

# YOU GET WHAT YOU GIVE: AN ANALYTICAL APPROACH TO CRITICAL VENDOR MOTIONS AND HOW BANKRUPTCY COURTS’ TREATMENT OF CRITICAL VENDORS MAY AFFECT THEIR CHAPTER 11 FILINGS

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## INTRODUCTION

There is no single standard or test for determining the validity of critical vendor claims. Every circuit throughout the United States applies its own standard. Some circuits even have internal splits of authority. Despite this fact, critical vendor motions are often granted routinely, expeditiously, and in the full amount requested. This paper will take an analytical approach in evaluating these decisions, the different approaches that courts take in making them, and how they may affect bankruptcy courts' chapter 11 filings.

Part I of this paper looks at chapter 11 filings by the numbers, showing the filings by each circuit and recent trends in where chapter 11 cases are filed. Part II of this paper analyzes the authority for critical vendors through the purview of sections 363(b) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and what is colloquially known as the Doctrine of Necessity. Part III of this paper looks at the effects of *In re Kmart Corp.*<sup>1</sup> and how that decision may have affected chapter 11 filings in the Seventh Circuit. Part V of this paper looks at the pro-debtor circuits, in this case the Second, Third, and Fifth Circuits, and the standards that they apply in granting critical vendor motions. Part IV also looks at the pro-debtor courts by the numbers, analyzing sixty cases in the Second, Third, and Fifth Circuits between 2018 and 2021 where critical vendor motions were filed. This section concludes by covering additional observations such as divergent approaches within a single court, services as a form of goods, and the expansive variety of pre-petition claims granted in critical vendor motions.

## I. CHAPTER 11 FILINGS BY THE NUMBERS

In 2005, Professor Lynn LoPucki published his book *Courting Failure: How Competition for Big Cases is Corrupting the Bankruptcy Courts*.<sup>2</sup> In his book, Professor LoPucki analyzed the prevalent amount of forum shopping involving large public companies filing bankruptcy in the United States.<sup>3</sup> Perhaps the most noticeable instance of this occurrence took place in 1996 when thirteen of the fifteen large public company bankruptcies were filed in the two-judge court in Delaware.<sup>4</sup> As Professor LoPucki's interviewees candidly admitted, forum shopping was pervasive in big bankruptcy cases.<sup>5</sup> Lawyers wanted good judges and a court convenient to both them and the debtor.<sup>6</sup> That being said, they also wanted judges likely to rule for the debtor on key issues and courts that would not cut attorneys' fees, and the districts that they

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<sup>1</sup> 359 F.3d 866 (7th Cir. 2004).

<sup>2</sup> See generally LYNN M. LOPUCKI, *COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING THE BANKRUPTCY COURTS* (The Univ. of Mich. Press 2005).

<sup>3</sup> See *id.* at 27.

<sup>4</sup> See *id.* at 76.

<sup>5</sup> See *id.* at 39–40.

<sup>6</sup> See *id.*

chose to file in would reflect this.<sup>7</sup> Professor LoPucki argued that this was a two-way street in the sense that bankruptcy judges wanted to preside over big cases.<sup>8</sup> Overseeing these cases could provide these judges with status, celebrity, and a higher opportunity for reappointment to the bench.<sup>9</sup>

Is forum shopping still prevalent today? If so, what factors contribute to these occurrences? Does the treatment of critical vendor motions play a major role when debtors decide where to file? Table 1 outlines both the chapter 11 and overall bankruptcy filing numbers since the start of 2018.

<b>Table 1: Chapter 11 and Overall Bankruptcy Filings (“OBF”) 2018-2021(3Q)<sup>10</sup></b>								
<b>Cir.</b>	<b>Ch. 11 Filings 1/1/18 – 12/31/18</b>	<b>OBF 1/1/18 – 12/31/18</b>	<b>Ch. 11 Filings 1/1/19 – 12/31/19</b>	<b>OBF 1/1/19 – 12/31/19</b>	<b>Ch. 11 Filings 1/1/20 – 12/31/20</b>	<b>OBF 1/1/20 – 12/31/20</b>	<b>Ch. 11 Filings 1/1/21 – 9/30/21</b>	<b>OBF 1/1/21 – 9/30/21</b>
1	3.75%	2.83%	3.36%	2.66%	1.82%	2.42%	3.32%	2.34%
2	16.70%	5.35%	16.55%	5.40%	11.86%	4.69%	6.99%	4.41%
3	15.29%	6.55%	14.97%	6.31%	24.04%	5.90%	17.65%	5.45%
4	5.86%	8.23%	5.47%	8.26%	5.68%	8.02%	5.34%	7.70%
5	17.22%	7.83%	12.66%	7.82%	23.46%	7.89%	21.94%	7.54%
6	4.16%	15.02%	6.84%	15.14%	4.02%	14.98%	4.47%	15.07%
7	3.38%	11.35%	3.43%	11.44%	2.33%	11.02%	3.54%	10.87%
8	2.03%	6.26%	2.98%	6.24%	2.02%	6.61%	2.39%	6.62%
9	16.67%	16.00%	16.62%	16.16%	12.20%	17.24%	17.55%	18.09%
10	2.58%	5.42%	3.19%	5.34%	2.26%	5.75%	2.23%	5.73%
11	12.01%	15.05%	13.32%	15.13%	10.00%	15.39%	14.22%	16.10%
DC	0.34%	0.11%	0.60%	0.11%	0.32%	0.09%	0.35%	0.08%

Undoubtedly, some circuits punch far above their weight when it comes to chapter 11 filings.<sup>11</sup> The Second, Third, and Fifth Circuits regularly see three to four times their proportionate share of chapter 11 cases. The Seventh Circuit, on the other hand, hovers around twenty-five to thirty percent of its proportionate share. As Table

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 19–20.

<sup>9</sup> See *id.* at 19–21.

<sup>10</sup> See ADMIN. OFF. OF THE U.S. COURTS, U.S. BANKRUPTCY COURTS: BUSINESS AND NONBUSINESS CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE THREE-MONTH PERIOD ENDING SEPT. 30, 2021, at Table F-2, <https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables?tn=&pn=32&t=All&m%5Bvalue%5D%5Bmonth%5D=&y%5Bvalue%5D%5Byear%5D=>. It should be noted that for all filing statistics used herein for Tables 1, 2, and 3, Table F-5A on the United States’ Courts website was used for each corresponding year with one exception. For the 2021 calendar year, Table F-2 was used to cover three 3-month periods as the final quarter statistics for 2021 had not been reported at the time. With the exception of 2021, Table F-5A was used exclusively throughout.

<sup>11</sup> See Samuel M. Andre, *The Southern District of Texas: The Next Big Venue in Commercial Bankruptcy?*, FREDRIKSON & BYRON P.A., THE RESTRUCTURING REPORT (Oct. 10, 2018), [https://www.fredlaw.com/the\\_restructuring\\_report/2018/10/10/1998/the\\_southern\\_district\\_of\\_texas\\_the\\_next\\_big\\_venue\\_in\\_commercial\\_bankruptcy/](https://www.fredlaw.com/the_restructuring_report/2018/10/10/1998/the_southern_district_of_texas_the_next_big_venue_in_commercial_bankruptcy/).

2 shows, these numbers become even more pronounced when one realizes that three of the ninety United States Bankruptcy Courts oversee roughly twenty-five to thirty percent of all chapter 11 filings.

<b>Table 2: Chapter 11 Filings in the District of Delaware, the Southern District of New York, and the Southern District of Texas 2018-2021(3Q)</b>				
<b>Court</b>	<b>Ch. 11 Filings 1/1/18 – 12/31/18</b>	<b>Ch. 11 Filings 1/1/19 – 12/31/19</b>	<b>Ch. 11 Filings 1/1/20 – 12/31/20</b>	<b>Ch. 11 Filings 1/1/21 – 9/30/21</b>
United States Bankruptcy Court for the District of Delaware	8.67%	8.70%	5.16%	11.62%
United States Bankruptcy Court for the Southern District of New York	9.39%	9.25%	8.40%	3.24%
United States Bankruptcy Court for the Southern District of Texas	6.61%	5.14%	16.46%	11.86%
Total	24.67%	23.09%	30.03%	26.72%

To determine whether the treatment of critical vendors and critical vendor motions plays a role in chapter 11 filing numbers, the many different approaches to the treatment of critical vendor claims must be analyzed.

