

SO ORDERED



Nancy V. Alquist
NANCY V. ALQUIST
U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(at Baltimore)**

IN RE: *
Experimental Machine, Inc. * **Case No. 16-25294 NVA**
Debtor. * **(Chapter 11)**
* * * * *

**CONSENT ORDER APPROVING EMERGENCY MOTION
FOR AUTHORITY TO USE CASH COLLATERAL
ON AN INTERIM BASIS**

Upon consideration of the foregoing Emergency Motion for Authority to Use Cash Collateral (the “Motion”); and it appearing that due and appropriate notice of the Motion, the relief requested therein, the Interim Hearing (as defined below) (the “Notice”) having been served by the Debtor in accordance with Rule 4001(b); the initial hearing on the Motion having been held by this Court on November 22, 2016 (the “Hearing”); and with the consent of the U.S. Trustee and M&T Bank, and upon the record made by the Debtor and other interested parties at the Hearing, and good and sufficient cause appearing therefore:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. This case was commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on November 18, 2016 (the “Petition Date”) in the United States Bankruptcy Court for the District of Maryland (the “Court”).

B. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. The Court has jurisdiction over the matters raised in the Motion, and over the persons and property affected by the Motion, pursuant to 28 U.S.C. §§ 157 and 1334. The matters raised in the Motion are core proceedings pursuant to 28 U.S.C. § 157(b). Venue for the Debtor's case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtor provided notice of this Motion to (a) the Office of the United States Trustee for the District of Maryland; (b) the Debtor's 20 largest unsecured creditors; and (c) Manufacturers and Traders Trust Company ("M&T Bank").

E. M&T Bank alleges that it is the current holder and owner of certain liens on certain assets of the Debtor including, but not limited to, all of the Debtor's accounts, chattel paper, goods, inventory, equipment, fixtures, farm products, instruments, commercial tort claims, deposit accounts, letter of credit rights, general intangibles, supporting obligations and records of, accession to and proceeds and products of the foregoing (collectively, the "Assets") pursuant to certain loan documents executed by the Debtor in favor of M&T Bank (collectively, the "Loan Documents").

F. In the ordinary course of business, the Debtor requires cash flow from its operations, including the Assets, to fund its operating costs. M&T Bank alleges that all of the Debtor's cash and cash proceeds are subject to the properly perfected security interest in favor of M&T Bank and, as such, constitute "cash collateral" of M&T Bank (as such term is defined in Bankruptcy Code section 363(a), "Cash Collateral").

G. The Debtor has an immediate and urgent need to use its Cash Collateral. Absent the use of Cash Collateral, the Debtor will not be able to fund its operating expenses, and its estate, its creditors will suffer immediate and irreparable harm.

H. Good and sufficient cause has been shown to justify the grant of interim relief requested in the Motion, and the requirements of Rules 4001(c)(2) and 6003(b) of the Federal Rules of Bankruptcy Procedure have been satisfied for the entry of this order (the "Interim Order").

I. The terms of the Debtor's use of Cash Collateral, as more fully set forth in this Interim Order, are (i) fair and reasonable, (ii) reflect the Debtor's prudent business judgment consistent with its fiduciary duties, (iii) constitute reasonably equivalent value and fair consideration; and (iv) are essential and appropriate for the continued

operation and management of the Debtor's business and the preservation of its assets and property. Entry of this Interim Order is in the best interests of the Debtor and its estate and creditors.

J. The adequate protection provided for under this Interim Order is sufficient to protect M&T Bank against any diminution in the value of its interest in the Cash Collateral, and is fair, reasonable and sufficient to satisfy the requirements of the Bankruptcy Code.

K. At a final hearing on the Motion (the "Final Hearing"), the Debtor will seek approval of the relief requested in the Motion on a final basis.

Based on the foregoing, it is, by the United States Bankruptcy Court for the District of Maryland, hereby

ORDERED:

1. That the Motion is GRANTED in accordance with Bankruptcy Rule 4001(b) for the Debtor to use the Cash Collateral, on an interim basis, to the extent provided in this Order.

