

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

In re:  Gator Equipment Rentals of Iberia, LLC,  <i>Debtor.</i>	Case No. 16-51667  Chapter 11  (Joint Administration Requested)
In re:  Gator Equipment Rentals of Fourchon, L.L.C.,  <i>Debtor.</i>	Case No. 16-51668  Chapter 11  (Joint Administration Requested)
In re:  Gator Crane Services, L.L.C.,  <i>Debtor.</i>	Case No. 16-51669  Chapter 11  (Joint Administration Requested)
In re:  Gator Equipment Rentals, L.L.C.,  <i>Debtor.</i>	Case No. 16-51671  Chapter 11  (Joint Administration Requested)

**THIS MOTION APPLIES TO CASE NO. 16-51671,  
GATOR EQUIPMENT RENTALS, L.L.C.**

**EMERGENCY MOTION PURSUANT TO SECTIONS 361 AND 363 OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 4001 FOR ENTRY OF  
INTERIM AND FINAL ORDERS: (1) AUTHORIZING THE USE OF CASH  
COLLATERAL; (2) GRANTING ADEQUATE PROTECTION; (3) SCHEDULING  
FINAL HEARING, AND; (4) PROVIDING RELATED RELIEF**

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NOW INTO COURT, through undersigned counsel, comes Gator Equipment Rentals, L.L.C. ("Gator Equipment"),<sup>1</sup> who moves this Court for entry of interim and final orders authorizing Gator Equipment to use cash collateral, approve the form of adequate protection to the lender holding a security interest therein, and for related relief. In support, Gator Equipment represents:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is 11 U.S.C. §§ 105(a), 363, 364, 1107 and 1108.

**Background**

2. On December 5, 2016 (the "Petition Date"), Gator Equipment filed for relief under Chapter 11 of the Bankruptcy Code. Gator Equipment intends to continue to operate its business and manage its properties as debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been

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<sup>1</sup> Gator Equipment is a companion case along with certain affiliate entities, Gator Equipment Rental of Iberia, LLC ("Gator Iberia"), Gator Equipment Rentals of Fourchon, L.L.C. ("Gator Fourchon") and Gator Crane Services, L.L.C. ("Gator Crane"). Collectively, Gator Equipment, Gator Iberia, Gator Fourchon and Gator Crane are referred to herein as "Debtors." Debtors have filed a motion seeking joint administration of the bankruptcy cases. This motion, however, applies solely to the Gator Equipment bankruptcy case, No. 16-51671.

requested or appointed, and no official committee of creditors or equity interest holders has yet been established.

3. Gator Equipment owns a variety of commercial and industrial use equipment inventory which it rents to third parties, which is used primarily in the oil and gas industry. Such rentals of inventory generate revenues which Gator Equipment uses to pay its operating costs.

4. Prior to the Petition Date, Gator Equipment obtained several loans from Regions Bank ("Regions"). Specifically, Gator Equipment executed, in favor of Regions, (i) a promissory note dated November 5, 2013 in the principal amount of \$3,621,350.71; (ii) a promissory note dated December 23, 2011 in the principal amount of \$395,874.53, and; (iii) a promissory note dated November 5, 2013 in the principal amount of \$500,000.00 (collectively, the "Regions Notes").

5. The Regions Notes, in turn, were made the subject of certain business loan agreements and commercial security agreements whereby the terms of the loans, default circumstances, and collateral were spelled out in more detail. Specifically, Gator Equipment executed a Commercial Security Agreement dated September 9, 2011 granting Regions a security interest in Gator Equipment's Accounts Receivable (the "AR CSA").<sup>2</sup>

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<sup>2</sup> Gator Equipment further entered into two other commercial security agreements with Regions, one dated December 23, 2011 and another dated September 9, 2011. As well, Gator Equipment and Regions entered into a Waiver and First Amendment to Security Agreements dated December, 2014 (the exact date is not specified in the document). These two security agreements, along with the December, 2014 amendment provide Regions with security interests in, to and upon all equipment, inventory, accounts, general intangibles and fixtures owned by Gator Equipment. Regions filed a UCC-1 financing statement on December 9, 2013 covering the equipment and inventory collateral. The December 9, 2013 financing statement expanded on the original financing statements filed by Regions on September 12, 2011 and October 3, 2011 which originally covered all equipment only. Further, to secure performance under the Regions Notes, Regions obtained the guarantees of certain persons affiliated with

6. The AR CSA contains a cross-collateralization provision whereby the collateral upon which Regions was granted a lien (*i.e.*, the accounts receivable of Gator Equipment) further stands as collateral for any and all obligations owed by Gator Equipment to Regions (in this case, any sums due pursuant to the Regions Notes).

