

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

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In re:

Pure Prairie Poultry, Inc.

Debtor.

Case No. 24-32426 KAC

Chapter 11 Case

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**NOTICE OF HEARING AND MOTION FOR AN EXPEDITED HEARING AND FOR  
AN ORDER AUTHORIZING THE DEBTOR TO PAY INSURANCE PREMIUMS AND  
MAINTAIN INSURANCE POLICIES**

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TO: THE OFFICE OF THE UNITED STATES TRUSTEE AND OTHER PARTIES-IN-INTEREST AS SPECIFIED IN LOCAL RULE 9013-3.

1. The above-named Debtor (“Debtor”), through its undersigned attorneys, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 3:00 p.m. on Wednesday, September 25, 2024 before the Honorable Katherine A. Constantine, Courtroom 8, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Due to the request for expedited hearing, the Debtor will not object to the timeliness of any response that is filed and delivered to Debtor’s counsel at least two (2) hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. The petition commencing this case was filed on September 20, 2024 (the “Petition Date”). The case is now pending before this court.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This motion requests relief under 11 U.S.C. §§ 105(a), 363, 549, 1107 and 1108, and is filed pursuant to Local Rules 9013-1 through 9013-3. The Debtor seeks an order authorizing the Debtor to pay insurance premiums and maintain existing insurance coverage.

7. The Debtor operates a poultry production plant in Charles City, Iowa (the “Plant”). As of the Petition Date, its poultry products are sold in regional grocery stores and food markets in Minnesota, Iowa, North Dakota, South Dakota, Missouri, and Nebraska. As of the Petition Date, the Debtor presently had approximately 138 employees.

8. The events precipitating the Debtor’s chapter 11 filing are described in the Declaration of George Peichel, Chief Financial Officer of the Debtor, filed on September 20, 2024.

9. On the Petition Date, the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor’s Chapter 11 case. No creditors or other official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code.

10. In the course of its business, Debtor maintains multiple insurance policies with various insurance carriers, compiled and organized by Accel Group (“Accel”), a risk management agency based in the state of Iowa and focused on providing insurance solutions and strategic counsel.

11. Debtor’s insurance agreement with Accel (each an “Insurance Agreement” and, collectively, the “Insurance Agreements”) covers its three parcels of real estate and the improvements located thereon (the “Real Property”), including its warehouse and the Plant, as

well as 62 passenger vehicles and 28 cargo trucks and trailers owned and operated by Debtor (the “Vehicles”).

12. The Real Property and the Vehicles are instrumental to Debtor’s day-to-day operations and are necessary to a successful reorganization.

13. Debtor is in the poultry production industry, an industry which carries with it certain inherent risks. As a result, Debtor carries necessary insurance to protect it against the risks of product recall, packaging defect, malicious tampering, and accidental contamination.

14. Operating in Iowa, Minnesota, and Wisconsin, Debtor is statutorily required to maintain Workers Compensation Benefits Insurance, and does so.

15. Debtor additionally carries Inland Marine Insurance on several pieces of heavy machinery, Directors and Officers Liability Insurance, Employment Practices Liability, Fiduciary Insurance, Crime Insurance, and Excess Liability Insurance.

16. For all of the foregoing coverage pursuant to the Insurance Policies, Debtor pays an annual premium of \$1,155,326.62 (the “Insurance Premium”).

17. Debtor’s Insurance Policies recently renewed on August 1, 2024, and remain in effect through August 1, 2025. Accordingly, Debtor must make a \$750,000.00 payment towards the Insurance Premium in the month of September in order to maintain its coverage.

18. The Debtor is an additional party to an Insurance Premium Financing Agreement (the “Premium Financing Agreement”) with IPFS Corporation.

19. Pursuant to the Premium Financing Agreement, Debtor is required to make nine monthly payments of \$15,882.16. The first such payment came due on September 1, 2024.

20. Continuing to make payments under the Premium Financing Agreement is also necessary to maintain the Insurance Policies.

21. Debtor maintains these Insurance Policies in amounts and form in accordance with state and local laws governing the multiple jurisdictions in which Debtor operates and as deemed necessary in Debtor's business judgment to adequately insure Debtor's assets and risk.

22. The Debtor and its creditors will suffer irreversible and irreparable harm if it is not authorized to pay Insurance Premiums in order to maintain Insurance Policies.

23. Cause exists to hear this matter on an expedited basis to avoid delay in payment and maintenance of the Insurance Policies. To avoid substantial disruption of the Debtor's business, the Debtor should be authorized to pay Insurance Premiums.

24. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

25. Pursuant to Local Rule 9013-2(a), this Motion is verified and accompanied by a memorandum of law, proposed order, and proof of service.

