary if the Debtors are to retain qualified employees during the reorganization process.

44. The manner in which vacation time ("**Vacation Time**") accrues varies from Debtor to Debtor. In the U.S. and Canada, the manner in which Vacation Time accrues is based on the Employee's tenure. All eligible U.S. Employees and Canadian Employees receive between 10 and 25 days of Vacation Time per calendar year (with the exception of Employees in their first year of employment with the Debtors, who receive a prorated amount of Vacation Time based

upon their hire date).¹⁴ U.S. Employees in their first year of employment with the Company may, with manager approval, purchase up to 10 days of Vacation Time in full-day increments, with the price of purchased Vacation Time determined using the Employee's base pay as of the date of their hire.

45. Salaried U.S. Employees forfeit all unused Vacation Time at the end of each year.¹⁵ However, accrued but unused Vacation Time has historically and voluntarily¹⁶ been paid out upon termination for salaried U.S. Employees. Accrued but unused Vacation Time for Represented hourly U.S. Employees is paid out at year end. Non-Represented hourly U.S. Employees forfeit all unused Vacation Time at the end of each year. Specifically, Represented and non-Represented hourly U.S. Employees who continue in active employment may receive pay in lieu of Vacation Time for no more than two weeks of their earned Vacation Time.

46. In addition, accrued but unused Vacation Time is paid out upon termination for Represented U.S. Employees. Pursuant to the terms of the CBAs, Represented U.S. Employees who are terminated or leave the Company for specified reasons receive a payment for Vacation Time, calculated by dividing the number of days of Company service during the year by 365 and multiplying the result by the amount of full vacation the Represented U.S. Employee would have received had the year of employment been completed. Non-Represented U.S. Employees who are terminated have historically, in the Company's sole discretion (except as otherwise required by

¹⁴ Represented Employees receive between 10 and 30 days of Vacation Time per calendar year.

¹⁵ Canada's labor laws and California state law supersede the Debtors' policy and allow Employees to carry over additional Vacation Time to the following calendar year. However, the Debtors highly encourage their California Employees and Canadian Employees to use all of their Vacation Time in the year in which it is earned.

¹⁶ Except as otherwise required by state law.

state law), received a lump sum payment equal to all earned but unused vacation days through the date of termination.

47. Because Employees regularly accrue and use Vacation Time, it is difficult to quantify the cost of accrued Vacation Time as of the Petition Date. As of the Petition Date, the average amount of unused Vacation Time for U.S. Employees is ten days, and the Debtors estimate that the U.S. Employees have accrued an aggregate of approximately \$1.6 million worth of Vacation Time. At this time, the Debtors seek authority to pay prepetition obligations related to Vacation Time only to Represented Employees and to Employees in states where state law requires payment of unused Vacation Time.

48. The Debtors also provide Holiday time (“**Holiday Time**”, and together with the Vacation Time, the “**PTO**”) in accordance with an approved holiday schedule. Depending on the Debtor, Employees are given between 11 and 15 days of Holiday Time. The Debtors do not provide “sick days” or other forms of PTO not otherwise set forth herein to the U.S. Employees or the Canadian Employees.

49. By this Motion, the Debtors seek authority to honor the prepetition PTO liabilities, except as otherwise indicated herein. The Debtors anticipate that their Employees will use their PTO in the ordinary course of business without resulting in any material cash flow requirements beyond the Debtors’ normal payroll obligations. PTO remains subject to ordinary-course restrictions.

IV. Employee Benefit Plans

50. The Debtors provide benefit packages to eligible Employees, including medical and prescription plans, dental plans, vision plans, life insurance plans and more, which are described in more detail below.

A. U.S. Medical Plans

51. The Debtors provide eligible U.S. Employees with medical benefits pursuant to two different medical plans through Highmark Inc. (“**Highmark**”). Eligible U.S. Employees have the option to choose between the Preferred Provider Organization (“**PPO**”) or the High Deductible Health Plan (“**HDHP**”) with a Health Savings Account (“**HSA**”). The PPO and HDHP are similar in the types of services they cover, but vary in terms of cost and provider access (collectively, the “**U.S. Medical Plans**”). Prescription drug benefits are provided by CVS Caremark, and the average monthly cost to the Debtors of the prescription drug benefits is approximately \$258,894.

52. As of the Petition Date, there are approximately 1,100 active U.S. Employees participating in the U.S. Medical Plans. The U.S. Medical Plans are funded through Employee contributions by participating Employees and by the Debtors. On average, approximately 21% to 82% of the cost of the U.S. Medical Plans is borne by the Debtors, depending largely on the type of plan, as well as whether the Employee is a Represented Employee. Employees contribute to the U.S. Medical Plans through payroll deductions to pay for the balance. Total annualized spend related to the U.S. Medical Plans (including prescription drug benefits), based on the Debtors’ most current enrollment data, is approximately \$14 million.

53. As of the Petition Date, the Debtors estimate that approximately \$250,000 is currently owed under the U.S. Medical Plans and approximately \$75,000 is owed to CVS Caremark for prescription drug benefits. The Debtors request authority to make all payments and remittances for amounts attributable to the prepetition period and related to the U.S. Medical Plan, including administrative fees, in the ordinary course of business and in their sole discretion.

B. U.S. Dental Plan

54. The Debtors also offer their eligible U.S. Employees dental benefits pursuant to a dental plan (the “**U.S. Dental Plan**”) through Delta Dental. As of the Petition Date, there are approximately 1,124 active U.S. Employees participating in the U.S. Dental Plan.

55. The U.S. Dental Plan is funded through contributions by participating Employees and by the Debtors. Approximately 50% of the cost of the U.S. Dental Plan is borne by the Debtors, and the remainder is paid through Employee contributions.

56. Total annualized spend related to the U.S. Dental Plan, based on the Debtors’ most current enrollment data, is approximately \$672,000. As of the Petition Date, the Debtors estimate that approximately \$12,000 is currently owed under the U.S. Dental Plan. The Debtors seek authority to make all payments or remittances for amounts attributable to the prepetition period and relating to the U.S. Dental Plan, including administrative fees, in the ordinary course of business and in their sole discretion.

C. U.S. Vision Plan

57. The Debtors also offer their eligible U.S. Employees vision benefits pursuant to a vision plan (the “**U.S. Vision Plan**”) through VSP Vision Care. As of the Petition Date, there are approximately 979 U.S. Employees enrolled in the U.S. Vision Plan.

58. The U.S. Vision Plan is funded through contributions by participating Employees; the Employees participating in the U.S. Vision Plan pay 100% of the U.S. Vision Plan premium via payroll deductions. As of the Petition Date, the Debtors do not believe they owe any amounts in connection with the U.S. Vision Plan.

D. U.S. Life and AD&D Insurance

59. The Debtors provide eligible U.S. Employees with life insurance in the amount of one times the Employee’s base annual earnings rounded to the next highest \$1,000, and capped at

\$500,000 (the “**Company-Paid Life Insurance**”). In addition, the Debtors give U.S. Employees the option of purchasing life insurance coverage in the amount of one to eight times the Employee’s base annual earnings, capped at \$750,000 (the “**Employee-Paid Life Insurance**”), and purchasing life insurance coverage for their spouse and/or dependents (“**Spouse & Dependent Life Insurance**,” and together with the Company-Paid Life Insurance, the “**Life Insurance Plans**”).