7. Regions filed a UCC-1 Financing Statement on October 3, 2011 covering the Gator Equipment accounts receivable and proceeds therefrom.<sup>3</sup>

8. Subsequently, Regions filed suit against Gator Equipment, and guarantors,<sup>4</sup> alleging a breach of the loan agreements and commercial security agreements. *See, “Regions Bank v. Gator Equipment Rentals, LLC, et al.”* No. 15-cv-05084-SSV-MBN, U.S.D.C., E.D.La. (the “Suit”). Ultimately, the District Court granted summary judgment in favor of Regions against Gator Equipment and the guarantors. Attached hereto as **Exhibit “B”** is a copy of the Amended Judgment issued within the Suit (the “Judgment”). The Judgment fixes the Regions claim and further recognizes the validity of the security interests, including the security interest in the Gator Equipment accounts receivable.

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Gator Equipment along with multiple indebtedness mortgages covering certain immovable property, specifically, property bearing the following municipal addresses: 1107 West Tunnel Blvd, Houma LA; 205 Choctaw Dr, Houma LA; 184 Aubrey Drive, Houma LA; and 603 Apache Road, Houma LA. Further, Regions obtained assignments of certain life insurance policies, as follows: two (2) \$1,000,000 Life Insurance Policy – issued in favor of Norman Schieffler, and two (2) \$1,000,000 Life Insurance Policy issued in favor of Joey Pierce.

<sup>3</sup> A copy of the Regions security agreements, financing statements and mortgages are attached hereto, in globo as **Exhibit “A.”**

<sup>4</sup> Regions holds guarantees by the affiliate debtor entities, Gator Crane, Gator Iberia, and Gator Fourchon, along with the guarantees of certain individuals affiliated with the Debtors. The affiliate Debtor-entity guarantees are not secured by accounts receivable security interests in, to and upon such affiliated Debtor-entity accounts receivable.

## Use of Cash Collateral on Interim and Final Basis

9. Gator Equipment derives revenues from the rental of its inventory.

These rentals of inventory, from time to time, generate accounts receivable, which, when paid, become proceeds that Gator Equipment uses to fund its daily operations. Gator Equipment intends to continue operations and to do so will require use of proceeds from pre-petition accounts receivable. Attached hereto as **Exhibit “C”** is a copy of a Budget prepared by Gator Equipment outlined the projected use of funds from operations (the “Budget”).<sup>5</sup>

10. By this Motion, Gator Equipment respectfully requests that it be authorized, pursuant to Sections 105(b), 362, 363, 506, 507 and 1108 of the Bankruptcy Code and Rules 2002, 4001, 6004(h), 7062 and 9014 to (i) use cash collateral of Regions on an interim and final basis in accordance with the terms and conditions of the order submitted herewith and attached hereto as **Exhibit “D”** (the “Proposed Interim Cash Collateral Order”).

11. Rule 4001(b)(2) provides that a hearing on use of cash collateral may not be conducted earlier than fourteen days after service of the motion requesting such use, but that a court may grant a preliminary hearing earlier than such date to authorize the use of such cash collateral necessary to prevent immediate and irreparable injury. Gator Equipment requests that an immediate, emergency preliminary hearing be scheduled pursuant to 11 U.S.C. § 363(c)(3) for as soon as is practicable for this Court to grant authority to Gator Equipment to use cash

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<sup>5</sup> Gator Equipment reserves all rights to assert that all or part of its cash on hand is not cash collateral or proceeds of cash collateral.

collateral in accordance with the budget time periods covering the gap between the filing of this motion and the date this Court fixes for a final hearing.

12. Gator Equipment will suffer immediate and irreparable injury if such emergency, limited authorization is not approved as it must pay payroll, vendors, suppliers, utilities and other costs of operation. If it is unable to pay its ongoing post-petition obligations until final hearing, it is quite likely that the business will be unable to successfully reorganize as employees may quit, vendors and suppliers may terminate services and goods, and utilities may terminate service. For these reasons, Gator Equipment suggests interim relief is appropriate.

13. Gator Equipment further requests that this Court schedule final hearing on this Motion for such time as this Court has available after the expiration of fourteen days from the service of this Motion.

14. At such final hearing, Gator Equipment requests that this Court authorize it to use cash collateral in accordance with the Budget for the time period covered by the budget (13 weeks) subject to the ability to request further extensions of such authorization via future orders of this Court.

#### **Adequate Protection**

15. 11 U.S.C. § 363(c)(3) and (e) provide that use of cash collateral may be granted if the secured party (Regions) is adequately protected. Adequate protection determinations are made on a case by case basis to determine whether a creditor's secured position is diminished by the proposed use of the collateral.

16. In this case, Regions has, in addition to accounts receivable and proceeds therefrom, a mortgage on the real property underlying the Gator Equipment location, mortgages on several personal residences of the principals of Gator Equipment. Further, Regions has liens against all equipment, inventory, fixtures, and general intangibles owned by Gator Equipment. Pursuant to the Judgment, Regions is owed the approximate aggregate sum under the Promissory Notes of \$4,668,782.31<sup>6</sup> as of December 12, 2016. Upon information and belief, the value of the collateral securing the Regions claim is approximately \$4,635,299.11, with the Debtor's inventory valued at a forced liquidation value.<sup>7</sup> Attached hereto as **Exhibit "E"** is a summary of the collateral and valuations of same.

