UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA FT. MYERS DIVISION

	X	
	:	Chapter 11
In re:	:	
	:	Case No. 11-01515
EVANS OIL COMPANY LLC, et al., ¹	:	
	:	Judge David H. Adams
Debtor.	:	
	:	

THIRD INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO BANKRUPTCY CODE SECTION 363 AND GRANTING ADEQUATE PROTECTION PURSUANT TO <u>BANKRUPTCY CODE SECTIONS 361 AND 363</u>

THIS CASE came on for consideration of the Emergency Motion of Debtors and Debtors-in-Possession for an Interim Order Authorizing Use of Cash Collateral Pursuant to Bankruptcy Code Section 363 and Granting Adequate Protection Pursuant to Bankruptcy Code Section 361 and 363 (the "Motion")² [Docket No. 11], filed on behalf of Evans Oil Company LLC ("Evans") KCWL, LLC ("KCWL"), Long Equipment Finance, LLC ("Long Equipment"), Long Petroleum Products LLC ("Long Petroleum"), Long Run, LLC ("Long Run"), Octane, LLC ("Octane"), and RML, LLC ("RML" and together with Evans, KCWL, Long Equipment, Long Petroleum, Long Run and Octane, the "Debtors"), the debtors and debtors-in-possession in the above-captioned Chapter 11

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Evans Oil Company, LLC (9593); KCWL, LLC (5248); Long Equipment Finance, LLC (5090); Long Petroleum Products, LLC (9602); Long Run, LLC (3259); Octane, LLC (1500); and RML, LLC (7544).

cases (the "<u>Cases</u>"), by and through their undersigned proposed counsel, for entry of an order (a) authorizing interim and permanent use of Cash Collateral and granting adequate protection, and (b) seeking an emergency hearing on the Motion to consider the entry of an interim order pursuant to Bankruptcy Rule 4001 (this "<u>Order</u>") authorizing Debtors, *inter alia*, to use the Cash Collateral, all upon the terms and conditions set forth herein pending the Final Hearing referred to below; and (c) requesting that a final hearing (the "<u>Final Hearing</u>") be scheduled, and that notice procedures in respect of the Final Hearing be established by this Court to consider entry of a final order (the "<u>Final Order</u>") authorizing on a final basis, *inter alia*, the use of the Cash Collateral, the *Motion to Prohibit Use of Cash Collateral and Objection of Fifth Third Bank to Debtors ' Motion to Use Cash Collateral* [Docket No. 47] (the "<u>Fifth Third Objection</u>"), and the *Response to Motion for an Interim Order Authorizing Use of Cash Collateral* [Docket No. 50] (the "<u>TransMontaigne Response</u>" and together with the Motion and the Fifth Third Objection, the "<u>Cash Collateral Pleadings</u>").

On January 31, 2011, this Court entered that certain Interim Order Authorizing Use of Cash Collateral Pursuant to Bankruptcy Code Section 363 and Granting Adequate Protection Pursuant to Bankruptcy Code Section 361 and 363 [Docket No. 31] (the "First Interim Cash Collateral Order"). On February 3, 2011, this Court entered that certain Second Interim Order Authorizing Use of Cash Collateral Pursuant to Bankruptcy Code Section 363 and Granting Adequate Protection Pursuant to Bankruptcy Code Section 361 and 363 [Docket No. 63] (the "Second Interim Cash Collateral Order")

²Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

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and together with the First and this Third Interim Cash Collateral Order, the "Interim Cash Collateral Orders").

Debtors and Fifth Third Bank ("<u>Fifth Third</u>") have agreed to extend the Interim Cash Collateral Orders pursuant to the terms and upon the conditions set forth in this Third Interim Cash Collateral Order, and the Office of the United States Trustee does not oppose an extension upon the terms and subject to the conditions of this Third Interim Cash Collateral Order.

After due deliberation and hearing on February 3, 2011, this Court finds and concludes that: (i) the Court has jurisdiction over the matters raised in the Motion under 28 U.S.C. §§ 157 and 1334; (ii) venue of this matter is proper under 28 U.S.C. §§ 1408 and 1409; (iii) this matter is a core proceeding under 28 U.S.C. § 157(b)(2); (iv) the relief requested in the Motion is in the best interests of Debtors, their estates, creditors, and other parties in interest; (v) adequate and proper notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; (vi) the issues addressed in the Fifth Third Objection and the TransMontaigne Response are resolved as set forth herein or overruled for the purposes of this Third Interim Order only; and (vi) good and sufficient cause exists for the granting of the relief requested in the Motion as set forth herein. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED, THAT that:

1. The Motion is GRANTED on an interim basis. Except as expressly set forth herein, the terms and conditions of the Interim Cash Collateral Orders shall continue in full force and effect though and including February 17, 2011.