60. The Debtors also provide accidental death and dismemberment insurance at no cost to eligible U.S. Employees in the amount of \$35,000, which pays the entire benefit in the case of loss of life, or a portion of the benefit for other covered losses (“**AD&D Insurance**”, and together with the Life Insurance Plans, the “**U.S. Life & AD&D Insurance**”), administered by Securian Financial. The Debtors pay approximately \$220,423 per month in premiums on account of the Life & AD&D Insurance, including Retiree Life (defined below). As of the Petition Date, the Debtors estimate that approximately \$220,423 in prepetition amounts is currently owed on account of the Life & AD&D Insurance. The Debtors seek authority to make all payments or remittances for amounts attributable to the prepetition period and relating to the Life & AD&D Insurance, including administrative fees, and to continue the program in the ordinary course of business and in their sole discretion.

E. U.S. Short-Term & Long-Term Disability Benefits

61. The Debtors provide eligible U.S. Employees with short-term and long-term disability, administered by Lincoln Financial Group. The Debtors currently provide approximately 1,264 U.S. Employees with short-term disability (“**U.S. Short-Term Disability**”). Such coverage provides salaried Employees with 100% full salary continuation for the first three months of disability, and 70% of the Employee’s base salary for the remainder of the Employee’s disability, with a maximum benefit duration of six months. Hourly Employees, by contrast, receive a weekly benefit equal to 60% of the Employee’s base earnings divided by 52, payable for up to six months.

62. The Debtors also automatically provide approximately 1,264 U.S. Employees with long-term disability insurance coverage (“**Company-Paid Long-Term Disability**”). For non-Represented, non-executive Employees, the Company-Paid Long-Term Disability benefits consist of monthly payments equal to 50% of the Employee’s salary prior to the disability, up to \$2,000, beginning after 182 days of continuous disability.¹⁷ While eligible Employees are automatically provided with Long-Term Disability coverage by the Debtors, approximately 431 Employees have elected to enroll in an Employee-paid option (the “**Employee-Paid Long-Term Disability**”, and together with the Company-Paid Long-Term Disability, the “**U.S. Long-Term Disability**”). The Employee-Paid Long-Term Disability coverage consists of monthly payments of 60% of the Employee’s salary prior to the disability, up to \$10,000, beginning after 182 days of continuous disability. The Employee-Paid Long-Term Disability is subsidized by the Debtors, but the cost is borne primarily by the participating Employees.

63. As of the Petition Date, the Debtors estimate that \$13,530 is currently owed on account of the Short-Term and Long-Term Disability. The Debtors seek authority to make all payments or remittances for amounts attributable to the prepetition period and relating to the Short-Term and Long-Term Disability, including administrative fees, in the ordinary course of business and in their sole discretion.

F. Canadian Employee Benefit Plans

¹⁷ Represented Employees and executives receive U.S. Long-Term Disability that differs from the U.S. Long-Term Disability provided to non-Represented, non-executive U.S. Employees. For Represented Employees, the Company-Paid Long-Term Disability benefits consist of monthly payments equal to 50% of the Represented Employee’s highest annual earnings, up to \$1,000 per month, and the Employee-Paid Long-Term Disability benefits consist of monthly payments equal to 60% of the Represented Employee’s highest annual earnings, up to \$2,000 per month. Executive Employees are provided with Company-Paid Long-Term Disability benefits consisting of monthly payments equal to 60% of earnings, with maximum benefits ranging from \$10,000 to \$35,000 per month.

64. Debtor Armstrong Flooring Canada Ltd. maintains separate dental, vision, life & AD&D, extended health benefit (including drug, hospitalization, accident/sickness, and medical travel) and disability benefit plans for its small number of Canadian Employees (the “**Canadian Employee Benefit Plans**”). The Canadian Employee Benefit Plans are all fully-insured through Medavie Blue Cross. The total cost of the Canadian Employee Benefit Plans is approximately \$1,564 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$1,564 in accrued and unpaid obligations under the Canadian Employee Benefit Plans. By this Motion, the Debtors seek authority, but not direction, to pay any accrued, unpaid obligations incurred under the Canadian Employee Benefit Plans, and to continue the Canadian Employee Benefit Plans on a postpetition basis in the ordinary course of business and consistent with past practices.

65. *Life & AD&D Insurance.* Canadian Employees are provided with life insurance in the amount of one times the Canadian Employee’s base annual earnings rounded to the next highest \$1,000, and capped at \$250,000. In addition, Canadian Employees are given the option of purchasing additional life insurance coverage in \$10,000 increments. The Debtors also provide Canadian Employees with accidental death and dismemberment insurance, which covers participants in the event of accidental death, loss or loss of use of a limb or loss of sight, speech, or hearing, in the amount of one times the Canadian Employee’s base annual earnings rounded to the next highest \$1,000, and capped at \$250,000.

66. *Long-Term Disability Insurance.* Canadian Employees are provided with long-term disability insurance. Where a participant’s total disability persists beyond the 182 day elimination period, the participant may become eligible for long-term disability insurance benefits in the amount of 66.67% of the Canadian Employee’s monthly salary, rounded to the

next dollar, and capped at \$10,000. Total disability means that, during the elimination period and the 24 months immediately following the elimination period, the Canadian Employee is unable to perform the regular duties of their own occupation; and, subsequently, the Canadian Employee is unable to perform the regular duties of any occupation for which they are reasonably qualified.

67. *Extended Health Benefits – Drug Insurance.* Canadian Employees are provided with prescription drug insurance designed to cover drug expenses incurred by the participating employees or their dependent(s) as a result of illness, pregnancy or accident.

68. *Extended Health Benefits – Accident/Sickness.* Canadian Employees are provided with accident/sickness coverage, which covers eligible expenses incurred by the participant or their dependent(s) as a result of an illness, pregnancy or accident. This can include expenses incurred in connection with hospitalization, the purchase of medical supplies and services, dental care following an accident, and more. Following a participant's death, the participant's dependents continue to be insured without cost for a period of time—generally, 12 months or the date they cease to be eligible dependents, whichever is earlier.

69. *Extended Health Benefits – Travel Coverage.* Canadian Employees are provided with travel coverage for emergency expenses occurring when the participant and the participant's dependents are travelling outside of their province of residence. The travel coverage has three components: (i) hospital and medical travel, (ii) trip cancellation and interruption, and (iii) baggage. Under the first component, participants are reimbursed for all usual, customary and reasonable expenses incurred following an emergency situation resulting from an accident or a sudden or unexpected illness, up to a maximum amount payable of \$2 million per event, per participant. Under the second component, participants are reimbursed for expenses incurred

when a participant must cancel their departure, interrupt or extent their trip after it has begun, for certain defined reasons, subject to a maximum of \$5,000 per trip, per participant. Under the third component, participants are reimbursed for the loss of or damage to their baggage during a trip outside their province of residence, subject to a maximum of \$500 per trip, per participant.

70. *Dental Care Coverage.* Canadian Employees are provided with dental care insurance coverage that provides benefits for preventative services, basic services, and restorative services for covered Canadian Employees and their respective eligible dependents.

