

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

In re:	)	Chapter 11
)	
MONTESQUIEU, INC., <u>et al.</u> , ¹	)	Case No. 19-10599 (BLS)
)	
Debtors.	)	Joint Administration Requested
)	

**MOTION OF DEBTORS FOR ORDER UNDER SECTIONS 105 AND 363 OF THE
BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6003
(A) AUTHORIZING THE DEBTORS TO MAINTAIN AND RENEW EXISTING
INSURANCE POLICIES AND (B) AUTHORIZING FINANCIAL INSTITUTIONS TO
HONOR ALL OBLIGATIONS RELATED THERETO**

Montesquieu, Inc. (“Holdings”), WG Best Weinkellerei, Inc. dba Montesquieu Winery (“WG Best”) and Montesquieu Corp. (“Montesquieu Corp.” and together with the Holdings and WG Best, the “Debtors”), the debtors-in-possession in the above captioned chapter 11 cases, by and through their proposed undersigned counsel, submit this *Motion of Debtors’ for Order Under Sections 105 and 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6003 (A) Authorizing the Debtors to Maintain and Renew Existing Insurance Policies and (B) Authorizing Financial Institutions to Honor All Obligations Related Thereto* (the “Motion”), and respectfully state:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M). The Debtors consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Montesquieu, Inc. (8069), WG Best Weinkellerie, Inc. dba Montesquieu Winery (California) (0458) and Montesquieu Corp. (California) (4025). The headquarters and service address for the above-captioned Debtors is 8221 Arjons Drive, San Diego, California 92126.

States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested in herein are sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Bankruptcy Rule 6003, and Local Rules 9013-1(m).

BACKGROUND

4. On March 20, 2019 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and property as debtors-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

5. No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed.

6. The factual background relating to the commencement of this Chapter 11 case is set forth in detail in the Declaration of Fonda Hopkins in Support of First Day Motions (the “Hopkins Declaration”), are incorporated herein by reference.

RELIEF REQUESTED

7. By this Motion, The Debtors seek entry of interim² and final³ orders (i) authorizing the Debtors to maintain and renew existing insurance policies and pay all policy premiums and

² A copy of the proposed Interim Order is attached hereto as Exhibit A.

³ A copy of the proposed Final Order is attached hereto as Exhibit B.

brokers' fees arising thereunder or in connection therewith, and (ii) authorizing financial institutions to honor all obligations related thereto.

8. In the ordinary course of the Debtors' business, the Debtors maintain numerous insurance policies providing coverage for, inter alia, commercial general liability, umbrella liability, shipping and cargo, cyber liability, property, foreign liability and fiduciary liability, (collectively, the "Policies"). These Policies are written through one entity, Malloy Imrie and Vasconi Insurance Services, LLC and have historically, cost the Debtors approximately \$100,000 to maintain. A schedule of the current Policies is attached hereto as Exhibit C.

9. Debtors' annual premium for its cyber security policy is due March 22, 2019 in the amount of \$6,339.00. Debtors' crime policy renews on April 19, 2019, and their remaining policies renew on June 11, 2019. As detailed in the Hopkins Declaration, much of the Debtors' sales are generated via e-commerce therefore, maintaining its Cyber Security policy is integral to its ongoing business and warrant the relief requested herein.

10. These Policies are essential to the preservation of the Debtors' business, and assets, and, in many instances, such insurance coverage is required by regulation, law, or contract that governs the Debtors' business.

BASIS FOR RELIEF

11. The Court may authorize Debtors to pay prepetition premiums to maintain insurance coverage under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *See* 11 U.S.C. § 105(a); *see also Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 625 (9th Cir. 1989) (section 105 endows the bankruptcy court with general equitable powers, where not

inconsistent with more specific law). A bankruptcy court may use its equitable powers under section 105 of the Bankruptcy Code to permit a debtor in possession to pay prepetition claims when payment is necessary to effectuate the Debtor's bankruptcy goals and essential to the continued operation of the business. *See Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) ("Cases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation . . ."); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (a bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept"); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (holding that section 105(a) "provides a statutory basis for the payment of prepetition claims" under the necessity of payment doctrine and noting the authority of the bankruptcy court "to authorize payment of prepetition 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) ("Under 11 U.S.C. § 105, the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.").

12. In addition, Debtors may need to renew or replace certain of their Insurance Programs in the upcoming months. The nonpayment of any premiums, deductibles, or related fees under one of the Insurance Programs could result in one or more of the Insurance Carriers increasing future insurance premiums, declining to renew insurance policies or refusing to enter into new insurance agreements with the Debtors in the future. If the Insurance Programs lapse without renewal, Debtors may be exposed to substantial liability for personal and/or property damages to the detriment of all parties in interest.

13. Moreover, these Policies are essential to the preservation of the Debtors' business, and assets, and, in many instances, such insurance coverage is required by regulation, law, or contract that governs the Debtors' business. Therefore, the continuation of the Insurance Programs and the payment of all prepetition and postpetition obligations arising under the Insurance Programs is essential to the Debtor' businesses and to preserve value for all parties in interest.

14. The relief requested herein is not prejudicial to any party in interest and, in fact, only benefits the Debtors' estates and their creditors. For this reason, and the supporting authority found in sections 105(a) and 363(b) of the Bankruptcy Code, Debtors respectfully request authority to pay, in the ordinary course, all Insurance Obligations.