17. While Debtor alleges that Regions is approximately fully secured, it does not appear that Regions has a significant equity cushion, at least not with its inventory valued at forced liquidation value. Use of the proceeds from accounts receivable may, therefore, impair the secured status of Regions. Therefore, Regions may be entitled to adequate protection under 11 U.S.C. §§ 361, 363(e).

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<b>Regions Debt Description</b>	
Amount P&I through 10/31/2016	\$ 4,519,161.10
Attorney Fees per Court order through 9/16/2016	\$ 68,982.73
Interest 11/1/2016 - 12/12/2016	\$ 45,638.48
Estimated Attorney Fees 9/17/2016 - 12/12/2016	\$ 35,000.00
<b>Total Value of Regions Claim as of 12/13/2016</b>	<b>\$ 4,668,782.31</b>

<sup>7</sup> Debtor intends to re-value the inventory at a more appropriate valuation for the final hearing on the use of cash collateral and reserves all rights regarding all valuations.

18. To the extent that use of cash collateral by Gator Equipment does impair the secured position of Regions, Gator Equipment proposes to provide Regions with replacement liens on (a) any post-petition generated accounts receivable<sup>8</sup> and (b) the unencumbered inventory of affiliate Gator Iberia (that is appraised at \$557,825.00<sup>9</sup> at forced liquidation value) to the extent, and only to the extent necessary to alleviate such impairment.

19. Under these circumstances, Regions is adequately protected and use of cash collateral in accordance with the Budget should be authorized.

### **Reservation of Rights**

20. Nothing herein shall be considered to be a determination with regard to collateral valuations, secured status of Regions, amount of claim by Regions against any debtor entity, or any other issues arising from the relationship between Regions and any of the debtor entities. If the adequate protection proposed herein is agreed to by Regions and Gator Equipment as an expeditious resolution of the cash collateral issue, but all rights, claims and defenses are reserved to the parties for future final determination and any order entered hereon shall not be determinative or dispositive of any issue of oversecured, fully secured, undersecured status, extent of liens, or any other issue arising under the agreements by and between Regions and the debtor entities.

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<sup>8</sup> Regions takes the position that Gator Equipment's post-petition receivables are already its collateral as its security interest is saved from termination under § 552(a) by operation of § 552(b).

<sup>9</sup> A summary of the forced liquidation valuation is attached hereto as **Exhibit "F."**

## Summary

Pursuant to Rule 4001(b)(1)(B), Gator Equipment provides the following summary regarding the request to use cash collateral and incorporates, by reference the provisions of the Proposed Interim Cash Collateral Order:

- 1) Entity having an interest in cash collateral – Regions Bank
- 2) Purposes for use of cash collateral – outlined in the Budget attached hereto;
- 3) The term of use of cash collateral – in accordance with the Budget through the first thirteen weeks or through and until March 3, 2017;
- 4) Adequate protection – Gator Equipment proposes that Regions be granted replacement liens on post-petition generated accounts receivable and unencumbered inventory of its affiliate, Gator Iberia.

## Notice

21. Notice of this Motion has been given to Regions, the twenty largest unsecured creditors, all creditors having filed a financing statement against Gator Equipment, and the Office of the United States Trustee. Gator Equipment respectfully suggests that such notice is appropriate for expedited emergency consideration of the Motion.

**WHEREFORE**, Gator Equipment prays that it be authorized, pursuant to entry by this Court of the Proposed Interim Cash Collateral Order, to use cash collateral in accordance with the Budget attached hereto, and further that this Court fix an emergency hearing at its earliest convenience to authorize an

immediate, preliminary use of cash collateral pending final hearing, and to schedule a final hearing at the conclusion of such preliminary hearing. Gator Equipment further prays for such other relief deemed equitable and just.

Respectfully Submitted,

**STEWART ROBBINS & BROWN LLC**

P. O. Box 2348

Baton Rouge, LA 70821-2348

(225) 231-9998 Telephone

(225) 709-9467 Fax

By: /s/ Paul Douglas Stewart, Jr.  
**Paul Douglas Stewart, Jr. (La. #24661)(T.A)**  
dstewart@stewartrobbins.com  
Brandon A. Brown (La. # 25592)  
bbrown@stewartrobbins.com  
Ryan J. Richmond (La. #30688)  
rrichmond@stewartrobbins.com

*Proposed Attorneys for Gator Equipment Rentals  
of Iberia, LLC, Gator Equipment Rentals of  
Fourchon, L.L.C., Gator Crane Services, L.L.C.  
and Gator Equipment Rentals, L.L.C.*