G. Additional Employee Benefits

71. *FSA.* The Debtors offer eligible U.S. Employees the opportunity to use tax-advantaged flexible spending accounts (“**FSA**”) to use pre-tax dollars toward the payment of medical, dental, vision, and dependent care expenses, administered by ConnectYourCare (“**CYC**”). Prior to the beginning of each calendar year, each FSA participant commits a set amount of funds to the FSA, and the Debtors collect and withhold a prorated amount each payroll period. Participating Employees submit claims to CYC, and CYC reimburses the participating Employees for the claimed amount. CYC then seeks reimbursement from the Debtors, who pay CYC from withheld Employee funds.

72. The Debtors pay about \$400 per month in administrative fees to a third-party administrator for FSA administration. The Debtors do not make any contributions to the FSAs. The Debtors, therefore, believe the FSA amounts are held in trust by the Debtors and are not property of their estates. The Debtors seek authority, but not direction, to continue the FSA program in the ordinary course of business.

73. *HSA.* The Debtors provide U.S. Employees who elect the HDHP the opportunity to contribute to use tax-advantaged health savings accounts (“**HSA**”). Approximately 315 Employees maintain HSAs. The Debtors’ current HSA vendor is Fidelity Investments. The HSA

allows Employees to use pre-tax dollars towards expenses that the HDHP does not cover, including services that apply toward the Employee's deductible and any coinsurance. The Debtors contribute \$500 for employee-only coverage and \$1,000 for all other coverage levels to the HSAs annually. Unlike the FSAs, dollars in each Employee's HSA accounts can be rolled over year-after-year and are not forfeited at year's end. The Debtors seek authority, but not direction, to continue the HSA program in the ordinary course of business.

74. *EAP.* The Debtors also provide an Employee Assistance Program ("**EAP**") through Carebridge, a confidential program that provides Employees with support in personal and family problems common in contemporary life. Under the EAP, Employees, their spouses, and their dependents are provided with face-to-face or telephonic consultations with a professional behavioral health clinician, and services under the EAP are available 24 hours a day, 365 days a year. The EAP costs the Debtors approximately \$15,000 per year. As of the Petition Date, approximately \$1,234 is outstanding on account of claims under the EAP, and the Debtors are seeking authority to pay outstanding fees and continue the EAP in the ordinary course of business.

75. *Tuition Assistance Program.* The Debtors offer tuition reimbursement for certain eligible Employees (the "**Tuition Assistance Program**", together with the HSA, FSA, and EAP, the "**Additional Employee Benefits**"). Under the Tuition Assistance Program, the Debtors reimburse participating Employees 50% of their tuition fees and textbooks once the participating Employee has successfully completed the course and received a grade of "B" or better (or a "Pass," where applicable). None of the Debtors' Employees are currently enrolled in the Tuition Assistance Program. As such, as of the Petition Date, no amounts were accrued and owing on account of the Tuition Assistance Program. By this Motion, the Debtors seek authority, but not

direction, to continue the Tuition Assistance Program in the ordinary course of business and in their sole discretion and pay any amounts due thereunder.

H. Union Deductions

76. As noted above, the Debtors have approximately 338 Represented Employees. Pursuant to the CBAs, the Debtors deduct Union dues and assessments (the “**Union Deductions**”) from the pay of each Represented Employee who voluntarily authorizes the Company to do so, and remits the Union Deductions to the applicable Union. All Union Deductions are immediately remitted to the applicable Union; thus, as of the Petition Date, there were no unremitted Union Deductions. The Union Deductions are properly deemed to be held in trust for the Unions and, therefore, do not constitute property of the Debtors’ estates. Out of an abundance of caution, the Debtors seek authority, but not direction, to pay Union Deductions to the applicable Unions in the ordinary course of business.

I. Employee Retirement Programs

(i) 401(k) Savings Plan

77. The Debtors maintain a 401(k) plan for eligible U.S. Employees administered by Fidelity Investments (the “**401(k) Plan**”).¹⁸ Eligible U.S. Employees may contribute pre-tax, Roth, or post-tax compensation, consistent with IRS regulations, for investment in the 401(k) Plan.

¹⁸ The Debtors have historically offered a nonqualified deferred compensation plan (“**NQDCP**”) to a select group of management or highly-compensated employees, established to provide benefits similar to the 401(k) Plan as it applies to Employees whose compensation is in excess of the Internal Revenue Code compensation limit. Under the NQDCP, a participant may elect to defer up to 25% of eligible base salary earnings and up to 25% of amounts earned under an annual bonus plan. Participants receive a Company match identical to the 401(k) Plan Company match, up to a maximum contribution of 8% of eligible earnings. However, pursuant to this Motion, the Debtors do not seek authority to make any payments under the NQDCP, nor continue the NQDCP in the ordinary course.

78. Specifically, U.S. Employees may contribute pre-tax dollars to a 401(k) account, and may also contribute after-tax dollars to a Roth 401(k) account. Subject to applicable IRS contribution limitations, U.S. Employees may contribute a maximum of 40% to the 401(k). Historically, the Debtors matched the first 8% of U.S. Employees contributions to their 401(k) account: 100% on the first 4% and 50% on the next 4% of contributions (the “**U.S. Matching Contributions**”).¹⁹ However, the Company has suspended Matching Contributions for all salaried U.S. Employees. Should the suspension be lifted, the Debtors will seek authority by separate motion to resume transferring Matching Contributions to the 401(k) Plan and honor their obligations under the 401(k) Plan in the ordinary course.

79. Participating U.S. Employees also have the option to contribute from 1% to 10% of their pay on an after-tax basis to a standard account (the “**Nondeductible 401(k) Account**”). The Debtors do not match U.S. Employee contributions to the Nondeductible 401(k) account.

80. There are approximately 1,281 U.S. Employees with account balances in the 401(k) Plan (the “**401(k) Plan Participants**”). As of the Petition Date, the Debtors estimate they owe approximately \$32,224 as Matching Contributions for the prepetition period. The Debtors seek the authority by this Motion to honor their other obligations under the 401(k) Plan in the ordinary course.

(ii) *U.S. Qualified Pension Plan*

81. The Debtors manage two U.S. defined-benefit pension plans, a qualified funded plan and nonqualified unfunded plan. The qualified funded plan, the Retirement Income Plan (the “**U.S. Qualified Pension Plan**”), is a defined-benefit pension plan subject to the provisions of the

¹⁹ For Represented U.S. Employees, the Debtors provide a 50% company match on up to 6% of the Represented Employee’s contributions to their 401(k) account.

Employee Retirement Income Security Act of 1974. There are approximately 315 active Employees enrolled in the U.S. Qualified Pension Plan, not including terminated vested participants.

82. Debtor Armstrong Flooring, Inc. established the U.S. Qualified Pension Plan, effective April 1, 2016, for the benefits of its eligible Employees and the eligible Employees of its affiliates. The U.S. Qualified Pension Plan was adopted in connection with the a corporate transaction pursuant to which Armstrong World Industries, Inc. (“**AWI**”), a public Pennsylvania corporation, spun-off its resilient flooring and wood flooring segments to Debtor Armstrong Flooring, Inc. (the “**Spin-Off**”), as of April 1, 2016 (the “**Effective Date**”). In connection with the Spin-Off, Debtor Armstrong Flooring, Inc. approved the transfer of liabilities and certain assets to the U.S. Qualified Pension Plan from AWI’s pension plan (the “**AWI Pension Plan**”), which assets and liabilities included (but were not limited to) those attributable to employees actively employed by Armstrong Flooring, Inc. or one of its affiliates as of the Effective Date of the Spin-Off, and had an accrued benefit in the AWI Pension Plan immediately prior to the Effective Date. Participants in the U.S. Qualified Pension Plan may retire as early as age 55 provided the participant is vested under the plan. Participants become vested after completing five years of continuous employment having worked at least 1,000 hours in each year.