RESERVATION OF RIGHTS

15. To the extent any Insurance Program or related agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, Debtors do not, at this time, seek to assume the same. Accordingly, if the Court authorizes the payments described above, any such payment should not be deemed to constitute a postpetition assumption or adoption of the programs, policies, or agreements as executory contracts pursuant to section 365 of the Bankruptcy Code.

16. Debtors submit that, for the reasons set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm, and Rule 6003 of the Federal Rules of Bankruptcy Procedure has been satisfied.

17. To successfully implement the foregoing, Debtors seeks a waiver of the notice requirements under Rule 6004(a) and the ten-day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

NOTICE

18. The Debtors have provided notice of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities holding the largest unsecured claims; (c) counsel to the agent for the Debtors' prepetition secured lenders; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the California Secretary of State; and (i) the California State Treasurer's Office. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders substantially in the form attached hereto as Exhibit A and Exhibit B respectively (i) authorizing, but not directing, the Debtors to maintain and renew existing insurance policies and pay all policy premiums and brokers' fees arising thereunder or in connection there within; and (ii) authorizing financial institutions to honor all obligations related thereto, (iii) scheduling a Final Hearing on the Motion; and (iv) granting such other and further relief as the Court deems proper.

Dated: March 20, 2019

FOX ROTHSCHILD LLP

/s/ Thomas M. Horan

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*Proposed Counsel to the Debtors and
Debtors-in-Possession*

EXHIBIT A

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

In re:	)	Chapter 11
)	
MONTESQUIEU, INC. <u>et al.</u> , ¹	)	Case No. 19-10599 (BLS)
)	
Debtors.	)	Jointly Administered
)	
	)	Re: D.I. _____
)	

**INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO MAINTAIN AND RENEW
EXISTING INSURANCE POLICIES; (B) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR ALL OBLIGATIONS RELATED THERETO
AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Montesquieu, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an interim order (this “Interim Order”) authorizing the Debtors to (i) maintain and renew existing insurance policies and pay all policy premiums and brokers’ fees arising thereunder or in connection therewith, (ii) authorizing financial institutions to honor all obligations related thereto; (iii) scheduling a Final Hearing on the Motion; and (iv) granting such other and further relief as the Court deems proper, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Montesquieu, Inc. (8069), WG Best Weinkellerei, Inc. dba Montesquieu Winery (California) (0458) and Montesquieu Corp. (California) (4025). The headquarters and service address for the above-captioned Debtors is 8929 Aero Dr, San Diego, California 92123.

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

other parties in interest; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019 at __:__ .m., prevailing Eastern Standard Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. on _____, 2019; and shall be served on: (a) the Debtors, 8929 Aero Dr., San Diego, CA 92123; (b) proposed counsel to the Debtors, Fox Rothschild LLP, 919 N. Market St., Suite 300, Wilmington, DE 19801, Attn: Thomas M. Horan (thoran@foxrothschild.com); (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Linda Richenderfer, Esq. (linda.richenderfer@usdoj.gov); (d) counsel to any statutory committee appointed in these chapter 11 cases; and (e) any other such party entitled to notice. In the event no objection to entry of the Final Order on the Motion is timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to maintain and renew existing insurance policies and pay all policy premiums and brokers' fees arising thereunder or in connection therewith.

4. The financial institutions are authorized, but not directed to process and honor all obligations that the Debtors are authorized to pay pursuant to this Interim Order, provided that funds are available in the Debtors' accounts to cover the checks and fund transfers.

5. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

6. Notice of the Motion shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

9. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2019

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

EXHIBIT B

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

In re:	)	Chapter 11
)	
MONTESQUIEU, INC. <u>et al.</u> , ¹	)	Case No. 19-10599 (BLS)
)	
Debtors.	)	Jointly Administered
)	
	)	Re: D.I. _____
)	

**FINAL ORDER (A) AUTHORIZING THE DEBTORS TO MAINTAIN AND RENEW
EXISTING INSURANCE POLICIES; (B) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR ALL OBLIGATIONS RELATED THERETO
AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Montesquieu, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), for entry of a final order (this “Final Order”) authorizing, but not directing, Debtors to (i) maintain and renew existing insurance policies and pay all policy premiums and brokers’ fees arising thereunder or in connection therewith, (ii) authorizing financial institutions to honor all obligations related thereto; (iii) scheduling a Final Hearing on the Motion; and (iv) granting such other and further relief as the Court deems proper, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates,

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

their creditors, and other parties in interest; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to maintain and renew existing insurance policies and pay all policy premiums and brokers' fees arising thereunder or in connection therewith.
3. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).
4. The financial institutions are authorized, but not directed to process and honor all obligations that the Debtors are authorized to pay pursuant to this Final Order, provided that funds are available in the Debtors' accounts to cover the checks and fund transfers.
5. Notice of the Motion shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.
6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.
7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

8. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

EXHIBIT C

Schedule of Insurance Policies

Policies are written through Malloy Imrie and Vasconi Insurance Services, LLC				
Company	Policy Type	Policy Number	Effective Dates	Annual Premium
Firemans Fund	Property(other than inventory) and Liability and Business Auto Policy	MZX80988101	6/11/2018-6/11/2019	\$20,685.00
Firemans Fund	International Liability	IEX58176264	6/11/2018-6/11/2019	\$2,750.00
Firemans Fund	Umbrella Liability	XAU49050925	6/11/2018-6/11/2019	\$11,480
Llyod's of London	Cyber Security Policy	WN152609	3/22/2018-3/22/2019	\$6,330.00
Travelers Insurance	Crime	n/a	4/19/2108-4/19/2109	\$3,128.99