26. Pursuant to Local Rule 9013-2(c), the Debtor gives notice that it may, if necessary, call George Peichel, Chief Financial Officer of Debtor, to testify on behalf of the Debtor about the factual matters raised in this Motion.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion and authorize the payment of Insurance Premiums and for such other and further relief as the court may deem just and equitable.

**TAFT STETTINIUS & HOLLISTER LLP**

Dated: September 20, 2024

By: /s/ James M. Jorissen

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**PROPOSED COUNSEL FOR THE  
DEBTOR**

**VERIFICATION**

I, George Peichel, Chief Financial Officer of the Debtor named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 20th day of September, 2024.

  
George Peichel

**UNITED STATES BANKRUPTCY COURT  
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**DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR AN  
ORDER AUTHORIZING THE DEBTOR TO PAY INSURANCE PREMIUMS**

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The above-named Debtor (the "Debtor"), by and through its undersigned counsel, submits this memorandum of law in support of the accompanying motion in the above-entitled matter and in accordance with Local Rule 9013-2(a).

**FACTUAL BACKGROUND**

The Debtor relies on the statement of facts set forth in the verified motion, the Petition, and the Declaration of George Peichel in Support of First Day Motions. Defined terms used in this Memorandum have the same meaning as in the accompanying motion.

**ARGUMENT**

**I. THE DEBTOR'S REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.**

The Debtor requests expedited relief. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a Motion "for cause shown." Cause exists here to grant the Motion on an expedited basis. As described in the motion, the Debtor's Insurance Policies are kept in compliance with applicable local and state law. Lapse would put Debtor at significant financial risk simply by the day-to-day operations of its business. Further, the Insurance Policies are in place to protect Debtor, Debtor's assets, and the security interests of all secured creditors in this bankruptcy.

Lapse of insurance coverage would operate to the detriment of the Debtor and all concerned creditors. Expedited relief authorizing payment of insurance premiums is thus necessary to maintain the Insurance Policies and avoid immediate and irreparable harm.

## **II. THE DEBTOR SHOULD BE AUTHORIZED TO PAY INSURANCE PREMIUMS.**

Pursuant to Section 363(b) of the Bankruptcy Code, a bankruptcy court is empowered to authorize a debtor to expend funds outside of the ordinary course of business. This “broad flexibility” is necessary to ensure a bankruptcy court is free to fashion appropriate relief to carry out the purposes of the Bankruptcy Code. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). This Court is authorized by Section 363(b) to award the relief now requested to permit Debtor to continue paying Insurance Premiums as they may come due and in accordance with the Insurance Policies.

Additionally, Section 105 authorizes the requested relief pursuant to the Court’s power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title . . .”

### ***A. The Bankruptcy Code Allows for Payment of Insurance Premiums***

The Bankruptcy Code does not prohibit the debtor from using, selling, or leasing property of the estate in all instances. Indeed, the Code authorizes debtors to do so in several circumstances with court approval. *See, e.g.*, 11 U.S.C. § 363(b)(1). Within the Eighth Circuit, courts permit debtors to pay unpaid insurance premiums, particularly where failure to do so will inhibit ability to reap insurance benefits going forward. *See, e.g., In re Fischer*, No. BK08-40125-TJM, 2008 WL 583444, at \*2 (Bankr. D. Neb. Feb. 28, 2008) (“[b]ecause the debtors cannot obtain crop insurance for the 2008 crop year unless they pay the unpaid premium for the 2007 crop year, and *because crop insurance is an important asset to a farming operation*, the debtors may use a portion



of the cash collateral to pay both the pre-petition and post-petition crop insurance premiums.”) (emphasis added).

Courts in other jurisdictions have similarly authorized maintenance of existing insurance policies and payment of all obligations arising thereunder, as may be needed in the debtor’s business judgment. *See In re dELIA\*s, Inc., et al.*, No. 14-23678-RDD, 2012 WL 13338138, at \*1 (Bankr. S.D.N.Y. Nov. 1, 2012) (permitting Chapter 11 debtors to “maintain their existing insurance policies and to pay all insurance obligations arising thereunder [and] to renew, revise, extend, supplement, change or enter into new insurance coverage and insurance premium financing as needed in their business judgment . . .”)

The Court should authorize the Debtor to pay the Insurance Premiums at issue in the Motion “outside the ordinary course” pursuant to Section 363. This payment, like any other use of property outside the ordinary course of business, is appropriate in instances where the debtor can demonstrate a “business justification” for doing so.

Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances. However, the debtor must articulate some business justification, other than mere appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business, before the court may permit such disposition under section 363(b).