83. The U.S. Qualified Pension Plan is administered by the Debtors’ Retirement Committee, which determines the appropriateness of the Plan’s investment offerings and monitors investment performance. The U.S. Pension Plan is insured by the Pension Benefit Guaranty Corporation (“**PBGC**”), a wholly-owned United States government corporation established under 29 U.S.C. § 1302 to administer the pension plan termination insurance program created under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301–1461. As of

December 31, 2021, the U.S. Pension Plan was fully-funded, with a surplus of approximately \$23 million.

84. The U.S. Qualified Pension Plan is closed to new participants. Effective December 31, 2017, the U.S. Qualified Pension Plan was amended to freeze benefit accruals for salaried participants. Currently, the U.S. Qualified Pension Plan is frozen as to all Employees except for a small number of Represented Employees (approximately 73 Represented Employees total) working at the Debtors' Jackson, Mississippi and Lancaster, Pennsylvania plants.

(iii) Retirement Benefit Equity Plan

85. The nonqualified unfunded Retirement Benefit Equity Plan (the “**RBEP**” and together with the U.S. Pension Plan, the “**U.S. Pension Plans**”) was established by Armstrong's retirement committee (the “**Retirement Committee**”) effective April 1, 2016 to pay supplemental retirement benefits (in excess of the limits defined under Section 415 and 401(a)(17) of the Internal Revenue Code) to certain Employees of the Company who qualified for benefits under the U.S. Pension Plan. There are only 3 active Employees enrolled in the RBEP.

86. Like the U.S. Pension Plan, the RBEP was established as a successor plan to AWI's Retirement Benefit Equity Plan (“**AWI RBEP**”) in connection with the Spin-Off. Supplemental benefits and distributions elections from the AWI RBEP were carried forward to be effective under the RBEP with respect to employees who were transferred from AWI to Armstrong Flooring, Inc. Like the U.S. Qualified Pension Plan, the RBEP is closed to new participants and, effective December 31, 2017, was amended to freeze benefit accruals for salaried participants.

(iv) OPEB

87. The Debtors provide postemployment benefits to certain retired U.S. Employees, their spouses, and their dependents. Specifically, the Debtors provide medical, prescription drug

and dental benefits (the “**Retiree Health**”) and life insurance benefits (the “**Retiree Life**”, together with the Retiree Health, “**OPEB**”).

88. While Debtors have discontinued Retiree Health for most retiring employees, certain Represented Employees who met certain age and service requirements in 2011 currently remain eligible for Retiree Health upon their retirement.²⁰ Generally, Employees at the Lancaster, Pennsylvania plant who are represented by the International Association of Machinists and Aerospace Workers are currently eligible for Retiree Health if they were at least 50 years old and completed at least 10 years of service as of November 4, 2011. Similarly, Employees at the Jackson, Mississippi and Lancaster, Pennsylvania plants who are represented by the United Steelworkers are currently eligible for Retiree Health if they were at least 50 years old and completed at least 10 years of service as of October 3, 2011. As of March 14, 2022, 18 active Represented Employees remain eligible for Retiree Health.

89. The Retiree Health plan currently allows eligible Employees who are younger than 65 to enroll in a Company sponsored health care plan. The Debtors subsidize the insurance premium for Represented Employees. For eligible Employees who are 65 or older, the Retiree Health Plan currently provides for a company contribution to a health reimbursement account to subsidize the purchase of a Medicare Advantage plan, Medicare Part D plan, or Medicare supplement plan on an exchange.

90. As of January 1, 2021, 1,028 retirees, 563 spouses, and 72 surviving spouses were receiving Retiree Health, and the accumulated postretirement benefit obligation (“**APBO**”)

²⁰ Under the CBAs, Represented Employees who did not meet the age and service requirements and are therefore not eligible for Company-paid Retiree Health will have access to Retiree Health through the Company, but must pay 100% of the average cost for retirees in similar plans. However, the Company may terminate “access” to Retiree Health for such Represented Employees at any time.

attributable to Retiree Health was approximately \$14.9 million. The Debtors generally have discontinued Retiree Life for all active Employees; only certain Represented Employees at the Jackson, Mississippi plant are currently eligible for Retiree Life. However, no Represented Employee who retires on or after May 1, 2022 is eligible for Retiree Life.

91. The Retiree Life plan provides eligible retirees a life insurance benefit between \$1,000 and \$100,000, with most retirees receiving a benefit of \$25,000. As of January 1, 2021, the Debtors provided Retiree Life to 2,043 retirees, and the APBO attributable to Retiree Life was approximately \$39.7 million.

92. The Debtors intend to seek to terminate all OPEB by separate motion in accordance with section 1114 of the Bankruptcy Code. In the interim, the Debtors will continue to make required payments for OPEB in the ordinary course of business.

(v) *Foreign Retirement Programs*

93. Debtor Armstrong Flooring Canada Ltd. sponsors the Retirement Plan for the Employees of Armstrong Flooring Canada Ltd. (the “**Canadian Pension Plan**”). The Canadian Pension Plan is a hybrid plan with a contributory defined contribution component and a non-contributory defined benefit component. Since 2011, the defined benefit component of the Canadian Pension Plan is frozen; participants are not allowed to contribute. There are no active Canadian Employee participants, but approximately 160 former employee and retiree participants. As of December 31, 2020, the defined benefit component of the Canadian Pension Plan was underfunded by approximately \$4 million on a liquidation basis.

94. The defined contribution component of the Canadian Pension Plan operates like the 401(k) Plan and is administered by Sun Life Financial Inc. Under the defined contribution component of the Canadian Pension Plan, Canadian Employees can contribute 1% to 6% of their

earnings to the Canadian Pension Plan. Debtor Armstrong Flooring Canada Ltd. is required to contribute the same amount as the participant's contributions (the "**Canada Matching Contributions**," and together with the U.S. Matching Contributions, the "**Matching Contributions**"). Canadian Employees may also make an additional voluntary contribution equivalent to 1% to 6% of their earnings, but Debtor Armstrong Flooring Canada Ltd. is not required to match those additional contributions. As of June 30, 2021, there were approximately 20 members, 6 of which were active Canadian Employees.

95. Debtor Armstrong Flooring Canada Ltd. also sponsors a Supplemental Executive Retirement Plan (the "**SERP**") and offers other postemployment benefits (the "**Canadian OPEB**", together with the SERP and Canadian Pension Plan, the "**Foreign Retirement Programs**", and together with the 401(k) Plan, the U.S. Pension Plans, and OPEB, the "**Employee Retirement Plans**"). The SERP is a supplemental defined benefit plan with four retired employee participants. As of December 31, 2020, the SERP's total liabilities were \$644,000, only \$72,000 of which was unfunded.

96. The Canadian OPEB consists of retiree health and life insurance benefits. As of December 31, 2020, there was only one active member and 65 inactive members. As of December 31, 2021, the Canadian OPEB obligations were approximately \$1.6 million, consisting largely of liabilities related to retiree life insurance.