## II. AUTHORITY FOR CRITICAL VENDORS

There are more than half a dozen sources of authority that bankruptcy courts have historically cited when granting critical vendor claims. These include a debtor's ability to use, sell, or lease property outside of the ordinary course of business under

section 363(b),<sup>12</sup> the bankruptcy courts' general equitable powers under section 105(a),<sup>13</sup> the Doctrine of Necessity,<sup>14</sup> a debtor's duty to protect and preserve the bankruptcy estate under section 1107(a),<sup>15</sup> the bankruptcy courts' ability to grant relief from the automatic stay, for cause, under section 362(d),<sup>16</sup> and a debtor's ability to obtain unsecured credit outside the ordinary course of business under section 364(b).<sup>17</sup> This paper will focus on the former three sources as they were, essentially, unanimously cited by the debtor-movants in the sixty cases analyzed herein.

*A. Debtors' Ability to Use, Sell, or Lease Property Outside of the Ordinary Course of Business Under Section 363(b) of the Bankruptcy Code*

Under section 363(b) of the Bankruptcy Code, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ."<sup>18</sup> Moreover, under section 105(a) of the Bankruptcy Code, a court is authorized to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."<sup>19</sup> This latter section is "an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case."<sup>20</sup>

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<sup>12</sup> See, e.g., *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–77 (Bankr. S.D.N.Y. 1989) (opining that debtors may rely on a court's authority under section 363(b) to utilize property of the estate other than in the ordinary course of business).

<sup>13</sup> Section 105(a) allowed the court to approve the payment of pre-petition claims if:

(1) [I]t [is] critical that the debtor deal with the claimant[; (2)] unless [the debtor] deals with the claimant, the debtor risks the probability of harm . . . or . . . loss of economic advantage to the estate or the debtor's going concern value. . . . [; and (3)] there is no practical or legal alternative [for] the debtor [to] deal with the claimant other than . . . payment of the[ir] claim.

*In re CoServ, L.L.C.*, 273 B.R. 487, 498 (Bankr. N.D. Tex. 2002).

<sup>14</sup> See, e.g., *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (holding that the necessity of payment doctrine could be successfully invoked where the payment of pre-petition claims of trade vendors in the case was "critical to the debtors' reorganization") (quoting *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); see also *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 311–12 (1882) (the Supreme Court writing on the "necessity of payment doctrine" for the first time).

<sup>15</sup> See, e.g., *In re CoServ, L.L.C.*, 273 B.R. at 496–97 (the court, citing to section 1107(a), to bridge the gap between section 105(a) and the Doctrine of Necessity, finding that implicit in the duties of a debtor in possession or a chapter 11 trustee is the fiduciary duty "to protect and preserve the estate," including the going-concern value of the operating business).

<sup>16</sup> See, e.g., *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (opining that when section 105(a) is read in conjunction with section 362(d), a court could find "the urgency and necessity of paying the prepetition claims" to constitute sufficient cause based on the evidence presented by the parties).

<sup>17</sup> See, e.g., *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (noting the "broad authority" that section 364(b) gives a court to allow a debtor to obtain credit and outlining six, or more, factors that courts should consider when granting preferential treatment to suppliers in exchange for credit out of the ordinary course).

<sup>18</sup> 11 U.S.C. § 363(b) (2018).

<sup>19</sup> 11 U.S.C. § 105(a).

<sup>20</sup> 2 COLLIER ON BANKRUPTCY ¶ 105.01 (Matthew Bender & Co., Inc. eds., 16th ed. 2022) ("The basic purpose of section 105 is to assure the bankruptcy courts power to take whatever action is appropriate or

For decades, bankruptcy courts have read these two sections in conjunction as a source of authority for granting critical vendor motions.<sup>21</sup> Just recently, the United States District Court for the Southern District of New York thoroughly articulated the standard while upholding a critical vendor motion that identified approximately 263 critical vendors.<sup>22</sup> The court began by noting that courts in the Southern District of New York authorize payments to critical vendors when the payment is critical to the debtor's reorganization.<sup>23</sup> Thereafter, citing *In re Ionosphere Clubs, Inc.*, the court noted that bankruptcy courts are empowered, pursuant to section 363, to authorize a debtor to expend funds, in the court's discretion and with broad flexibility, outside of the ordinary course of business, as long as the debtors articulate some business justification other than appeasing major creditors.<sup>24</sup> Moreover, when read in conjunction with section 105(a), bankruptcy courts may authorize the payment of pre-petition debts when it is necessary to facilitate the rehabilitation of the debtor under the Doctrine of Necessity.<sup>25</sup> The court went on, noting that the Doctrine of Necessity recognizes the existence of a bankruptcy court's power to authorize the payment of pre-petition claims where the payment is essential to the continued operation of the debtor, and the court is duty-bound "to maintain the estate for the benefit of all creditors" under sections 363(b) and 105(a).<sup>26</sup>

*B. Bankruptcy Courts' General Equitable Powers Under Section 105(a) of the Bankruptcy Code*

While some courts have read sections 363(b) and 105(a) in conjunction as a source of authority, other courts have held that their equitable power under section 105(a) on its own "authorize[s] the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization."<sup>27</sup> In *In re Just for Feet, Inc.*, the United States District Court for the District of Delaware opined that section 105(a) of the Bankruptcy Code provided "a statutory basis for the payment of pre-petition claims."<sup>28</sup> The court rejected arguments that it did not have the power under section 105(a) to authorize the payment of the pre-petition trade vendor claims and noted that "[t]he Supreme Court, the Third Circuit, and the District of Delaware all recognize[d] the court's power to authorize the payment of pre-petition claims" deemed necessary to a debtor's survival during

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necessary in aid of the exercise of their jurisdiction."); see also *In re Barnes*, 310 B.R. 209, 212 (Bankr. D. Colo. 2004) ("[Section] 105 gives the Bankruptcy Court the authority to fill in gaps in the statutory mandates of Congress in an efficient manner.").

<sup>21</sup> See, e.g., *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–77 (Bankr. S.D.N.Y. 1989).

<sup>22</sup> See *In re Windstream Holdings, Inc.*, 614 B.R. 441, 445 (S.D.N.Y. 2020).

<sup>23</sup> See *id.* at 451 (quoting *In re Fin. News Network Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)).

<sup>24</sup> See *id.* at 456 (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175–76).

<sup>25</sup> See *id.* at 456–57.

<sup>26</sup> See *id.*

<sup>27</sup> *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999); see also *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175.

<sup>28</sup> 242 B.R. at 824.

the pendency of their chapter 11 case.<sup>29</sup> The court ultimately held that the debtors could not survive without a continuous supply of inventory from their vendors, thereby successfully invoking the necessity of payment doctrine by determining that the payment of pre-petition claims of trade vendors was critical to the debtors' reorganization.<sup>30</sup>

### C. The Doctrine of Necessity

The Doctrine of Necessity, or necessity of payment doctrine, was first articulated by the Supreme Court 140 years ago in a railroad bankruptcy case.<sup>31</sup> In this case, the Supreme Court opined that:

Many circumstances may exist which may make it necessary and indispensable to the business of the road and the preservation of the property, for the receiver to pay preexisting debts of certain classes, out of the earnings of the receivership, or even the *corpus* of the property, under the order of the court, with a priority of lien.<sup>32</sup>

Although this doctrine was never codified in the Bankruptcy Code, courts have nonetheless followed this doctrine in invoking their equitable powers to authorize the payment of pre-petition claims where such payment was essential to the continued operation of the debtor.<sup>33</sup> Much more recently, the court in *In re Windstream Holdings Inc.* followed almost the exact same line of reasoning.<sup>34</sup>

## III. THE EFFECTS OF *IN RE KMART CORP.*

While many courts have gone to great lengths to approve critical vendor motions, other courts have not been as accommodating. Throughout the 1980s and 1990s, the Chicago bankruptcy court had only seven large public company filings, with many local lawyers electing to travel to Delaware or New York to file their cases.<sup>35</sup> A focus group commissioned by the court's Chief Judge, Susan Pierson Sonderby, reported that the reason was simply "misperceptions" of the court, leading the court to make some "cosmetic" changes to their rules.<sup>36</sup> Beginning in October of 2000, the Chicago bankruptcy court experienced a large influx of major cases and, in just twenty-seven months, found itself presiding over fourteen large public company cases, twice as

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<sup>29</sup> *Id.* at 825.

<sup>30</sup> *Id.* at 826 (citing *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)).

<sup>31</sup> See *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882).

<sup>32</sup> *Id.* at 311.

<sup>33</sup> See *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

<sup>34</sup> See 614 B.R. 441, 456–57 (S.D.N.Y. 2020).

<sup>35</sup> See LOPUCKI, *supra* note 2, at 132.

