

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

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	:	Chapter 11
In re:	:	
	:	Case No. 11-01515
EVANS OIL COMPANY LLC, <i>et al.</i> , <sup>1</sup>	:	
	:	Judge David H. Adams
Debtor.	:	
	:	
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**THIRD INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL  
PURSUANT TO BANKRUPTCY CODE SECTION 363 AND GRANTING  
ADEQUATE PROTECTION PURSUANT TO  
BANKRUPTCY CODE SECTIONS 361 AND 363**

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”)<sup>2</sup> [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

<sup>1</sup> 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 “Cases”), 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 “Order”) 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 “Final Hearing”) 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 “Final Order”) 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 “Fifth Third Objection”), and the *Response to Motion for an Interim Order Authorizing Use of Cash Collateral* [Docket No. 50] (the “TransMontaigne Response” and together with the Motion and the Fifth Third Objection, the “Cash Collateral Pleadings”).

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”)

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

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

Debtors and Fifth Third Bank (“Fifth Third”) 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.

2. To the extent that Fifth Third Bank has a valid, perfected and enforceable security interests in Debtors' cash collateral ("Cash Collateral") 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 "Cash Collateral Budget") attached to this Order as Exhibit A 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 "Budget"), 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 Exhibit B.

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.

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

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.

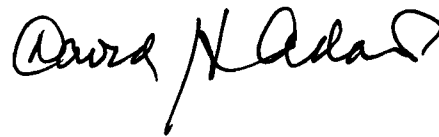
9. A copy of this Third Interim Cash Collateral Order shall be served by Debtors or their counsel, by regular mail on (i) the Office of the United States Trustee for Region XXI; (ii) each of Debtors' secured lenders; (iii) counsel for Fifth Third Bank; (iv) the additional creditors identified on each 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.



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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. 16<sup>th</sup> 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)**



# **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