*In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (citations omitted); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“[i]n determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the Debtor to show that a sound business purpose justifies such actions.”).

The Debtor has a significant and obvious business justification for the relief requested in the Motion. In fact, payment and maintenance as requested herein are necessitated by the nature of Debtor’s business. Debtor’s Insurance Policies insure the assets used in its day-to-day business

operations and certain assets which serve as collateral for several secured creditors in this bankruptcy. Beyond the insurance of those assets, the Insurance Policies insure Debtor against risk involved in product contamination, crime, and other inherent business risks which could severely impede Debtor's reorganization prospects in the absence of adequate insurance coverage.

Beyond these cognizable concerns—which provide substantial justification on their own for granting relief—Debtor is required by state and local law to carry insurance policies which meet certain statutory insurance minimums. Were that not enough, maintenance of insurance policies is required of all debtors by the operating guidelines established by the Office of the United States Trustee. *See* 3 United States Trustee Manual § 3-3.2.3 (Oct. 1998) (“A debtor must obtain appropriate insurance coverage, and documentation regarding the existence of the coverage must be provided to the [Office of the] United States Trustee as early in the case as possible.”).

In addition, and in the alternative, the Motion should be granted pursuant to the Doctrine of Necessity by which the Court analyzes the Motion under Section 105(a). Section 105(a) grants the Court authority to issue any order “necessary or appropriate to carry out the provisions” of the Code. Section 105(a) provides sufficient cause to authorize payment of Insurance Premiums. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175; *In re Archdiocese of St. Paul and Minneapolis*, 553 B.R. 693, 700 (Bankr. D. Minn. 2016) (“a bankruptcy court is essentially a court of equity, its broad equitable powers may only be exercised in a manner which is consistent with the provisions of the Code.”).

It is in the best interest of the Debtor and all secured creditors that the Insurance Premiums are paid. That said, maintenance of Insurance Policies is a necessity in the proper reorganization of Debtor's business practice and, accordingly, the relief requested by this Motion will inure to all interested parties by way of Debtor's continued operation. The requested relief is necessary and

appropriate to carry out the provisions of the Bankruptcy Code and effectuate Debtor's reorganization. Failure to maintain insurance would prevent Debtor from continuing operations, which would benefit nobody and detrimentally effect all involved.

### **CONCLUSION**

The Debtor has a compelling business justification for payment of Insurance Premiums and maintenance of Insurance Policies. As a result, granting the relief requested herein is necessary to avoid immediate and irreparable harm. Further, granting the relief requested will not prejudice any creditor or other party in interest. Rather, the relief requested will inure to the benefit of all parties in interest by ensuring that Debtor's business operations continue. The Debtor respectfully requests that the Court grant the relief requested in the Motion on an expedited basis.

Dated: September 20, 2024

**TAFT STETTINIUS & HOLLISTER LLP**

By: /s/ James M. Jorissen

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**PROPOSED COUNSEL FOR THE  
DEBTOR**

**UNITED STATES BANKRUPTCY COURT  
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**ORDER**

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This case is before the court on Debtor's Motion for Expedited Relief and an Order Authorizing Debtor to pay Insurance Premiums (the "Motion"). Based on the Motion and this court having determined that it is in the best interests of Debtor's estate to grant the Motion, and it appearing that due and proper notice of this action was given,

**IT IS HEREBY ORDERED:**

1. The Debtor's Motion is granted.
2. The Debtor's request for expedited relief is granted.
3. The Debtor is authorized, but not required, to pay or cause to be paid, in their sole discretion, all insurance premiums and maintain all insurance policies.
4. The Debtor is authorized, but not required, to continue to pay and honor, in its sole discretion, obligations arising under or related to its various insurance policies.
5. The Debtor's banks and other financial institutions are authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtor under this Order whether presented prior to or after the Petition Date to the extent necessary and to the extent the Debtor has good funds standing to its credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.
6. Nothing in the Motion or this Order, nor any payments made pursuant to this Order,

shall be deemed to be, or constitute, (a) an admission as to the validity or priority of any claim against the Debtor, (b) an assumption or post-petition reaffirmation of any agreement, plan, practice, program, policy, executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, (c) a grant of third-party beneficiary status of any additional rights on any third party, or (d) a waiver of any rights, claims or defenses of the Debtor.

7. Nothing in the Motion or this Order shall impair the ability of the Debtor to contest the validity or amount of any payment made pursuant to this Order.

8. Nothing in the Motion or this Order shall be construed as impairing the Debtor's right to contest the validity or amount of any insurance premiums or any other amount which any related insurance carrier may claim.

9. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated:

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United States Bankruptcy Judge