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2. To the extent that Fifth Third Bank has a valid, perfected and enforceable security interests in Debtors' cash collateral ("<u>Cash Collateral</u>") as that term is defined under Bankruptcy Code Section 363(a), Debtors may use Cash Collateral for the period commencing on the Petition Date to pay those items delineated in the budget (the "<u>Cash Collateral Budget</u>") attached to this Order as <u>Exhibit A</u> through and including the week commencing April 29, 2011 (with a variance from actual-to-projected disbursements weekly not to exceed 10%, on a cumulative basis collectively, the "<u>Budget</u>"), effective through February 17, 2011.

3. As adequate protection for any such interest in Cash Collateral used by Debtors, Fifth Third is granted replacement liens upon, and security interests in, Debtors' post-petition Cash Collateral, but only to the extent that Debtors diminish such Cash Collateral, and in no event to exceed the type, kind, priority and amount, if any, which existed on the Petition Date. Moreover, as further adequate protection of Fifth Third's interests in Cash Collateral, Debtors shall provide counsel for Fifth Third and any creditors' committee with such reports as described on the list attached hereto as <u>Exhibit B</u>.

4. In the event actual disbursements weekly exceed projected disbursements by more than 10%, on a cumulative basis, Fifth Third may, upon not less than two (2) business days' prior written notice to Debtors' counsel, have the right to a hearing on stay relief. In any event, it shall not be a default under this Third Interim Cash Collateral Order if actual disbursements for "Product purchases" are greater than have been budgeted by Debtors to the extent prices charged Debtors by its suppliers for such purchases increase after January 30, 2011.

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5. No later than Wednesday, February 9, 2011, Debtors shall provide Fifth Third with a report (the "Petition Date Report"), reviewed by The Parkland Group, Inc. ("Parkland"), of Debtors' inventory, cash and receivables (together, the "Working Capital") as of the Petition Date. No later than 12:00 p.m. Noon prevailing Eastern Time, on each of February 11 and 15, 2011, Debtors shall provide Fifth Third with a report (the "Interim Report"), reviewed by Parkland, of Working Capital on the most recent prior date for which Debtors have such information. In the event, and to the extent that, the Working Capital on the Interim Report is less than the Working Capital on the Petition Date Report (the "Deficiency"), Fifth Third may, by written notice to Debtors' counsel sent via electronic mail and filed with the Court, declare a default under this Third Interim Cash Collateral Order, in which event Debtors shall have two (2) business days to cure the Deficiency and Debtors and Fifth Third shall have the right to an emergency hearing to consider whether Fifth Third should be granted relief from the automatic stay provisions of 11 U.S.C. § 362. Debtors may cure the Deficiency by increasing Working Capital or by depositing funds in a separate debtor-in-possession account at BB&T in the amount of the Deficiency (the "Reserve") as and for further adequate protection. The Reserve may be drawn upon by Debtors upon Debtors subsequently presenting a report (the "Cure Report"), reviewed by The Parkland Group, that the Working Capital as of such date is greater than the Working Capital reported in the Petition Date Report.

6. Notwithstanding anything to the contrary set forth in any Order or the Cash Collateral Budget, Debtors are authorized to use Cash Collateral to purchase fuel, refined petroleum products, lubricants and other product. This shall not affect the Cash

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Collateral Budget calculations for default purposes solely between Debtors and Fifth Third.

7. Fifth Third represents that it is holding in a suspense account certain ACH returns initiated on January 26, 2011 totaling approximately \$81,000 in the aggregate, which Fifth Third shall release from the suspense account and, upon receipt of written evidence from Fifth Third of (A) the information identifying by the date, amount and payor of both (i) the remittance of each of these ACH transfers and (ii) the return of the ACH transfers, and (B) the release of such ACH returns by Fifth Third, Debtors shall pay immediately to Fifth Third by wire transfer Eighty-One Thousand Dollars (\$81,000).

8. A further hearing to consider the Motion is scheduled for the 17th day of February, 2011, at 10:30 A.M., prevailing Eastern Time. Any objections to the further use of Cash Collateral must be filed with the Bankruptcy Court and served upon counsel for the Debtors on or before the 14th day of February, 2011.

9. A copy of this Third Interim Cash Collateral Order shall be served by Debtors or their counsel, by regular mail on (i) the Office of the United States Trustee for Region XXI; (ii) each of Debtors' secured lenders; (iii) counsel for Fifth Third Bank; (iv) the additional creditors identified on each Debtor's list of twenty (20) largest unsecured creditors; (v) other known claimants having liens or security interests in property of Debtors; (vi) the Internal Revenue Service; and (vii) the United States Department of Justice, within five (5) days of entry of this Order.