<sup>36</sup> *Id.*



many as it had seen in the last two decades combined.<sup>37</sup> Six of these massive cases included forum shops by companies with headquarters elsewhere, with perhaps the most infamous such case being *Kmart*.<sup>38</sup>

In *In re Kmart Corp.*, the Seventh Circuit affirmed the decision of the United States District Court for the Northern District of Illinois, Eastern Division, which had reversed Judge Sonderby's critical vendors order and opined that neither section 105(a) nor a "doctrine of necessity" supported the orders.<sup>39</sup> The Seventh Circuit wasted no time in rejecting the Doctrine of Necessity, opining that "[a] 'doctrine of necessity' is just a fancy name for a power to depart from the Code. . . . [T]oday it is the Code rather than the norms of nineteenth century railroad reorganizations that must prevail."<sup>40</sup> Moreover, the circuit court cited numerous shortcomings by the bankruptcy court, including the fact that "the bankruptcy court did not: (1) explore the possibility of using a letter of credit to assure vendors of payment; (2). . . find that any [companies] would have ceased doing business with Kmart [were they] not paid for [their] pre-petition deliveries;]" (3) find that discrimination against the unsecured creditors was the sole way to facilitate the reorganization; and (4) "find that the disfavored creditors were at least as well off as they would have been had the [court not entered the] critical vendors order."<sup>41</sup>

Judge Easterbrook noted that Judge Sonderby had "entered a critical-vendors order just as Kmart proposed it, without notifying any disfavored creditors, without receiving any pertinent evidence . . . and without making any finding of fact that the disfavored creditors would gain or come out even."<sup>42</sup> Kmart had used Judge Sonderby's order to pay, in full, the pre-petition debts of 2,330 suppliers in the amount of roughly \$300 million, while around 2,000 non-critical vendors and 43,000 unsecured creditors received around ten cents on the dollar.<sup>43</sup> What is particularly interesting about this case is the fact that the order authorizing payment was reversed around fourteen months after it was entered, after all of the critical vendors had been paid, and right as Kmart's plan of reorganization was on the verge of being approved.<sup>44</sup>

As Professor LoPucki aptly noted, "Kmart had trusted the Chicago bankruptcy system, and the Chicago bankruptcy system had not come through."<sup>45</sup> Professor LoPucki questioned whether Chicago would survive such a failure, opining that if the Chicago bankruptcy and circuit judges did not work to accommodate debtors, judges in other cities would, and the cases would follow.<sup>46</sup> Has the Seventh Circuit lost filings in the wake of Kmart? Table 3 shows the chapter 11 filings versus overall

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<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> 359 F.3d 866, 869 (7th Cir. 2004).

<sup>40</sup> *Id.* at 871 (citations omitted).

<sup>41</sup> *Id.* at 873–74.

<sup>42</sup> *Id.* at 868.

<sup>43</sup> *Id.* at 869.

<sup>44</sup> See *id.*

<sup>45</sup> LOPUCKI, *supra* note 2, at 134.

<sup>46</sup> See *id.* at 134–35.

filings in the Seventh Circuit in the wake of *Kmart*. As the United States Courts Statistics & Reports page only goes back to 2001, Table 3 outlines the three years preceding and the three years following *Kmart*.

<b>Table 3: Chapter 11 Filings in the Seventh Circuit Before and After Kmart</b>							
	<b>Filings in 2007</b>	<b>Filings in 2006</b>	<b>Filings in 2005</b>	<b>Filings in 2004</b>	<b>Filings in 2003</b>	<b>Filings in 2002</b>	<b>Filings in 2001</b>
<b>Chapter 11 Filings</b>	5.29%	5.91%	6.74%	4.38%	5.99%	6.65%	5.19%
<b>Overall Filings</b>	10.39%	10.36%	10.79%	10.15%	10.21%	10.21%	9.70%

Aside from a small dip in chapter 11 filings in 2004, the numbers are generally within a similar range. Overall filings fluctuated between 9.70% and 10.79% while chapter 11 filings fluctuated between 4.38% and 6.74%. Looking back at Table 1, which covers 2018 through 2021, overall filings have ranged from 10.87% to 11.44% while chapter 11 filings have ranged from 2.33% to 3.54%.<sup>47</sup> So, while overall filings have increased by roughly one percent of all bankruptcy filings, chapter 11 filings have decreased by rough two to three percent and are roughly half of what they were, proportionally, pre-*Kmart*. One final note is that the website for the United States Bankruptcy Court for the Northern District of Illinois lists two megacases, which may be seen as either a glass half full or half empty given the state of the court pre-2000.<sup>48</sup>

#### IV. THE PRO-DEBTOR CIRCUITS

The case data analyzed in this section and outlined in Table 4, Table 5, Table 6, and Table 7<sup>49</sup> was obtained by using the claims agents Stretto and Prime Clerk. These websites provide information about chapter 11 bankruptcy cases, including information about the cases, filing dates, administrative and substantive consolidations, the court docket, and the outcome of the chapter 11 proceeding, among many other things.<sup>50</sup> Following my analysis of the most prevalent circuits for filing chapter 11 cases, I scoured the websites of these claims agents for bankruptcy cases in the United States Bankruptcy Court for the District of Delaware (“Delaware”), the United States Bankruptcy Court for the Southern District of New

<sup>47</sup> See ADMIN. OFF. OF THE U.S. COURTS, U.S. BANKRUPTCY COURTS, *supra* note 10.

<sup>48</sup> See UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS: Fees/Case Information, Megacase Information, <https://www.ilnb.uscourts.gov/megacase-information> (last visited Jan. 28, 2023).

<sup>49</sup> See *infra* Tables 4–7.

<sup>50</sup> See Cases, STRETTO, <https://cases.stretto.com> (last visited Jan. 28, 2023); see also Restructuring Admin. Cases, KROLL, <https://www.kroll.com/en/restructuring-administration-cases> (last visited Jan. 28, 2023).

York (“SDNY”), the United States Bankruptcy Court for the Southern District of Texas (“SDTX”), and the United States Bankruptcy Court for the Northern District of Illinois (“NDILL”). I systematically went through these cases and found sixty cases in which critical vendor motions were filed. Following an overview of the state of the law regarding the treatment of critical vendor motions for each of these three courts, this data will be analyzed.

#### A. The Second Circuit

In the Second Circuit, there is no clear, singular standard or test for evaluating critical vendor motions. For example, in *In re Financial News Network, Inc.*, the court opined that under the Doctrine of Necessity, a bankruptcy court may allow pre-plan “payments of prepetition obligations where such payments are critical to the debtor’s reorganization.”<sup>51</sup> The court in *In re Ionosphere Clubs, Inc.*, in applying the Doctrine of Necessity, similarly found that the payment of pre-petition claims could be critical, noting that “the paramount . . . goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor.”<sup>52</sup> However, the court also read sections 363(b) and 105(a) in conjunction, opining that sections may empower bankruptcy courts to authorize the immediate payment of pre-petition claims, outside the ordinary course of business, when such payment is essential to the survival of the debtor.<sup>53</sup> Just recently, the court in *In re Windstream Holdings Inc.* followed the same line of reasoning.<sup>54</sup> However, the court also opined on the Doctrine of Necessity, noting that in order to meet the standard: (1) “the vendor must be necessary for [a] successful reorganization”; (2) the vendor must exercise “sound business judgment[;]” and (3) other unsecured creditors must not be prejudiced by the favorable and preferential treatment of the vendor.<sup>55</sup> You, of course, also have outliers. For example, within the last decade the now-retired Judge Allan Gropper, on the record, stated that “I have often said from this bench that I don’t believe that there is such a thing as a critical vendor.”<sup>56</sup> Chapter 11 debtors in the Second Circuit are fortunate that this is not the standard and that critical vendor motions are granted routinely.

While tests and standards can provide helpful guidance when trying to predict how a court may rule, how a court actually rules is significantly more important. Of the three courts analyzed in this study, SDNY was the slowest when it came to granting interim orders, taking just 2.64 days on average.<sup>57</sup> When it came to granting

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<sup>51</sup> 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991).

<sup>52</sup> 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

<sup>53</sup> See *id.* at 175–77.

<sup>54</sup> See 614 B.R. 441, 456–57 (S.D.N.Y. 2020).

<sup>55</sup> *Id.* (citing *In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr. E.D. Va. 2005)).

<sup>56</sup> Transcript of First Day Hearing at 52:9–11, *In re Eastman Kodak Co.*, No. 12-10202 (Bankr. S.D.N.Y. Jan. 19, 2012), ECF No. 202.