J. Reimbursable Expenses

97. The Debtors reimburse Employees for approved expenses incurred in the scope of their employment on behalf of the Debtors, including, among other things, travel, lodging, meals, phone/internet and automobile allowances, and other business expenses (collectively, the "**Reimbursable Expenses**"). Generally, the Debtors pay for Reimbursable Expenses for U.S. Employees and Canadian Employees directly through approximately 409 active corporate credit

cards issued by JPMorgan Chase Bank, N.A. (“**JPMorgan**”) (the “**Corporate Credit Cards**”) or 68 active purchasing cards (“**P-Cards**”) issued by JPMorgan. The Corporate Credit Cards are typically used for travel-related expenses, while the P-Cards are more often used for non-travel-related business expenses. Amounts charged to the Corporate Credit Cards and P-Cards have historically been paid directly by the Debtors.²¹

98. Less often, U.S. Employees and Canadian Employees may also incur out-of-pocket Reimbursable Expenses and seek reimbursement for their Reimbursable Expenses from the Debtors using the Debtors’ reimbursement system, SAP Concur. Accordingly, Reimbursable Expenses are incurred by Employees with the understanding that they will be paid directly or reimbursed by the Debtors.

99. The Debtors believe that payment of the Reimbursable Expenses is critically important to the morale of the Debtors’ workforce, which, in turn, is essential to maximizing the value of the estates. Cancellation of the Corporate Credit Cards and/or failing to reimburse Reimbursable Expenses would cause disruption to the Debtors’ businesses, and it would be inequitable to require the Employees to personally bear any approved business-related expenses they incurred in furtherance of their responsibilities to the Debtors. The Reimbursable Expenses may represent a significant cost to the Employees who incurred them, but represent a relatively minimal cost to the Debtors’ estates in light of the overall benefits achieved.

100. Certain prepetition Reimbursable Expenses may not have been paid as of the Petition Date because, among other reasons, amounts charged to the Corporate Credit Cards or Employees’ personal credit cards have not yet become due or Employees have not yet submitted

²¹ The Corporate Credit Cards and P-Cards are secured obligations under the Debtors’ prepetition ABL Facility. Therefore, obligations under the Corporate Credit Cards and P-Cards, to the extent not paid, would become DIP obligations.

a request for reimbursement. There is a lag time between the time expenses are incurred and the time expenses are reimbursed and paid. Thus, it is difficult for the Debtors to determine with precision the actual amount of incurred but not reported Reimbursable Expenses as of any particular time. Typically, however, the average aggregate monthly amount expended by the Debtors for the Reimbursable Expenses is approximately \$410,200. Thus, based on historical figures, the Debtors estimate that approximately \$5,389 is outstanding on account of prepetition Reimbursable Expense as of the Petition Date, and seek authority to honor such obligations.

K. Withholding Obligations

101. The Debtors are required by certain laws to withhold from the U.S. Employees' Wages amounts related to federal, state, and local income taxes, Medicare taxes, Social Security, and state-issued employment insurance (collectively, the "**U.S. Employee Payroll Taxes**") for remittance to the appropriate federal, state, or local taxing authority. The Debtors also have similar obligations under Canadian law (the "**Foreign Employee Payroll Taxes**," and together with the U.S. Employee Payroll Taxes, the "**Employee Payroll Taxes**").

102. The Debtors also routinely deduct certain amounts from Employees' Wages, including, without limitation, (a) garnishments, service charges, and other similar deductions and (b) other pre- and post-tax deductions payable pursuant to certain of the Employee Health Benefits and Entitlements (as defined below), including health insurance premiums and retirement savings contributions, and (c) other withholdings as may be required in the various jurisdictions that the Debtors operate in (collectively, the "**Deductions**," and together with the Employee Payroll Taxes, the "**Withholding Obligations**").

103. The Debtors believe that the unpaid Withholding Obligations generally are held in trust by the Debtors and are not property of their estates. As such, the Debtors do not believe they need authority to remit such payments to the appropriate third parties. However, out of an

abundance of caution, the Debtors seek authority to remit the accrued, unpaid Withholding Obligations to the respective third-party payees and to continue to honor and process the Withholding Obligations on a postpetition basis in the ordinary course of business and consistent with past practices.

L. Postpetition Continuation of Employee Compensation and Benefits

104. Finally, the Debtors seek an order authorizing, but not directing, the Debtors to continue their Employee Compensation and Benefits programs in the ordinary course of business. Though the Debtors believe that such programs constitute ordinary course of business expenses authorized under the Bankruptcy Code and applicable law without notice or a hearing, out of an abundance of caution, the Debtors seek authorization to continue such programs during the pendency of these Chapter 11 Cases, as such may be modified or supplemented from time to time in the ordinary course of business.

V. Workers' Compensation

105. In the ordinary course of business, as required by applicable law, the Debtors maintain workers' compensation insurance coverage for claims arising from, or related to, employment with the Debtors (the "**Workers' Compensation Program**"). The Debtors maintain coverage for the Workers' Compensation Programs through several policies, described below.

106. The Debtors maintain coverage for Workers' Compensation claims arising in Wisconsin through a policy (the "**WI Policy**") provided by ACE Fire Underwriters Insurance Company; the Debtors maintain coverage for Workers' Compensation claims arising in Arizona, California, and Massachusetts through a policy (the "**AZ, CA, MA Policy**") provided by ACE American Insurance Company; and the Debtors maintain coverage for Workers' Compensation claims arising in all other states through a policy (the "**General WC Policy**", together with the WI Policy and the AZ, CA, MA Policy, the "**Workers' Compensation Policies**") provided by

Indemnity Insurance Company of North America. The current Workers' Compensation Policies run from April 1, 2022 through April 1, 2023. The total annual premium under the Workers' Compensation Policies are approximately \$90,317. Separate from and in addition to the premium, the Debtors fund a "loss fund" with \$7,222 annually. The Debtors have also posted a \$171,747 surety bond in connection with self-insured workers' compensation. The Debtors paid Arch Insurance Company a \$2,147 premium for the bond. The bond will expire on July 1, 2022.

107. Failure to maintain workers' compensation insurance could result in administrative or legal proceedings against the Debtors and their officers and directors. As of the Petition Date, the Debtors do not believe that any prepetition obligations are outstanding in connection with the Workers' Compensation Program, including prepetition premiums, fees and deductibles (the "**Workers' Compensation Obligations**"). However, out of an abundance of caution, the Debtors seek authority, but not direction, to pay Workers' Compensation Obligations, including any amounts related to prepetition workers' compensation claims, and to maintain the Workers' Compensation Program in the ordinary course of business on a postpetition basis.

VI. Severance Arrangements

108. In addition to the Debtors' other benefit plans and programs, the Debtors provide severance pay to eligible non-insider salaried Employees. In the U.S., non-insider salaried Employees are awarded severance in accordance with the terms of a formal severance plan (the "**Severance Plan**"). Pursuant to the Severance Plan, eligible U.S. Employees receive between 5 and 40 weeks of severance pay, depending on the U.S. Employee's job type, position grade, years of service, and eligible earnings, among other benefits. As a condition precedent to receiving the severance payment, U.S. Employees must execute a Company-approved release within 45 days of their termination.