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

3. Subject to the terms and conditions of this Order, the Debtor may use Cash Collateral for the period (the "Specified Period") from the date of this Order through (and including) December 17, 2016. Except as otherwise expressly provided in this Order, Cash Collateral may be used solely (a) during the Specified Period, (b) up to the amounts stated for any line item, during the periods and for the purposes identified in the Budget attached hereto as Exhibit A, which is subject to economic and business fluctuations of +/- 10% for estimated income, cost of goods sold, and operating expenses.

4. If Cash Collateral is not used for a particular line item in the Budget during the period for which Cash Collateral usage is authorized for such line item in this Order, or if Cash Collateral is used in an amount less than specified in such line item during the budgeted period, then the Debtor may use the unused balance of such line item in subsequent periods. The Debtor may also utilize amounts for miscellaneous items set forth in the Budget for any budgeted expense.

5. As adequate protection for the use and/or diminution of the interests of M&T Bank in the Cash Collateral (the "Adequate Protection"), M&T Bank shall receive: (i) monthly payments in the amount of \$5,500.00, payable in semi-monthly installments of \$2,750.00 each on December 2, 2016 and December 16, 2016; and (ii) pursuant to Section 361 of the Bankruptcy Code, and subject to the "carve-out below," valid, perfected, enforceable

and non-avoidable first priority replacement liens on all of the Debtor's post-petition assets, which replacement liens shall be limited solely to any diminution in value of the Cash Collateral from and after the Petition Date and shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Sections 363, 364 or any other section of the Bankruptcy Code or other applicable law. Notwithstanding the foregoing, the liens granted to M&T Bank herein shall not attach to any of Debtor's claims and causes of action brought under Chapter 5 of the Bankruptcy Code (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code), and all rights, recoveries and defenses of the Debtor with respect thereto (collectively, the "Avoidance Actions").

As used in this Order, the "Carve Out" means, the following expenses: (i) statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); and (ii) the \$8,000.00 per month allocated to legal fees on the budget which amount the Debtor proposes to pay to Scarlett, Croll & Myers, PA for deposit into their escrow account to the extent allowed or later allowed and payable by order of the Court under Sections 328, 330 and/or 331 of the Bankruptcy Code.

6. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of any claim or lien granted by this Interim Order with respect to the Adequate Protection without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect in accordance with applicable non-bankruptcy law any claim or lien granted by this Interim Order with respect to the Adequate Protection, or to entitle M&T Bank to the priorities granted herein. Notwithstanding the foregoing, M&T Bank is authorized to file, as it deems necessary in its sole discretion, such financing statements, notices of lien and other similar documents to perfect in accordance with applicable non-bankruptcy law any lien granted by this Interim Order with respect to the Adequate Protection, and all such financing statements, notices of lien and other similar documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such filing or recordation shall be necessary or required to create or perfect any lien granted by this Interim Order with respect to the Adequate Protection. The Debtor is authorized and directed to execute and deliver to M&T Bank all financing statements, notices of lien and other documents as M&T Bank may reasonably request.

7. In the event any or all of the provisions of this Order are hereafter reversed, stayed, modified, amended, or vacated by a subsequent order of the Court or any other court, such reversal, stay, modification, amendment, or vacation shall not affect the validity of any right or obligation arising under this Order prior to the effective date of such modification, amendment or vacation, and such right or obligation shall be governed in all respects by the provisions of this Order.

8. By agreeing to the terms of this Order, M&T Bank has not waived any defaults existing under the Loan Documents or any of M&T's rights or remedies under the Loan Documents, applicable law, or otherwise. Furthermore, by agreeing to the terms of this Order, M&T Bank has not agreed to forbear from exercising or enforcing any of its rights or remedies under the Loan Documents, applicable law, or otherwise, subject, however, to the applicability of the automatic stay of 11 U.S.C. §362. M&T Bank is deemed to have specifically reserved all of its rights and remedies under the Loan Documents, applicable law, or otherwise including, without limitation, M&T's right, subject to the applicability of the automatic stay of 11 U.S.C. §362, to immediately assert and enforce all such rights and remedies.