<sup>57</sup> See *infra* Table 4: Southern District of New York Chapter 11 Cases with Critical Vendor Motions 2018–2021 [hereinafter “Table 4”].

final orders, the court finished second, averaging 26.21 days for entry.<sup>58</sup> The court was also one of two to grant interim final orders.<sup>59</sup>

Although the turnaround for critical vendor orders is very important, the amount granted is of far greater significance. Of the three courts, SDNY granted far and away the most interim relief with an average of \$17,055,857.00 granted against \$17,715,707.00 requested, or roughly 96.28% per case.<sup>60</sup> Of the fourteen cases analyzed, only three received less than the interim amount requested, and only one of those three received less than the final amount requested.<sup>61</sup>

SDNY was similarly generous when it came to the amount granted in final orders. Once again, SDNY granted far and away the most final relief with an average of \$35,914,510.00 granted against \$37,070,595.00 requested, or roughly 96.88% per case.<sup>62</sup> Of the fourteen cases analyzed only two received less than the final amount requested, one by way of final order,<sup>63</sup> and one by way of a \$175,000,000.00 second interim order.<sup>64</sup>

One interesting observation that came out of this group of cases is the very different ways in which judges frame their orders. For example, in both *Barneys New York Inc.*, and *A.B.C. Carpet Co., Inc.*, the debtors were granted the full amount of monetary relief sought to pay their lien claimants, foreign vendors, 503(b)(9) claims, and critical vendors.<sup>65</sup> Both orders gave a similar amount of relief, the former giving

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<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See Interim Order Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code Authorizing Debtors to Pay Prepetition Claims of Critical Vendors, Foreign Vendors and Suppliers of Goods Entitled to Administrative Priority at 2, *In re Aegerion Pharms., Inc.*, No. 19-11632 (Bankr. S.D.N.Y. Sept. 10, 2019), ECF No. 42; Interim Order (A) Authorizing the Debtors to Pay Certain Prepetition Claims of Foreign Vendors and Critical Vendors and Service Providers; (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests; and (C) Granting Related Relief at 3, *In re Centric Brands, Inc.*, No. 20-22637 (Bankr. S.D.N.Y. Mar. 25, 2022), ECF No. 72; Interim Order Authorizing Payment of Prepetition Claims of Certain Critical Vendors at 2, *In re Synergy Pharms. Inc.*, No. 18-14010 (Bankr. S.D.N.Y. Nov. 5, 2020), ECF No. 63; Final Order Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code Authorizing Debtors to Pay Prepetition Claims of Critical Vendors, Foreign Vendors and Suppliers of Good Entitled to Administrative Priority at 2, *In re Aegerion Pharms., Inc.*, No. 19-11632 (Bankr. S.D.N.Y. Sept. 10, 2019), ECF No. 146.

<sup>62</sup> See *infra* Table 4.

<sup>63</sup> See Final Order Pursuant to Sections 105(a), 363(b), 503(b) and 507(a) of the Bankruptcy Code Authorizing Debtors to Pay Prepetition Claims of Critical Vendors, Foreign Vendors and Suppliers of Good Entitled to Administrative Priority at 2, *In re Aegerion Pharms., Inc.*, No. 19-11632 (Bankr. S.D.N.Y. June 27, 2019), ECF No. 146.

<sup>64</sup> See Second Interim Order (I) Authorizing, but not Directing, Debtors to Pay Prepetition Claims of Certain Critical and Foreign Vendors and (II) Authorizing and Directing Financial Institutions to Honor and Process Checks and Transfers Related to Such Claims at 3, *In re LATAM Airlines Grp. S.A.*, No. 20-11254 (Bankr. S.D.N.Y. July 7, 2020), ECF No. 464.

<sup>65</sup> See *infra* Table 4. Final Order (I) Authorizing the Payment of (A) Prepetition Claims of Lien Claimants, (B) Foreign Vendor Claims, (C) Section 503(B)(9) Claims, and (D) Critical Vendor Claims, and (II) Granting Related Relief at 3, *In re Barneys N.Y., Inc.*, No. 20-11254 (Bankr. S.D.N.Y. Sept. 5, 2019), ECF No. 221; Final Order Granting Motion of Debtors for (I) Authority to Pay Certain Prepetition Claims of (A) Lien Claimants, (B) Section 503(B)(9) Claimants, and (C) Critical Vendors, and (II) Related Relief, *In re A.B.C. Carpet Co., Inc.*, No. 21-11591 (Bankr. S.D.N.Y. Oct. 1, 2021), ECF No. 119.

\$3,000,000.00 for these claims and the latter giving \$2,100,000.00 for these claims.<sup>66</sup> However, the order given in *Barneys* was made carte blanche whereas the order in *A.B.C. Carpet* broke down the amount for each of these claimants.<sup>67</sup>

### B. The Third Circuit

In the Third Circuit, the standard for evaluating critical vendor motions is similarly equivocal. In what is perhaps the seminal case, *In re Just for Feet, Inc.*, the United States District Court for the District of Delaware held that section 105(a) of the Bankruptcy Code provided a statutory basis for the payment of pre-petition claims wherein such payment was necessary to facilitate a successful reorganization.<sup>68</sup> Citing to the necessity of payment doctrine, the court went further, noting that not only were such payments necessary to the reorganization, but that the debtor would not survive the chapter 11 reorganization otherwise.<sup>69</sup> Courts in the Third Circuit have largely followed this notion for decades. As the court noted in *In re Columbia Gas Systems Inc.*, “[i]n the Third Circuit the law is clear that to justify payment of one class of pre-petition creditors in advance of a confirmed plan, the debtor must show that payment is essential to the continued operation of the business.”<sup>70</sup> The United States Court of Appeals for the Third Circuit has itself addressed the necessity of payment doctrine on at least two occasions, both in the context of, unsurprisingly, railroad reorganizations.<sup>71</sup> In *In re Lehigh & New England Railway Co.*, the court noted that the necessity of payment doctrine permits the immediate payment of claims of creditors where those creditors will not supply services or materials that are essential to conduct the business until, and unless, their pre-reorganization claims have been paid.<sup>72</sup>

Under the Doctrine of Necessity, how does Delaware rule? Of the three courts, Delaware fell right in the middle when it came to granting interim orders with an average turnaround time of 2.48 days.<sup>73</sup> Delaware was actually the slowest court when it came to granting final orders with an average turnaround time of 27.78 days.<sup>74</sup> Much like SDNY, Delaware also granted second interim orders.<sup>75</sup>

With respect to interim relief, Delaware granted by far the lowest absolute amount per case with an average of \$995,637.35 granted against \$1,029,782.61

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<sup>66</sup> See *infra* Table 4.

<sup>67</sup> See *id.*

<sup>68</sup> 242 B.R. 821, 824 (D. Del. 1999).

<sup>69</sup> See *id.* at 824–26.

<sup>70</sup> 171 B.R. 189, 192 (Bankr. D. Del. 1994) (citation omitted).

<sup>71</sup> See *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); see also *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972).

<sup>72</sup> See *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d at 581 (quoting Judge Hastie from his decision ten years earlier in *In re Penn Cent. Transp. Co.*, 467 F.2d at 102 n.1).

<sup>73</sup> See *infra* Table 5: District of Delaware Chapter 11 Cases with Critical Vendor Motions 2018–2021 [hereinafter “Table 5”].

<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

requested, although this falls in the middle of the three courts in terms of percentages at 96.68% per case.<sup>76</sup> However, when the amounts granted in second interim orders are included, this jumps to 101.33% per case.<sup>77</sup> Notably, of the twenty-seven cases analyzed, only three received less than the interim amount requested, and all received at least the final amount requested.<sup>78</sup>

With respect to final relief, Delaware once again granted the lowest absolute amount per case with an average of \$1,688,504.00 granted against \$1,669,986.00, or an average of 101.11% per case.<sup>79</sup> What makes this fascinating statistic possible is the fact that in one case Delaware actually awarded 33% more than the final amount requested by the debtor.<sup>80</sup>

### C. The Fifth Circuit

In the Fifth Circuit, the standard for evaluating critical vendor motions is far less nebulous. In the leading case, *In re CoServ, L.L.C.*, the United States Bankruptcy Court for the Northern District of Texas opined that when sections 105(a) and 1107(a) were read in conjunction with one another, they formed a bridge that made the Doctrine of Necessity applicable to the underlying case.<sup>81</sup> The court noted that chapter 11 trustees and debtors in possession both had a fiduciary duty to protect and preserve the bankruptcy estate and that there were occasions when this duty could only be fulfilled by the pre-plan satisfaction of a pre-petition claim.<sup>82</sup> Moreover, the court articulated its own three-part test and held that section 105(a) allowed the court to approve the payment of pre-petition claims if: (1) it was critical that the debtor deal with the claimant; (2) unless the debtor dealt with the claimant, the debtor risked the probability of harm or loss of economic advantage to the estate or the debtor's going concern value; and (3) there was no practical or legal alternative for the debtor to deal with the claimant other than payment of their claim.<sup>83</sup>

Following its precedent in *In re CoServ, L.L.C.*, how does SDTX rule? Of the three courts, SDTX is the fastest when it comes to granting interim relief with an

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<sup>76</sup> See *id.*

<sup>77</sup> See *id.*

<sup>78</sup> See *id.*

<sup>79</sup> See *id.*

<sup>80</sup> See Final Order Granting Motion of the Debtors for Entry of Interim and Final Orders Authorizing, But Not Directing, Payment of Prepetition Claims of Critical Vendors Pursuant to 11 U.S.C. §§ 363(B), 1107 and 1108, Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 9013-1(M) at 2, *In re Fleetwood Acquisition Corp.*, No. 19-12330 (Bankr. D. Del. Nov. 26, 2019), ECF No. 106; Interim Order Granting Motion Of The Debtors For Entry Of Interim And Final Orders Authorizing, But Not Directing, Payment of Prepetition Claims Of Critical Vendors Pursuant to 11 U.S.C. §§ 363(B), 1107 and 1108, Fed. R. Bankr. P. 6003 and 6004, and Del. Bankr. L.R. 9013-1(M) at 2, *In re Fleetwood Acquisition Corp.*, No. 19-12330 (Bankr. D. Del. Nov. 5, 2019), ECF No. 28.