10. If notice is given in the manner provided herein, said notice shall be sufficient and proper and in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

11. Nothing in the Motion or this Order shall be construed to impair Debtors' right, or the rights of any of Debtors' estates, to contest the validity, priority, perfection or amount of any claimed security interest of Fifth Third Bank.

12. This Order shall be immediately effective and enforceable upon entry.

DONE and ORDERED in Chambers at Ft. Myers, Florida, on February 4_, 2011.

David Nada

David H. Adams United States Bankruptcy Judge

Copies to:

Debtors, Debtors' Attorney, United States Trustee Alan J. Statman, Esq., Statman, Harris, & Eyrich LLC, 441 Vine Street, Ste. 3700, Cincinnati. OH 45202 Local Rule 1007(d) Parties in Interest List (Equity Security Holders / Top 20) United States Treasury, Internal Revenue Service, Cincinnati, OH 45999-0039 U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001 Office of the Attorney General, State of Florida, the Capitol PL-01, Tallahassee, FL 32399-1050 All Points (Capital One Equipment Leasing), 275 Broadhollow Road, Melville, NY 11747 Ally, PO Box 9001948, Louisville, KY 40290-1948 Alter Moneta Corporation, 50 Lakefront Blvd., Ste 208, Buffalo, NY 14202 BB&T of Florida Business Loan Center, PO Box 580050, Charlotte, NC 28258-0050 BMW Bank of North America, PO Box 78066, Phoenix, AZ 85062-8066 Branch Banking and Trust Company, 8840 Tamiami Trail North, Naples, FL 34108 CitiCapital Commercial Corporation, 3950 Regent Blvd., Irving, TX 75063 Fifth Third Bank, 1000 Town Center #1400, Southfield, MI 48075 Fifth Third Bank, 999 Vanderbilt Beach Road 1MOC2A, Naples, FL 34108 Fifth Third Bank, PO Box 630778, Cincinnati, OH 45263-0778 Ford Motor Credit, PO Box 790119, St. Louis, MO 63179-0119 General Electric Capital Corporation, PO Box 140849, Irving, TX 75014 GE Transportation Finance, PO Box 822108, Philadelphia, PA 19182-2108 Land Rover Capital Group, PO Box 78069, Phoenix, AZ 85062-8069 Long Time Insurance Co. Ltd., 3170 Horseshoe Dr. S., Naples, FL 34104 Mercedes Benz Financial, 6716 Grade lane, Bldg. 9, Suite 910, Louisville, KY 40213 Northern Trust Bank, NA 700 Brickell Avenue, Miami, FL 33131 Northern Trust, NA, 375 Fifth Avenue South, Naples, FL 34102 OFC Capital Corp./Wachovia, 576 Colonial Park Dr., Suite 100, Rosewell, GA 30075 Patriot Capital Corp., PO Box 790448, St. Louis, MO 63179-0448 Seneca Tank, Inc., 5585 N.E. 16th Street, Des Moines, IA 50313 US Bancorp, PO Box 580337, Minneapolis, MN 55458-0337 Wells Fargo Dealer Services, PO Box 25341, Santa Ana, CA 92799-5341

EXHIBIT A

(Budget)