9. This Order and the use of Cash Collateral authorized herein shall become effective immediately upon authorization and approval by the Court. Except with respect to the payment of accrued items set forth in the Budget, the use of Cash Collateral authorized herein shall terminate on December 17, 2016, at 12:00 midnight, subject to the Debtor's right to seek further order of the Court authorizing use of Cash Collateral.

10. Within three business days after the entry of this Order, the Debtor shall serve a copy of this Order on: (a) the Office of the United States Trustee; (b) the Debtor's twenty largest unsecured creditors; (c) counsel to M&T Bank; and (d) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002.

11. Any party seeking to object to entry of an order further approving the relief set forth herein on a final basis, must file a written objection (an "Objection"), stating with particularity the grounds therefore, with the United States Bankruptcy Court for the District of Maryland (the "Court") and serve such Objection on: the Debtor, c/o Michael S. Myers, Esquire, SCARLETT, CROLL & MYERS, P.A., 201 N. Charles Street, Suite 600, Baltimore, Maryland 21201, Attorney for Debtor; M&T Bank c/o Michael C. Bolesta, Esquire, Gebhardt & Smith, LLP, One South Street, Suite 2200, Baltimore, Maryland 21202; and the Office of the United States Trustee, c/o Katherine A.

Levin, Esquire, United States Department of Justice, 101 West Lombard Street, Suite 2625, Baltimore, Maryland 21201, so that it is received no later than December 6, 2016 at 4:00 p.m.

12. A final hearing to consider the Debtor's request use of Cash Collateral shall be held on December 12, 2016 at 2:00 P.M.

13. Subject to applicable law, the terms of this Order shall be binding upon and inure to the benefit of the successors and assigns of each party hereto, including any trustee appointed with regard to the Debtor under the Bankruptcy Code, whether in a chapter 7 or in this chapter 11 case.

14. The Debtor, any later appointed committee of unsecured creditors, and any later appointed Trustee reserve all rights and actions afforded to it under the Bankruptcy Code and any applicable law, including, after termination of this Order, the right to challenge the validity of M&T Bank's lien in, to and against the Assets.

END OF ORDER

cc: Michael S. Myers, Esquire
SCARLETT, CROLL & MYERS, P.A.
201 N. Charles Street, Suite 600
Baltimore, Maryland 21201
Attorney for Debtor

U.S. Trustee
101 W. Baltimore Street, Suite 600
Baltimore, Maryland 21201

Michael C. Bolesta, Esquire
Gebhardt & Smith LLP
One South Street, Suite 2200
Baltimore, Maryland 21202
Attorneys for M&T Bank

Experimental Machine, Inc.

One Month Budget

		<u>November 18,</u>			
		<u>2016 -</u>			
		<u>December 17,</u>			
		<u>2016</u>			
	<u>NET SALES</u>	\$156,000			
	<u>OPERATING</u>				
	HEALTH INSURANCE	\$11,000			
	BUSINESS INSURANCE				
	LEGAL	\$8,000			
	MISCELLANEOUS	\$500			
	OFFICE SUPPLIES & EXPENSES	\$500			
	PHONES	\$1,650			
	POSTAGE & FRIEGHT	\$1,000			
	RENT	\$23,500			
	REPAIRS AND MAINTENANCE	\$2,000			
	RAW MATERIALS AND SUPPLIES	\$18,000			
	UTILITIES	\$4,500			
	OUTSIDE SERVICES (painting, etc.)	\$3,000			
	Auto expences	\$1,500			
	TOTAL OPERATING	\$75,150			
	<u>PAYROLL</u>				
	PAYROLL TAXES AND WITHHOLDINGS	\$11,500			
	SALARIES - OFFICERS	\$10,000			
	SALARIES - NON-OFFICERS	\$50,000			
	TOTAL PAYROLL	\$71,500			
	SECURED CREDITORS (M&T Bank)	\$5,500			
	<u>GRAND TOTAL OF DISBURSEMENT</u>	\$152,150			
	<u>NET INCOME</u>	\$3,850			