<sup>81</sup> 273 B.R. 487, 496–97 (Bankr. N.D. Tex. 2002).

<sup>82</sup> *Id.* at 497.

<sup>83</sup> See *id.* at 498–99.

average of 2.14 days.<sup>84</sup> Moreover, SDTX is actually the fastest court when it comes to granting final relief with an average turnaround of 23.41 days.<sup>85</sup> Unlike the other two courts, SDTX did not grant a second interim order.<sup>86</sup>

With respect to interim relief, SDTX fell right in the middle in terms of absolute relief granted with an average of \$9,933,336.67 granted against \$9,981,033.33 requested, although this would be the greatest percentage granted, exclusive of second interim orders, at 99.52% per case.<sup>87</sup>

When looking at final relief, SDTX once again fell right in the middle when it came to absolute relief at \$14,350,912.00 granted against \$14,475,294.00 requested, although in terms of percentages the court was once again second only to Delaware at roughly 99.14% per case.<sup>88</sup>

In terms of the types of pre-petition claims that were granted, some of the more interesting claims included Perishable Agricultural Commodities Act (“PACA”) and Packers and Stockyards Act (“PASA”) claims, customs and regulatory claims, and shipper and warehousemen claims.<sup>89</sup> What makes the latter claim so interesting is the fact that in two cases where the final orders granted the debtors at least as much as the final amount requested, one order paid shippers and warehousemen \$1,000,000.00 while the other paid shippers nothing.<sup>90</sup>

## V. THE “LESS” PRO-DEBTOR CIRCUITS

### A. The Seventh Circuit

The Seventh Circuit’s standard for evaluating critical vendor motions is undoubtedly *Kmart*’s test for criticality.<sup>91</sup> In searching for cases, Stretto and Prime Clerk had a total of five cases filed in NDILL, only two of which had critical vendor motions. Even expanding the search to other claims agents like Epiq<sup>92</sup> yielded only an additional four cases, none of which had critical vendor motions. Moreover, the

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<sup>84</sup> See *infra* Table 6: Southern District of Texas Chapter 11 Cases with Critical Vendor Motions 2018-2021 [hereinafter “Table 6”].

<sup>85</sup> See *id.*

<sup>86</sup> See *id.*

<sup>87</sup> See *id.*

<sup>88</sup> See *id.*

<sup>89</sup> See *id.*

<sup>90</sup> See Final Order (I) Authorizing the Payment of Critical Vendor Claims and Certain Other Specified Trade Claims, (II) Confirming Administrative Expense Priority of Outstanding Orders and (III) Granting Related Relief at 9, *In re Bristow Grp.*, No. 19-32713 (Bankr. S.D. Tex. June 27, 2019), ECF No. 308; Final Order Authorizing Payment of Critical Construction Subcontractor Claims at 1, *In re Burkhalter Rigging, Inc.*, No. 19-30495 (Bankr. S.D. Tex. Apr. 23, 2019), ECF No. 271.

<sup>91</sup> See *In re Kmart Corp.*, 359 F.3d 866, 873 (7th Cir. 2004).

<sup>92</sup> Epiq, *Corporate Restructuring Chapter 11*, EPIQ GLOBAL, <https://www.epiqglobal.com/en-us/services/restructuring-bankruptcy> (last visited Jan. 28, 2023).

only two cases with critical vendor motions were from 2015 and 2017, which were both outside the window of this study.<sup>93</sup>

Some have postulated that testing for criticality limits the number of vendors seeking critical vendor status as proving indispensability is often an exercise in futility.<sup>94</sup> This would help explain why the Seventh Circuit, which has more overall filings than the Second, Third, or Fifth Circuits, with roughly twice as many filings as the former two, only has two critical vendor motions across the universe of claims agents.<sup>95</sup> Interestingly enough, the two cases with critical vendor motions are the only megacases listed on NDILL's court website, although in January of this year, there were five megacases listed, with the former cases having no critical vendor motions.<sup>96</sup>

The *Central Grocers, Inc.* case is something of an outlier because the critical vendor motion was made, and granted, while the case was before Delaware, as the case would not be transferred to NDILL until June 20, 2017, forty-seven days after filing.<sup>97</sup> While not necessarily an outlier, the *Caesars Entertainment Operating Company, Inc.* case is a bit of an oddity as it is the only case of the sixty cases used herein where the debtor filed separate motions for critical vendors and lien claimants, section 503(b)(9) claimants, and foreign vendor claimants.<sup>98</sup> In both NDILL cases, the Debtors received 100.00% of both the interim and final relief sought, with interim orders being entered the day after the motions were made and final orders being entered after 28 and 49 days, respectively.<sup>99</sup> The amounts awarded in the two cases varied greatly, with one case awarding a carte blanche order in the amount of \$3,400,000.00 to pay critical vendors, and the other awarding \$56,410,000.00 to pay critical vendors, lien claimants, 503(b)(9) claimants, and foreign vendor claimants.<sup>100</sup> Although the data suggests that applications for critical vendor status are a rarity and

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<sup>93</sup> See *infra* Table 7: Northern District of Illinois Chapter 11 Cases with Critical Vendor Motions 2015-2021 [hereinafter "Table 7"].

<sup>94</sup> See, e.g., Travis N. Turner, *Kmart and Beyond: A "Critical" Look at Critical Vendor Orders and the Doctrine of Necessity*, 63 WASH. & LEE L. REV. 431, 462 (2006).

<sup>95</sup> See *supra* Table 1: Chapter 11 and Overall Bankruptcy Filings 2018-2021(3Q) [hereinafter "Table 1"].

<sup>96</sup> See UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS: Fees/Case Information, Megacase Information, <https://www.ilnb.uscourts.gov/megacase-information> (last visited Jan. 28, 2023).

<sup>97</sup> See Motion of Debtors (I) For Interim and Final Authorization to Pay Certain Prepetition Obligations to Critical Vendors and (II) Granting Related Relief, *In re Cent. Grocers, Inc.*, No. 17-13886 (Bankr. D. Del. May 4, 2017), ECF No. 7; Final Order (I) For Authorization to Pay Certain Prepetition Obligations to Critical Vendors and (II) Granting Related Relief, *In re Cent. Grocers, Inc.*, No. 17-13886 (Bankr. D. Del. June 1, 2017), ECF No. 317; Order Determining Venue of Bankruptcy Cases, *In re Cent. Grocers, Inc.*, No. 17-13886 (Bankr. D. Del. June 20, 2017), ECF No. 386 (transferring the case to the Northern District of Illinois).

<sup>98</sup> See Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of (A) Prepetition Claims of Certain Lien Claimants, (B) Section 503(b)(9) Claims, and (C) Foreign Vendor Claims, (II) Approving Procedures Related Thereto, and (III) Granting Related Relief at 1-2, *In re Caesars Ent. Operating Co.*, No. 15-01145 (Bankr. N.D. Ill. Jan. 15, 2015), ECF No. 9; Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of Certain Vendors, (II) Approving and Authorizing Procedures Related Thereto, and (III) Granted Related Relief, *In re Caesars Ent. Operating Co.*, No. 15-01145 (Bankr. N.D. Ill. Jan. 15, 2015), ECF No. 11.

<sup>99</sup> See *infra* Table 7.

<sup>100</sup> See *id.*



only made in megacases in NDILL, these cases nonetheless awarded 100.00% of the amount sought with the quickest turnaround time for interim orders, and the longest time for final orders.<sup>101</sup>

### CONCLUSION

There is no single standard or test for determining the validity of critical vendor claims. Every circuit throughout the United States applies its own standard. Some circuits even have internal splits of authority. Despite this fact, critical vendor motions are often granted routinely, expeditiously, and in the full amount requested. This paper has taken an analytical approach in evaluating these decisions, the different approaches that courts take in making them, and how they may affect bankruptcy courts' chapter 11 filings.