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Cash Projection														ION CONFIDENTIA		
				Werk Ending											Totai	
	Selfing Price	Profit per gallon	2/4/2011	2/11/2011	2/18/2011	2/25/2011	3/4/2011	3/11/2011	3/18/2011	3/25/2011	4/1/2011	4/8/2011	4/15/2011	4/22/2011	4/29/2011	1000
Sallons-2010	52.48	\$0.187	1,002,058	1,002,058	1,007,058	1,002,058	1,091,724	1,093,724	1,091,724	1,191,724	1,031,724	1.123,435	1,123,435	1,123,435	1,123,435	13,960,5
Sallons-2011 Sallons-Change	\$2.sn	\$0.183	1,032,393 3,0%	979,367 -2.3%	979,167 -2.3%	979,167 -2.3%	1,055,972 -2.4%	1.065.972 -2,4%	1,065.972 -2.4%	1,065,972 -7,4%	1,065,972 -7.4%	1,099,826 -2.1%	1,099,826 -2.1%	1,099,828	1,099,826 -2.1%	13,595,0 -1,9%
ales			2,973,793	2,820,000	2,879,996	2,820,990	3.070.000	3,070,000	3.070,990	3.970.000	3,070,060	3,167,500	3.157.590	8,167,500	3,167,500	39,458,2
axes invoiced to customers usl and Excise Taxes	ŝ 0.19		198,582	158,439	136,459	188,439	205,144	205,144	205.144	205,144	205,144	211,659	213,699	211,659	211,659	2,936,3
ederal Fuel Taxes	\$ 0.27		188,531	176,250	176,250	176,250	191,875	191,875	191.875	191.875	191,875	197,969	197,969	197,969	197,969	2,565,8
Total			384,513	364,689	367,689	364,689	397,019	397,019	<u>897,019</u>	397,019	397,019	409,678	409,628	409,628	409,628	5,102,1
ash Receipts	99.5%															
icounts receivance ifes tax therged to customers	99.57		3,700,900 8,977	2,940,000 8,077	2.9#0,000 8,077	2,946.000 8,077	2,958,426 8,077	2.805,900 8,027	2,805,900 8,077	2.805,900 8.077	3,054,650 8,077	3,054,650 8,077	3,054,650 8,077	3,054,650 8,077	3,034,650 8,077	35.469.3 105.0
nel and Excise Taxes			185,000	185,000	1,85,030	185,000	198,682	188,439	188,439	188,439	205,144	205,144	205,144	205,144	205,144	2,529,7
ederal fuel tax			180,000	180,000	180,000	\$80,000	185,831	176.250	176,250	176,250	191,875	191.875	191,875	191,835	191,875	2,393,9
			3,373,077	3,313,077	3,313,977	3,313,077	3,351,016	3.178.665	9,178,665	3,178,665	3,459,746	3,459,746	3.459.746	3.459,746	3,459,746	43, 498, 0
Visibursements Fortunt parchases			2,572,097	2,572,097	2,643,750	2,543,750	2,743,750	2,878,125	2.878.125	2.878.125	2,878,125	2,878,125	2,969,531	2,969,531	2,969,531	36.374.64
ayroll plus taxes			2,112,057	126,249	2,040,700	126,249	2,743,750	126,249	2,670,125	126,249	2,070,120	2,875,125	2,969,531	126,249	5,309,533	36,374,6 757,4
icalth insurance net			18,015	,,			18,019	*******		120,240		18,019		120,2-3		54,0
anv charges			2,000				2,000					2,000				6,0
redit card fees			4,500				4,500					4,500				13,5
uel expense			21,538	22,538	21,538	21,538	23,538	22,538	21,538	21,538	21,538	21,538	21,598	21,538	21,538	286,0
mployee expenses			346	345	346	346	346	346	846	346	846	346	946	346	346	4,5
ues & Subscriptions			692	692	692	692	692	692	692	692	692	691	692	G9 Z	697	9,0
net warhing			531	231	233	231	Z31	331	291	231	231	231	231	231	233	3,0
Vorkers comp insurance				12,000									12,000			24,0
hsurance Reinsurance													35,000			35,04
eased could ment			- 51,146	51,146			54.746	52,146			51,146	-				306,8
icenses and fees			346	346	345	346	51,146 346	346	345	346	346	51,146 346	346	346	346	500,a 4,9
ostage			577	577	577	572	577	\$77	572	577	577	577	577	577	577	7,9
hop supplies			1.269	3,269	1,269	1,269	1,269	1,269	1,269	3,269	1,269	1,269	1,269	1,769	1,269	16,5
epeirs & Maintensons			5,769	5,769	5,799	5,769	5,769	5,769	5,769	5,769	5,769	5,769	5,769	5,769	5,769	75,0
Office supplies			462	462	452	462	462	462	462	462	462	461	462	462	462	5,0
inlepitorie & Milities			3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	35,0
វិកាទីលះបាន			577	577	\$77	577	\$77	577	577	527	577	577	577	577	577	7,54
folls				6,000			9,000					9,000				24,0
fiscellaneous			4,615	4,625	4,615	4,615	4,615	4,625	4,615	4,635	4,615	4,615	4,615	4,615	4,615	60,0
when the changed to sustainers Welland Excise taxes						34,000 837,341				32,508				40,365		106,6* 2,527,0
let and excise taxes ederal Fueltax			185,831	J85,831	176,250	837,341 176,250	176,250	193,875	191,875	813,997	191,875	191,875	197,369	975,720 157,569	197,969	2,627,63
danagement fee			100,001	102,001	176,250	110,250	62,000	191,875	194,475	191,875	191,875	62,000	197.909	157,509	161,909	124,0
Professional fees Delator							01,000				220,000	00,000			Z20.000	440,0
Professional fees Creditors											30,000				30,000	60,0
IS Trustee fees																
Fotal Disbursements Vet cash			2,873,016	2,992,746 929,931	2,959,423	3,757,013	3,105,088	3,286,819 (108,153)	7,109.473 69,242	4,581,977	3.410,569 49,177	3,382,338	3,753,923 205,823	4,349.277	3,456,923	43,919,5 {421,4
ver casa	At Filling			520,331	453,654	1443.9361	244,927	1108,153)	69,242	(903,312)	49,177	77,408	205,825	(389,531)	2,823	(az),4
Cash Balance Drening balance	130.100															
Opening balance Net cash	538,300		538,300 500,061	1,038,351 320,333	1,358,692 453,654	2,832,345 (443,936)	1,368,409 244,927	1,613,337 (108,153)	1,505,3 54 59,243	1,574,426 (903,317)	671,114 49,177	720,290 77,408	797,699 205,823	1,003,522 (889,531)	£13,990 2,823	536_3 (921,43
losing balance			1,038,363	1,356,692	1,817,345	1445,5.409	1,613,337	1,505,184	1.574,426	671.314	730,290	71,008	1,033.527	113,990	116,813	1421,4 116,8
Accounts Receivable																
Accounts Receivable	10,191,059		\$0,191.059	10,183,865	10,068,553	9,943,242	9,822,930	9,947,030	10,243,441	10,539,871	10.836.302	10 851 555	10.977.111	11,162,570	11,228,029	10,191,01
ales	10,131,039		2,973,293	2,670,090	2,370,001	2,870,000	3,070,000	9,947,430 3,670,690	3,070,000	3,974,000	3,020,000	10,851,652 3.167,500	3,167,500	3,167,500	3,167,500	10,191,0 39,453,21
axes			322,590	372,765	372,765	372,765	405,096	405,096	405,096	405,096	405,096	417,705	417,705	417,765	417,705	5,207,11
ess: Receipts Sales			(3.000.000)	(2,940,000)	[2,946,000]	[2,940,000]	12.958,426}	(2,805,900)	(2,805,900)	12,805,900)	(3,054,650)	(3,054,630)	(5,054,650)	(3,054,650)	(3,054,650)	[38,469,3]
ess: Receipts Taxos			(373,077)	[373.077]	[373,077]	(373,077)	(392,590)	(372,765)	(372,765)	(372,705)	[405.096]	(405.006)	(405.096)	(405,696)	(405,096)	(5,078,6
losing balance			10,183,865	10.063,553	9,943,747	9,822,330	9,947,010	10,243,443	10,539,871	10,836,302	10,851,652	10.977.111	11,107.570	11,728,D29	11.353,488	11,353,4
nventory	2.358,730		2,243,365	1,978,090	1,978,000	1,978,000	3,928,000	1,928,000	1,928,000	1,928,000	1,928,000	1,928,000	1,928,000	1,928,000	1,928,000	1,928,0
ash Collaters!	13,086,089		13,365,591	13,350,245	13,587,587	13,129,340	13,488,347	13,676,624	14,847,297	13,435,416	13,499,942	13,702,810	\$4,034,091	11,270,019	13,396,302	