109. The Debtors do not maintain a formal severance plan for non-salaried U.S. Employees, but provide severance to hourly U.S. Employees on an informal and discretionary basis (the “**Severance Practices**”). Under the informal Severance Practices, hourly U.S. Employees are generally awarded a lump sum severance payment tied to years of service. Like the Severance Plan, under the Severance Practices, any severance payment is conditioned on the terminated hourly U.S. Employee executing a Company-approved release.

110. In Canada, no formal severance plan is in place; rather, severance pay is decided on a person-by-person basis based on the rules and regulations in the province in which the Canadian Employee is located (the “**Foreign Employee Severance**”).

111. The Debtors provide severance pay to terminated executive Employees upon a change in control through individual change in control severance agreements or employment agreements (the “**CIC Severance**”), and also provide severance pay to terminated executive Employees other than in connection with a change in control via the Severance Pay Plan for Executive Employees of Armstrong Flooring, Inc. (the “**Non-CIC Severance**”, together with the CIC Severance, the “**Executive Severance**”, and together with the Severance Plan, Severance Practices, and Foreign Employee Severance, the “**Severance Arrangements**”).²² Under the change in control severance agreements, in the context of a change-in-control transaction, including a sale of substantially all of the Debtors’ assets,²³ eligible executive Employees are entitled to receive, among other things, a lump sum severance payment, in cash, equal to two (2)

²² The Company’s CEO is not party to a change in control severance agreement or covered by the Severance Pay Plan for Executive Employees of Armstrong Flooring, Inc.; rather, the terms of his severance pay in a change in control or non-change in control scenario are governed by his employment agreement.

²³ Other than a sale of substantially all of the Debtors’ assets where the individuals who comprise the Debtors’ board of directors immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold immediately following the sale.

times the sum of (i) the executive Employee's base salary as in effect immediately prior to termination, and (ii) the executive Employee's target annual bonus under any annual incentive compensation plan adopted by the Company in which the executive Employee participates.

112. Under the Severance Pay Plan for Executive Employees of Armstrong Flooring, Inc., participants are entitled to Non-CIC Severance where they are involuntarily terminated by the Company without Cause (i) due to a reduction in workforce, (ii) due to the elimination of the Employee's position, or (iii) for any other reason approved in the Committee's sole discretion, where "Reasonable Alternative Employment"²⁴ is not provided.

113. The Debtors estimate that following a change in control, total liabilities for CIC Severance for salaried Employees would be \$19.2 million or less, and could be significantly less after accounting for those Employees who will be ineligible to receive severance because they receive an offer from a buyer of the Debtors' assets. Outside of the change of the change in control context, Non-CIC Severance would be \$18.4 million or less, and could be significantly less after accounting for those Employees who will be ineligible to receive severance because Reasonable Alternative Employment (as defined in the Severance Plan) is provided.

114. The Debtors seek authority, but not direction, to continue the Severance Arrangements in the ordinary course of business, but are not currently seeking authority to pay any obligations arising under the Severance Arrangements. Pending the outcome of the sale process, the Debtors may seek authority to pay obligations arising under the Severance Arrangements by separate motion at a later date.

²⁴ Reasonable Alternative Employment is defined as an offer of employment where (i) the base salary is equal to at least 90% of the Participant's current base salary, and (ii) the distance between the participant's residence or current place of employment and the new place of employment is within 50 miles, or the distance of the employee's current commute, whichever is greater.

VII. Board Fees and Expenses

115. In the ordinary course of business, the Debtors pay fees (“**Board Fees**”) to, and reimburse the business-related expenses (e.g., travel expenses to and from board meetings) of, the board of directors of Armstrong Flooring, Inc., which oversees all of the Debtors’ operations. The quarterly Board Fees are paid in advance by the Debtors to their board members and total approximately \$175,000. As of the Petition Date, the Debtors do not believe that any Board Fees are due and owing. As such, the Debtors seek authority to simply to continue to pay the Board Fees on a postpetition basis in the ordinary course of business.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

I. Payment of Prepetition Employee Obligations Is Appropriate Under Bankruptcy Code Sections 507(a)(4) and 507(a)(5).

116. The Debtors believe that a substantial portion of the amounts they seek to pay hereunder are entitled to priority under sections 507(a)(4) and (a)(5) of the Bankruptcy Code. Section 507(a)(4) of the Bankruptcy Code grants priority to employee claims for “wages, salaries, or commissions, including vacation, severance and sick leave pay” earned within 180 days before the Petition Date up to \$15,150 per employee. 11 U.S.C. § 507(a)(4). Similarly, section 507(a)(5) of the Bankruptcy Code provides the claims for contributions to certain employee benefit plans are also afforded priority treatment to the extent of the number of employees covered by each plan multiplied by \$15,150, less any amounts paid pursuant to Bankruptcy Code section 507(a)(4). *Id.* § 507(a)(5). Because of the number of Employees working for the Debtors, and because some amounts are unknown pending submission of claims, the Debtors do not know the exact amount due to each Employee for the prepetition period. However, the majority of the Debtors’ Employees are owed amounts under the \$15,150 cap. Any amounts in excess of the Priority Cap represent reasonable compensation for an extended period of time. By this Motion, Debtors seek authority

pursuant to the Interim Order to pay the Prepetition Employee Obligations up to \$15,150 per Employee (other than those due pursuant to the Sales Commission Plans, which the Debtors seek authority to pay in full) and, pursuant to the Final Order, authority to pay amounts (other than Severance Obligations) that exceed the Priority Cap.

117. Because the vast majority of the Prepetition Employee Obligations the Debtors seek to pay hereunder (including *all* of the Prepetition Employee Obligations encompassed by the proposed Interim Order) constitute priority claims, the relief requested in herein affects only the timing of payment, and not the amount, and will not prejudice general unsecured creditors.

118. Moreover, a portion of the Prepetition Employee Obligations constitute funds held in trust for payment to third parties. The payment of the Withholding Obligations will not prejudice the Debtors' estates because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under Bankruptcy Code section 541. *See* 11 U.S.C. § 541(d); *Begier v. IRS*, 496 U.S. 53, 58–59 (1990). Further, failure to pay these amounts could subject the Debtors and their officers and directors to liability. *See, e.g., In re Sheppard*, 253 B.R. 397 (Bankr. D.S.C. 2000) (officer responsible for a company not paying its federal employment tax liabilities found personally liable for such tax liabilities); *In re Geise*, 151 B.R. 432 (Bankr. N.D. Ohio 1992) (same); *see also* 26 U.S.C. § 6672(a) (“Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to . . . pay over such tax . . . shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.”)

II. Payment of the Prepetition Employee Obligations is Appropriate Under the Doctrine of Necessity.

119. As a result of the commencement of the Chapter 11 Cases, and in the absence of an order of the Court providing otherwise, the Debtors will be prohibited from paying or otherwise satisfying their Prepetition Employee Obligations, and the checks, wire transfers, and direct deposit transfers issued in respect of the Prepetition Employee Obligations will be dishonored. Failing to honor these obligations would have devastating consequences for the Debtors' ability to operate their business during these Chapter 11 Cases and, thus, the Debtors' sale process and reorganization. Authorization to pay the Prepetition Employee Obligations is, therefore, necessary to maximize the value of the Debtors' estates for all creditors and stakeholders.

120. Even if certain prepetition Employee claims are not entitled to priority, payment of these claims is necessary to retain their current employees and maintain positive employee morale, and therefore, to preserve and protect the Debtors' ongoing business operations.