Three of the ninety United States Bankruptcy Courts have, in the aggregate, seen anywhere from twenty-three to thirty percent of all chapter 11 filings since the start of 2018.<sup>102</sup> Debtors file in these courts because it is in their best interest.<sup>103</sup> Of the sixty cases pulled from Stretto and Prime Clerk that filed a critical vendor motion, all sixty motions were granted to at least some extent. In these three courts, debtors got anywhere from 96.28% to 101.32% of the interim relief that they sought. These same debtors got anywhere from 96.88% to 101.11% of the final relief that they sought. Debtors that filed in SDNY got as much as \$175,000,000.00 in final relief to pay their critical vendors while debtors that filed in SDTX got as much as \$72,500,000.00.<sup>104</sup> Debtors like *Barneys New York* got carte blanche orders to pay their critical vendors.<sup>105</sup> Some debtors that filed critical vendor motions even got \$1,000,000.00 to pay shippers and warehousemen.<sup>106</sup> Even courts that make debtors jump through additional hoops for critical vendor status, such as establishing criticality, appear to award the full amount, expeditiously.<sup>107</sup> Debtors file in these courts because they give them the relief that they need to reorganize under chapter 11. The generous and

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<sup>101</sup> See UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS: Fees/Case Information, Megacase Information, <https://www.ilnb.uscourts.gov/megacase-information> (last visited Jan. 28, 2023); see also *infra* Table 7.

<sup>102</sup> See *supra* Table 2: Chapter 11 Filings in the District of Delaware, the Southern District of New York, and the Southern District of Texas 2018-2021(3Q) [hereinafter "Table 2"].

<sup>103</sup> See LOPUCKI, *supra* note 2, at 40.

<sup>104</sup> See Second Interim Order (I) Authorizing, but Not Directing, Debtors to Pay Prepetition Claims of Certain Critical and Foreign Vendors and (II) Authorizing and Directing Financial Institutions to Honor and Process Checks and Transfers Related to Such Claims at 2–3, *In re LATAM Airlines Grp. S.A.*, No. 20-11254 (Bankr. S.D.N.Y. July 7, 2020), ECF No. 464; see also *infra* Table 6.

<sup>105</sup> See Final Order (I) Authorizing the Payment of (A) Prepetition Claims of Lien Claimants, (B) Foreign Vendor Claims, (C) Section 503(b)(9) Claims, and (D) Critical Vendor Claims, and (II) Granting Related Relief at 2, *In re Barneys N.Y., Inc.*, No. 19-36300 (Bankr. S.D.N.Y. Sept. 5, 2019), ECF No. 221.

<sup>106</sup> See Final Order Granting Motion of the Debtors for Entry of Interim and Final Orders Authorizing, But Not Directing, Payment of Prepetition Claims of Critical Vendors Pursuant to 11 U.S.C. §§ 363(b), 1107 and 1108, FED. R. BANKR. P. 6003 and 6004, and Del. Bankr. L.R. 9013-1(M), *In re Fleetwood Acquisition Corp.*, No. 19-12330 (Bankr. D. Del. Nov. 26, 2019), ECF No. 106.

<sup>107</sup> See *infra* Table 7.

obliging treatment that these courts give to critical vendor motions is a testament to that fact.

<b>Table 4: Southern District of New York Chapter 11 Cases<sup>108</sup></b>					
<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
Barneys New York, Inc., et al.	19-36300	8/6/2019	8/6/2019	8/7/2019	9/5/2019
A.B.C. Carpet Co., Inc., et al.	21-11591	9/8/2021	9/9/2021	9/10/2021	10/1/2021
Aegerion Pharm., Inc.	19-11632	5/20/2019	5/21/2019	5/24/2019	6/27/2019
Centric Brands Inc.	20-22637	5/18/2020	5/18/2020	5/20/2020	6/10/2020
Frontier Commc'ns Corp.	20-22476	4/14/2020	4/15/2020	4/20/2020	5/26/2020
Hermitage Offshore Serv. Ltd.	20-11850	8/11/2020	8/12/2020	8/17/2020	8/27/2020
Internap Tech. Sol. Inc.	20-22393	3/16/2020	3/16/2020	3/19/2020	4/14/2020

<sup>108</sup> Please note that the sequence of the cases listed remains unchanged throughout Table 4 despite the header of the columns changing on subsequent pages. Additionally, Table 4, Table 5, Table 6, and Table 7 will contain footnotes that include additional information relating to these cases.

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
Barneys New York, Inc., et al. <sup>109</sup>	30	\$3,000,000	\$2,200,000	\$2,200,000	\$3,000,000
A.B.C. Carpet Co., Inc., et al. <sup>110</sup>	22	\$2,100,000	\$1,025,000	\$1,025,000	\$2,100,000
Aegerion Pharm., Inc. <sup>111</sup>	37	\$1,985,177	\$893,330	\$157,000	\$800,000
Centric Brands Inc.	23	\$85,000,000	\$45,000,000	\$37,500,000	\$85,000,000
Frontier Commc'ns Corp. <sup>112</sup>	41	\$73,400,000	\$33,300,000	\$33,300,000	\$73,400,000
Hermitage Offshore Serv. Ltd. <sup>113</sup>	15	Null	\$1,600,000	\$1,600,000	\$3,300,000
Internap Tech. Sol. Inc. <sup>114</sup>	29	\$26,900,000	\$17,800,000	\$17,800,000	\$26,900,000

<sup>109</sup> Lien Claimants, Foreign Vendors, 503(b)(9), Critical Vendors Interim: \$2,200,000.00; Lien Claimants, Foreign Vendors, 503(b)(9), Critical Vendor Final: \$3,000,000.00.

<sup>110</sup> Lien Claimants Interim: \$250,000.00; Lien Claimants Final: \$350,000.00. 503(b)(9) Interim: \$300,000.00; 503(b)(9) Final: \$500,000.00. Critical Vendor Interim: \$475,000.00; Critical Vendor Final \$1,250,000.00.

<sup>111</sup> Critical Vendor Claims: \$1,635,177.00; Foreign Vendor Claims: \$100,000.00; 503(b)(9) Claims: \$250,000.00.

<sup>112</sup> Lien Claimants Interim: \$8,800,000.00; Lien Claimants Final: \$21,000,000.00. 503(b)(9) Interim: \$6,200,000.00; 503(b)(9) Final: \$17,800,000.00. Critical Vendor Interim: \$18,300,00.00; Critical Vendor Final \$34,400,000.00.

<sup>113</sup> No Final Amount Requested.

<sup>114</sup> Hosting Facilities Interim: \$300,000.00; Hosting Facilities Final \$300,000.00. Telecoms Interim: \$7,900,000.00; Telecoms Final: \$9,700,000.00. Construction Contractors Interim: \$2,100,000.00; Construction Contractors Final: \$4,100,000.00. Trade Creditors Interim: \$7,500,000.00; Trade Creditors Final \$12,800,000.00.

<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
KB US Holdings, Inc.	20-22962	8/23/2020	8/24/2020	8/25/2020	9/17/2020
LATAM Airlines Grp. S.A.	20-11254	5/26/2020	5/26/2020	5/31/2020	
LSC Commc'n, Inc.	20-10950	4/13/2020	4/13/2020	4/15/2020	5/12/2020
Nine West Holdings, Inc.	18-10947	4/6/2018	4/6/2018	4/9/2018	5/7/2018
Purdue Pharma L.P.	19-23649	9/15/2019	9/16/2019	9/18/2019	10/15/2019
Sears Holdings Corp.	18-23538	10/15/2018	10/15/2018	10/17/2018	11/16/2018
Synergy Pharm. Inc.	18-14010	12/12/2018	12/12/2018	12/14/2018	1/8/2019

<b>Cases cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
KB US Holdings, Inc.	24	\$11,000,000	\$11,000,000	\$11,000,000	\$11,000,000
LATAM Airlines Grp. S.A. <sup>115</sup>		\$190,000,000	\$45,000,000	\$45,000,000	

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<sup>115</sup> Second Interim Order on 7/6/2020 for \$175,000,000.00. No Final Order Granted.