Assumptions: Revenues projected by reanagement estimate and compared to some period in 2010 for reasonableness. Gallons sold determined by dividing seles by average colling price per gallon for January 2011 Grans Profit and Eco of Product determined by using a third crisis per gallon profit for gallons sold-a based on 2010 average minus. 07 cents to be conservative Accounts Benchrable collections projected to be collected 4 arebs after involor

Accounts Barekable collection projected to be collected a web's inter-involus Accounts Barekable collection projected to be collected a web's inter-involus Accounts Barekable collection projected to be paid one web's fifter purchase of product. Other taket paid on 19th of each month Prophera ble coll from the paratic offiction and parately and a state product and product. Other taket paid on 19th of each month Prophera ble coll from the paratic offiction and parately Assumes ball court participate monthly parately and a state of the parately for parately and parately and the parately and the parately and Assumes ball court parately and the parately and web's down and 100% of expenses. Second operating operate to parately and web's down and the parately and the parately and web's down and the parately and

EXHIBIT B

(Financial Reporting)

Weekly (Each Wednesday for the period ended prior Friday):

- Budget v. Actual Receipts, Disbursements and Change in Cash Balance
- List of every receipt, and the amount of total receipts
- List of every disbursement, and the amount of total disbursements
- List of every disbursement (if any) not reviewed or approved by The Parkland Group, Inc.

Daily (Each business day for the prior business day):

- For each bank account, the aggregate amounts deposited and disbursed each day;
- For each bank account, a list of every disbursement, and amount of total disbursements