121. The bankruptcy court's power to authorize the pre-plan satisfaction of prepetition claims whose payment is critical to the debtor's business is firmly established under the "doctrine of necessity," which "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).²⁵

²⁵ See also *In re C.A.F. Bindery, Inc.*, 1999 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Friedman's Inc.*, No. 09-10161 CSS, 2011 WL 5975283, at * 3 (Bankr. D. Del. Nov. 30, 2011) ("[N]ormally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . most courts will allow such payments under the 'doctrine of necessity,' if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor's business."); *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) ("The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11."); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit the pre-plan payment of prepetition obligation when essential to the continued operation of the debtor."); *In re Eagle-Pitcher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.").

“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.” *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (Bankr. D. Del. 1999).

122. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Motor Coach Indus. Int’l, Inc.*, No. 08-12136, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the doctrine of necessity in the Third Circuit); *In re Just for Feet, Inc.*, 242 B.R. at 824-25 (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to continued operation of business).

123. Courts have noted additional support for the pre-confirmation satisfaction of critical claims in Bankruptcy Code section 363(b), under which a court may authorize the use of property outside the ordinary course of business where a debtor “articulate[s] some business justification, other than mere appeasement of major creditors” for such relief. *See Ionosphere.*, 98 B.R. at 175 (Bankr. S.D.N.Y. 1989).

124. The Debtors’ ability to maximize value and continue operations depends, in large part, upon the retention and motivation of the Employees whose efforts will be critical to the successful reorganization process. The Debtors’ Employees possess knowledge unique to the Debtors’ products and operations. If amounts owed are not received, insurance reimbursements are not made, or other benefits delayed, the Employees may suffer substantial personal hardship

and in some cases will be unable to meet their basic needs, potentially making it difficult or impossible for them to continue working for the Debtors. In order to avoid Employee resignations and to maintain Employee morale, it is critical that the Debtors be authorized to pay each of their Employees all compensation amounts that have been earned under the Debtors' prepetition contractual obligations or practices, subject to the limitations described herein.

125. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses through, among other things, continuing the orderly day-to-day operations of the Debtors' business, payment of the Prepetition Employee Obligations as requested herein is proper in accordance with the doctrine of necessity.

126. The relief requested is commonly granted in this District. *See, e.g., In re Hertz Corp.*, No. 20-11218 (MFW) (Bankr. D. Del. June 25, 2020) (authorizing Debtors to maintain prepetition employee incentive programs and bonus programs during pendency of chapter 11 cases); *In re Techniplas, LLC*, No. 20-11049 (LSS) (Bankr. D. Del. June 3, 2020) (same); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. Mar. 30, 2020) (same); *In re RentPath Holdings, Inc.*, No. 20-10312 (BS) (Bankr. D. Del. March 10, 2020) (authorizing Debtors to continue the non-insider severance program and honor severance obligations that arise postpetition); *In re VIP Cinema Holdings, Inc.*, No. 20-10345 (MFW) (Bankr. D. Del. May 4, 2020) (same); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. July 26, 2017) (same); *In re PES Holdings, LLC*, No. 19-11626 (KG) (Bankr. D. Del. Aug. 20, 2019) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re*

Things Remembered, Inc., No. 19-10243 (KG) (Bankr. D. Del. Feb. 6, 2019) (same); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 4, 2018) (same).²⁶

III. The Proposed Payment-Processing Procedures are Appropriate.

127. As set forth above, the Debtors request that all Banks be authorized and directed to honor and process payments on account of the Prepetition Employee Obligations as directed by the Debtors. The Debtors have sufficient liquidity to pay the amounts delineated in this Motion in the ordinary course of business and have implemented controls to ensure that prepetition claims will not be paid except as authorized by this Court. The Debtors therefore submit that the payment processing procedures described in the Motion are appropriate.

IV. The Debtors Seek a Waiver of the Automatic Stay as It Applies to Workers' Compensation Claims.

128. Section 362(a)(1) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1).

129. Here, cause exists to modify the automatic stay to permit the Employees to proceed with workers' compensation claims in the appropriate judicial or administrative forum. Staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees. As previously discussed, Employees' departure or demoralization likely

²⁶ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders, however, are available upon request.

will cause severe disruption to the Debtors' businesses and likely will impair the success of their restructuring.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

130. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). In the context of preliminary injunctions, the Third Circuit has interpreted the language “immediate and irreparable harm” to refer to a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages are inadequate. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App'x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). The harm also must be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

131. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

132. Nothing in this Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

NOTICE

133. Notice of this Motion will be given to: (a) the U.S. Trustee, (b) counsel to the prepetition Lenders, (c) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors, (d) the Internal Revenue Service, (e) the Securities and Exchange Commission, (f) the Office of the United States Attorney for the District of Delaware, (g) any party that has requested notice pursuant to Bankruptcy Rule 2002, and (h) all parties entitled to notice pursuant to Local Bankruptcy Rules 2002-1(b) and 9013-1(m). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

134. No previous request for the relief sought herein has been made to this Court or any other court.

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CONCLUSION

The Debtors respectfully request that this Court enter the Interim Order and the Final Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
May 9, 2022

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Joseph O. Larkin
Joseph O. Larkin (I.D. No. 4883)
Carl T. Tullson (I.D. No. 6704)
Jacqueline M. Dakin (I.D. No. 6650)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 651-3000
Joseph.Larkin@skadden.com
Carl.Tullson@skadden.com
Jacqueline.Dakin@skadden.com

- and -

Ron E. Meisler (*pro hac vice* admission pending)
Jennifer Madden (*pro hac vice* admission pending)
155 North Wacker Drive
Chicago, Illinois 60606-1720
Telephone: (312) 407-0700
Ron.Meisler@skadden.com
Jennifer.Madden@skadden.com

- and -

CHIPMAN BROWN CICERO & COLE, LLP
Robert A. Weber (I.D. No. 4083)
Aidan T. Hamilton (I.D. No. 6729)
Hercules Plaza
1313 North Market Street, Suite 5400
Wilmington, Delaware 19801
Telephone: (302) 295-0191
Weber@chipmanbrown.com
Hamilton@chipmanbrown.com

Proposed Counsel to Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Interim Order

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

In re

ARMSTRONG FLOORING, INC., et al.,

Debtors.¹

Chapter 11

Case No. 22-10426 (___)

(Joint Administration Pending)

Related Docket No[s]. ___

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) PAY CERTAIN
PREPETITION EMPLOYEE OBLIGATIONS AND (B) CONTINUE EMPLOYEE
BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "**Motion**")² of the Debtors for an interim order (this "**Interim Order**") and a Final Order under Bankruptcy Code sections 105(a), 363(b), 507(a), 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors, *inter alia*, to pay prepetition wages, salaries, employee benefits, and amounts to or on account of independent contractors or temporary employees; (ii) authorizing, but not directing, the Debtors to continue the maintenance of all employee benefit programs in the ordinary course; (iii) authorizing, but not directing, the Debtors to honor employee expense obligations; (iv) authorizing the Debtors to pay over to appropriate parties prepetition withholdings; (v) authorizing the Debtors to honor certain retiree benefit obligations; (vi) authorizing financial institutions to receive, process, honor and pay all checks, drafts and other forms of payment, including fund transfers, used by the Debtors relating to the foregoing; and (vii) granting related relief on an interim basis as further described herein; and upon consideration of the First-Day