LSC Commc'n, Inc.	29	\$19,300,000	\$9,600,000	\$9,600,000	\$19,300,000
Nine West Holdings, Inc.	31	\$1,300,000	\$900,000	\$900,000	\$1,300,000
Purdue Pharma L.P.	29	\$7,700,000	\$7,700,000	\$7,700,000	\$7,700,000
Sears Holdings Corp.	32	\$90,000,000	\$70,000,000	\$70,000,000	\$90,000,000
Synergy Pharm. Inc.	25	\$4,003,146	\$2,001,573	\$1,000,000	\$3,003,146

**Table 5: District of Delaware Chapter 11 Cases with Critical Vendor Motions 2018-2021**

Case Name	Case Number	Dated Filed	Date CV Motion Filed	Date Interim Order Granted	Dated Final Order Granted
Impresa Holdings Acquisition Corp., et al.	20-12399	9/24/2020	9/24/2020	9/25/2020	10/16/2020
True Religion Apparel, Inc., et al.	20-10941	4/13/2020	6/5/2020		6/22/2020
In-Shape Holdings, LLC, et al.	20-13130	12/16/2020	12/16/2020	12/17/2020	1/20/2021
Old LC, Inc. (f/k/a Loot Crate, Inc.), et al.	19-11791	8/11/2019	8/12/2019	8/13/2019	9/3/2019
MTE Holdings LLC, et al.	19-12269	10/22/2019	3/3/2019		3/23/2019
MobiTV, Inc., et al.	21-10457	3/1/2021	3/2/2021	3/2/2021	3/26/2021

Montesquieu, Inc., et al.	19-10599	3/20/2019	3/21/2019	3/22/2019	4/24/2019
Nighthawk Royalties LLC, et al.	18-10989	4/30/2018	5/15/2018	5/17/2018	6/7/2018
Pipeline Foods, LLC, et al.	21-11002	7/8/2021	7/28/2021		8/3/2021

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
Impresa Holdings Acquisition Corp., et al.	22	\$450,000	\$450,000	\$450,000	\$450,000
True Religion Apparel, Inc., et al. <sup>116</sup>	17	\$2,500,000			\$2,500,000
In-Shape Holdings, LLC, et al.	35	\$688,000	\$688,000	\$688,000	\$688,000
Old LC, Inc. (f/k/a Loot Crate, Inc.), et al.	22	\$1,000,000	\$500,000	\$500,000	\$1,000,000
MTE Holdings LLC, et al. <sup>117</sup>	20	\$190,613.75			\$190,613.75
MobiTV, Inc., et al.	24	\$1,000,000	\$500,000	\$500,000	\$1,000,000
Montesquieu, Inc., et al.	34	\$15,000	\$15,000	\$15,000	\$15,000
Nighthawk Royalties LLC, et al.	23	\$200,000	\$75,000	\$75,000	\$200,000
Pipeline Foods, LLC, et al. <sup>118</sup>	6	\$1,323,221.74			\$1,300,000

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<sup>116</sup> No Interim Order.

<sup>117</sup> No Interim Order.

<sup>118</sup> No Interim Amount Requested.

<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
REVA Medical, Inc.	20-10072	1/14/2020	1/14/2020	1/16/2020	2/5/2020
VIVUS, Inc., et al.	20-11779	7/7/2020	7/7/2020	7/10/2020	8/16/2020
Z Gallerie, LLC, et al.	19-10488	3/11/2019	3/11/2019	3/12/2019	4/9/2019
Fleetwood Acquisition Corp, et al.	19-12330	11/4/2019	11/4/2019	11/5/2019	11/26/2019
Basin Transload, LLC	20-11462	6/1/2020	6/1/2020	6/3/2020	6/23/2020
ALS Liquidation LLC, et al.	20-11774	7/6/2020	7/8/2020	7/20/2020	9/25/2020
API Americas Inc., et al.	20-10239	2/2/2020	2/2/2020	2/4/2020	3/19/2020
Augustus Intelligence Inc.	21-10744	4/24/2021	4/30/2021	5/4/2021	6/3/2021
FHC Holdings Corp. (f/k/a Francesca's Holdings Corp.), et al.	20-13076	12/3/2020	12/4/2020	12/8/2020	1/4/2021

Cases Cont'd	Days Btw Filing and Final Order	Final Amount Requested	Interim Amount Requested	Interim Amount Granted	Final Amount Granted
REVA Medical, Inc. <sup>119</sup>	22	Full	\$770,000	\$480,000	Full
VIVUS, Inc., et al. <sup>120</sup>	40	\$17,800,000	\$7,200,000	\$7,200,000	\$17,800,000
Z Gallerie, LLC, et al. <sup>121</sup>	29	\$3,000,000	\$2,250,000	\$2,250,000	\$3,000,000
Fleetwood Acquisition Corp, et al.	22	\$1,500,000	\$1,000,000	\$750,000	\$2,000,000
Basin Transload, LLC	22	\$15,000	\$10,000	\$10,000	\$15,000
ALS Liquidation LLC, et al.	79	\$1,700,000	\$325,000	\$79,532	\$1,700,000
API Americas Inc., et al. <sup>122</sup>	46	\$500,000	\$250,000	\$250,000	\$250,000
Augustus Intelligence Inc.	34	\$106,000	\$86,000	\$86,000	\$106,000
FHC Holdings Corp. (f/k/a Francesca's Holdings Corp.), et al.	31	\$1,000,000	\$500,000	\$500,000	\$1,000,000

<sup>119</sup> Lien Claimants' Charges (Petition Date): \$209,927.01; Lien Claimants' Charges (Interim Period): \$209,927.01. 503(b)(9) Claims (PD): \$2,542.27; 503(b)(9) Claims (IP): \$2,542.27. Critical Vendor Claims (PD): \$73,443.64; Critical Vendor Claims (IP): \$73,443.64. Non-priority Trade Claims (PD): \$742,523.70; Non-priority Trade Claims (IP): \$479,283.73. PD Total: \$1,029,000.00; IP Total: \$765,196.65.

<sup>120</sup> General Unsecured Vendor Claims Interim: \$5,500,000.00; General Unsecured Vendor Claims Final: \$15,300,000.00. Priority Trade Claims Interim: \$1,700,000.00; Priority Trade Claims Final: \$2,500,000.00.

<sup>121</sup> Critical/Foreign Vendor Interim: \$1,500,000.00; Critical/Foreign Vendor Final: \$2,000,000.00. Logistics Claims Interim: \$375,000.00; Logistics Claims Final: \$500,000.00. 503(b)(9) Claims Interim: \$375,000.00; 503(b)(9) Claims Final \$500,000.00.

<sup>122</sup> Second Interim Order on 2/21/2020 for \$250,000.00.



<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
Lighthouse Res. Inc., et al.	20-13056	12/3/2020	12/3/2020	12/4/2020	1/4/2021
BeavEx Holding Corp., et al.	19-10316	2/18/2019	2/18/2019	2/21/2019	3/11/2019
iPic-Gold Class Ent., LLC, et al.	19-11739	8/5/2019	8/5/2019	8/8/2019	9/10/2019
Furniture Factory Ultimate Holding, L.P., et al.	20-12816	11/5/2020	11/5/2020	11/6/2020	11/30/2020
The News-Gazette, Inc., et al.	19-11901	8/30/2019	8/30/2019	9/4/2019	9/24/2019
CL H Winddown LLC, et al.	21-10527	3/8/2021	4/2/2021		4/8/2021
Cedar Haven Acquisition, LLC	19-11736	8/2/2019	8/2/2019	8/6/2019	9/4/2019
Sancilio Pharm. Co., Inc., et al.	18-11333	6/5/2018	6/5/2018	6/7/2018	6/28/2018
BL Santa Fe, LLC, et al.	21-11190	8/30/2021	8/30/2021	8/31/2021	9/20/2021

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
Lighthouse Res. Inc., et al.	32	\$350,000	\$150,000	\$150,000	\$350,000
BeavEx Holding Corp., et al.	21	\$265,000	\$200,000	\$200,000	\$265,000
iPic-Gold Class Ent., LLC, et al. <sup>123</sup>	36	\$5,350,000	\$4,500,000	\$4,500,000	\$5,350,000
Furniture Factory Ultimate Holding, L.P., et al. <sup>124</sup>	25	\$750,000	\$550,000	\$550,000	\$750,000
The News-Gazette, Inc., et al. <sup>125</sup>	25	Null	\$6,000	\$6,000	\$6,000
CL H Winddown LLC, et al. <sup>126</sup>	6	\$325,000			\$325,000
Cedar Haven Acquisition, LLC	33	\$200,000	\$100,000	\$100,000	\$200,000
Sancilio Pharm. Co., Inc., et al.	23	\$580,000	\$290,000	\$290,000	\$580,000
BL Santa Fe, LLC, et al. <sup>127</sup>	21	Full	\$3,270,000	\$3,270,000	Full

<sup>123</sup> Second Interim Order on 8/22/2019 for \$850,000.00.

<sup>124</sup> Critical Vendor Interim: \$270,000.00; Critical Vendor Final: \$455,000.00. Shipper Charges, Import Charges, 503(b)(9) Interim: \$280,000.00; Shipper Charges, Important Charges, 503(b)(9) Final: \$295,000.00.

<sup>125</sup> No Final Amount Requested.

<sup>126</sup> No Interim Order.

<sup>127</sup> Pre-Petition Ordinary Course \$3,270,000.00 Ordinary Course Due Within 30 Days \$3,450,000.00.