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Armstrong Flooring, Inc. (3305); AFI Licensing LLC (3265); Armstrong Flooring Latin America, Inc. (2943); and Armstrong Flooring Canada Ltd. (N/A). The address of the Debtors' corporate headquarters is PO Box 10068, 1770 Hempstead Road, Lancaster, PA 17065.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of this Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to pay and/or honor, in their sole discretion, the Prepetition Employee Obligations as and when such obligations are due; *provided, however,* that during the Interim Period, except as otherwise set forth herein, no Employee may receive payment on account of the Prepetition Employee Obligations in an amount in excess of the limits provided for by Bankruptcy Code sections 507(a)(4) or 507(a)(5) pursuant to this Order.
3. The Debtors are authorized, but not directed, in their sole discretion, to honor the Employee Benefit Obligations and Employee Expense Obligations that were in effect as of the Petition Date, and to continue the Employee Compensation and Benefits programs in the ordinary course; *provided, however,* that such relief shall not constitute or be deemed an

assumption or an authorization to assume any of such Employee Compensation and Benefits programs, including, policies, plans, programs, practices, and procedures, under Bankruptcy Code section 365(a).

4. The Debtors are authorized, but not directed, in their sole discretion, to pay all Withholding Obligations as and when such obligations are due. The Debtors may remit any and all amounts withheld from Employees, including social security, FICA, federal and state income taxes, garnishments, health care payments, other insurance premiums, retirement fund withholding, and other types of withholding, whether these amounts relate to the period prior to the date of the Debtors' chapter 11 filings or subsequent thereto.

5. In accordance with section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business.

6. Notwithstanding anything to the contrary herein, any payment to be made or authorization contained hereunder shall be subject to the requirements imposed on the Debtors pursuant to the DIP Documents.

7. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors to satisfy their Prepetition Employee Obligations, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Prepetition Employee Obligations. The Banks shall rely on the direction and representations of the Debtors as to which checks and

fund transfers should be honored and paid pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Interim Order or for inadvertently honoring or dishonoring any check or fund transfer.

8. To the extent the Debtors have not yet sought to remit payment on account of the Prepetition Employee Obligations, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Prepetition Employee Obligations.

9. The Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition electronic transfers on account of the Prepetition Employee Obligations, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check.

10. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claims, including any claim held by any Employee or any third party. For the avoidance of doubt, nothing contained in the Motion or this Interim Order is intended or should be construed to create an administrative priority claim on account of any Employee.

11. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Interim Order.

12. No provision of this Interim Order shall be construed as authority to make any payment which is subject to the provisions of Bankruptcy Code section 503(c).

13. Nothing in the Motion or this Interim Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

14. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

15. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

16. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof.

17. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

19. The final hearing on the Motion shall be held on _____, 2022 at ___:___ a.m./p.m., prevailing Eastern Time. Any objections or responses to the entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2022, and shall be served on: (a) Armstrong Flooring, Inc., P.O. Box.

10068, 1770 Hempstead Road, Lancaster, PA 17065 (Attn: Christopher Parisi, Esq.); (b) proposed counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street, Wilmington, Delaware 19801 (Attn: Joseph Larkin, Esq. and Jacqueline Dakin, Esq.); (c) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Linda Casey, Esq.); (d) counsel to the prepetition Lenders; and (e) counsel to any statutory committee appointed in the Chapter 11 Cases. If no objections or responses are filed and served, this Court may enter a final order without further notice or hearing.

20. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

ARMSTRONG FLOORING, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 22-10426 (___)

(Joint Administration Pending)

Related Docket No[s]. ___

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) PAY CERTAIN PREPETITION
EMPLOYEE OBLIGATIONS AND (B) CONTINUE EMPLOYEE BENEFITS
PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for an Interim Order and a final order (this “**Final Order**”) under Bankruptcy Code sections 105(a), 363(b), 507(a), 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors, *inter alia*, to pay prepetition wages, salaries, employee benefits, and amounts to or on account of independent contractors or temporary employees; (ii) authorizing, but not directing, the Debtors to continue the maintenance of all employee benefit programs in the ordinary course; (iii) authorizing, but not directing, the Debtors to honor employee expense obligations; (iv) authorizing the Debtors to pay over to appropriate parties prepetition withholdings; (v) authorizing the Debtors to honor certain retiree benefit obligations; (vi) authorizing financial institutions to receive, process, honor and pay all checks, drafts and other forms of payment, including fund transfers, used by the Debtors relating to the foregoing; and (vii) granting related relief as further described herein; and upon consideration of the First-Day Declaration; and this

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Armstrong Flooring, Inc. (3305); AFI Licensing LLC (3265); Armstrong Flooring Latin America, Inc. (2943); and Armstrong Flooring Canada Ltd. (N/A). The address of the Debtors’ corporate headquarters is PO Box 10068, 1770 Hempstead Road, Lancaster, PA 17065.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of this Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby;

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. To the extent the Debtors have not yet sought to remit payment on account of the Prepetition Employee Obligations, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Prepetition Employee Obligations.
3. The Debtors are authorized, but not directed, to pay and/or honor, in their sole discretion, the Prepetition Employee Obligations as and when such obligations are due.
4. The Debtors are authorized, but not directed, in their sole discretion, to honor the Employee Benefit Obligations and Employee Expense Obligations that were in effect as of the Petition Date, and to continue the Employee Compensation and Benefits programs in the ordinary course; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Compensation and Benefits

programs, including, policies, plans, programs, practices, and procedures, under Bankruptcy Code section 365(a).

5. The Debtors are authorized, but not directed, in their sole discretion, to pay all Withholding Obligations as and when such obligations are due. The Debtors may remit any and all amounts withheld from Employees, including social security, FICA, federal and state income taxes, garnishments, health care payments, other insurance premiums, retirement fund withholding, and other types of withholding, whether these amounts relate to the period prior to the date of the Debtors' chapter 11 filings or subsequent thereto.

6. The Debtors are authorized, but not directed, in their sole discretion, to continue administering the Bonus Plans in the ordinary course of business. The Debtors are further authorized, but not directed, to pay all amounts due thereunder in the ordinary course of business in accordance with the terms of the Bonus Plans, irrespective of whether such amounts (a) relate to the prepetition period and/or (b) exceed the Priority Cap.

7. In accordance with section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business.

8. The Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition electronic transfers on account of the Prepetition Employee Obligations, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check.

9. Notwithstanding anything to the contrary herein, any payment to be made or authorization contained hereunder shall be subject to the requirements imposed on the Debtors pursuant to the DIP Documents.

10. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors to satisfy their Prepetition Employee Obligations, whether presented before, on or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Prepetition Employee Obligations. The Banks shall rely on the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Final Order.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claims, including any claim held by any Employee or any third party. For the avoidance of doubt, nothing contained in the Motion or this Final Order is intended or should be construed to create an administrative priority claim on account of any Employee.

12. Any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

13. No provision of this Final Order shall be construed as authority to make any payment which is subject to the provisions of Bankruptcy Code section 503(c).

14. Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party beneficiary status or bestowing any additional rights on any third party; or (e) being otherwise enforceable by any third party.

15. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

16. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

17. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

19. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.