**Table 6: Southern District of Texas Chapter 11 Cases with Critical Vendor Motions 2018-2021**

<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
PWS Winddown LLC	20-33642	7/20/2020	7/21/2020		7/22/2020
Francis' Drilling Fluids, Ltd., et al.	18-35441	9/29/2018	9/29/2018	10/2/2018	11/1/2018
Burkhalter Rigging, Inc., et al.	19-30495	2/1/2019	3/19/2019	3/25/2019	4/23/2019
Brazos Electric Power Coop., Inc.	21-30725	3/1/2021	3/1/2021	3/3/2021	3/17/2021
Neiman Marcus Grp. LTD LLC, et al.	20-32519	5/7/2020	5/7/2020	5/8/2020	6/2/2020
Alta Mesa Res., Inc.	19-35133	9/11/2019	1/13/2020	1/15/2020	2/11/2020
Am. Com. Lines Inc.	20-30982	2/7/2020	2/7/2020	2/10/2020	3/3/2020
Basic Energy Serv., Inc.	21-90002	8/17/2021	8/17/2021	8/17/2021	9/13/2021
Bristow Grp. Inc.	19-32713	5/11/2019	5/11/2019	5/14/2019	6/27/2019

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
PWS Winddown LLC <sup>128</sup>	1	All or Part Ord. Course Bus.			\$350,000
Francis' Drilling Fluids, Ltd., et al.	33	\$1,000,000	\$500,000	\$60,000	\$60,000
Burkhalter Rigging, Inc., et al. <sup>129</sup>	35		\$165,000	\$140,500	\$240,500 (\$100,000 Over Interim)
Brazos Electric Power Coop., Inc.	16	\$10,000,000	\$7,000,000	\$7,000,000	\$10,000,000
Neiman Marcus Grp. LTD LLC, et al. <sup>130</sup>	26	\$72,500,000	\$42,500,000	\$42,500,000	\$72,500,000
Alta Mesa Res., Inc.	29	\$9,025,000	\$5,600,000	\$5,600,000	\$9,025,000
Am. Com. Lines Inc.	25	\$54,200,00	\$41,000,000	\$41,000,000	\$54,200,000

<sup>128</sup> No Interim Order. Final Amount Requested Left Open to Court.

<sup>129</sup> Subcontractor Claims Requested: \$140,500.00; Subcontractor Claims Granted: \$240,500.00. Shipping Claims Requested: \$25,000.00; Shipping Claims Granted: \$0.00. No Final Amount Requested.

<sup>130</sup> Critical Vendor Interim: \$25,000,000.00; Critical Vendor Final: \$50,000,000.00. Lien Claimants Interim: \$12,400,000.00; Lien Claimants Final: \$12,400,000.00. Customs and Regulatory Claimants Interim: \$115,000.00; Customs and Regulatory Claimants Final: \$115,000.00. 503(b)(9) Interim: \$5,000,000.00; 503(b)(9) Final \$10,000,000.00.

Basic Energy Serv., Inc.	27	\$5,900,000	\$4,800,000	\$4,800,000	\$5,900,000
Bristow Grp. Inc. <sup>131</sup>	47	\$7,550,000	\$5,350,000	\$5,350,000	\$7,550,000

Case Name	Case Number	Dated Filed	Date CV Motion Filed	Date Interim Order Granted	Dated Final Order Granted
CEC Ent., Inc.	20-33163	6/25/2020	6/25/2020	6/29/2020	7/23/2020
Geokinetics Inc.	18-33410	6/25/2018	6/27/2018	6/29/2018	7/16/2018
HGIM Holdings, LLC	18-31080	3/7/2018	3/8/2018	3/9/2018	4/3/2018
Katerra Inc.	21-31861	6/6/2021	6/7/2021	6/7/2021	7/12/2021
Pacific Drilling S.A. (2020)	20-35212	10/30/2020	10/30/2020		11/3/2020
Sundance Energy Inc.	21-30882	3/9/2021	3/9/2021		3/10/2021
Vanguard Natural Res., Inc. (2019)	19-31786	3/31/2019	4/1/2019	4/1/2019	4/22/2019
Washington Prime Grp. Inc.	21-31948	6/13/2021	6/13/2021	6/16/2021	7/8/2021

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<sup>131</sup> Critical Vendor Interim: \$2,400,000.00; Critical Vendor Final: \$3,700,000.00. Foreign Interim: \$350,000.00; Foreign Final: \$350,000.00. Shippers/Warehousemen Interim: \$1,000,000.00 Shippers/Warehousemen Final: \$1,000,000.00. 503(b)(9) Interim: \$1,600,000.00; 503(b)(9) Final: \$2,500,000.00.

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
CEC Ent., Inc. <sup>132</sup>	28	\$5,750,000	\$2,750,000	\$2,750,000	\$4,500,000
Geokinetics Inc.	19	\$500,000	\$500,000	\$500,000	\$500,000
HGIM Holdings, LLC <sup>133</sup>	26	\$4,000,000	\$3,600,000	\$3,600,000	\$4,000,000
Katerra Inc. <sup>134</sup>	35	\$3,100,000	\$1,500,000	\$1,500,000	\$3,100,000
Pacific Drilling S.A. (2020) <sup>135</sup>	4	\$2,000,000	\$250,000		\$2,000,000
Sundance Energy Inc. <sup>136</sup>	1	\$22,140,000			\$22,140,000
Vanguard Natural Res., Inc. (2019) <sup>137</sup>	21	\$35,400,000	\$25,800,000	\$25,800,000	\$35,400,000
Washington Prime Grp. Inc. <sup>138</sup>	25	\$12,500,000	\$8,400,000	\$8,400,000	\$12,500,000

<sup>132</sup> Critical Vendor Interim: \$1,000,000.00; Critical Vendor Final: \$2,000,000.00. PACA/PASA Interim: \$750,000.00; PACA/PASA Final: \$1,500,000.00. 503(b)(9) Interim: \$500,000.00; 503(b)(9) Final: \$1,000,000.00. Lien Interim: \$500,000.00; Lien Final: \$0.00.

<sup>133</sup> Lien Interim: \$3,010,000.00; Lien Final: \$3,370,000.00. 503(b)(9) Interim: \$410,000.00; 503(b)(9) Final: \$460,000.00. Foreign Interim: \$10,000.00; Foreign Final: \$10,000.00.

<sup>134</sup> Critical Vendor Interim: \$500,000.00; Critical Vendor Final: \$1,000,000.00. Lien Claimants Interim: \$1,000,000.00; Lien Claimants Final: \$2,100,000.00.

<sup>135</sup> No Interim Order Sought. \$50,000.00 Interim and \$100,000.00 Final for Critical Vendors.

<sup>136</sup> No Interim Order.

<sup>137</sup> Lien Claimants Interim: \$10,400,000.00; Lien Claimants Final: \$17,400,000.00. Marketing Arrangement Counterparties Interim: \$5,500,000.00; Marketing Arrangement Counterparties Final: \$5,500,000.00. Shippers and Warehousemen Interim: \$3,700,000.00; Shippers and Warehousemen Final: \$6,100,000.00. 503(b)(9) Claimants Interim: \$5,700,000.00; 503(b)(9) Claimants Final: \$5,700,000.00. HSE and Other Suppliers Interim: \$500,000.00; HSE and Other Suppliers Final \$700,000.00.

<sup>138</sup> Critical Vendor Interim: \$5,900,000.00; Critical Vendor Final: \$8,800,000.00. Lien Claimants Interim: \$2,500,000.00; Lien Claimants Final: \$3,700,000.00.

**Table 7: Northern District of Illinois Chapter 11 Cases with Critical Vendor Motions 2015-2021**

<b>Case Name</b>	<b>Case Number</b>	<b>Dated Filed</b>	<b>Date CV Motion Filed</b>	<b>Date Interim Order Granted</b>	<b>Dated Final Order Granted</b>
Caesars Ent. Operating Co., Inc.	15-01145	1/15/2015	1/15/2015	1/16/2015	3/6/2015
Central Grocers, Inc.	17-13386	5/4/2017	5/4/2017	5/5/2017	6/1/2017

<b>Cases Cont'd</b>	<b>Days Btw Filing and Final Order</b>	<b>Final Amount Requested</b>	<b>Interim Amount Requested</b>	<b>Interim Amount Granted</b>	<b>Final Amount Granted</b>
Caesars Ent. Operating Co., Inc. <sup>139</sup>	49	\$56,410,000	\$39,510,000	\$39,510,000	\$56,410,000
Central Grocers, Inc. <sup>140</sup>	28	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000

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<sup>139</sup> Critical Vendors Interim: \$10,700,000.00; Critical Vendors Final: \$16,300,000.00. Lien Claimants Interim: \$8,000,000.00; Lien Claimants Final: \$10,000,000.00. 503(b)(9) Claimants Interim: \$20,700,000.00; 503(b)(9) Claimants Final: \$30,000,000.00. Foreign Vendor Claimants Interim: \$110,000.00. Two motions brought instead of one.

<sup>140</sup> Carte blanche order granted in Delaware.