

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

HAMPSHIRE GROUP, LIMITED, et al.,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16-12634 (LSS)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE USE OF CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C.  
§§ 361, 362, 363 AND 507; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”) hereby move the Court (the “Motion”) for entry of an interim order on an expedited basis (the “Interim Order”),<sup>2</sup> substantially in the form attached hereto as Exhibit A, and following a final hearing to be set by the Court (the “Final Hearing”), entry of a final order (the “Final Order”), pursuant to sections 105, 361, 362, 363, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing use of cash collateral and granting adequate protection to the Secured Parties (as defined below) as set forth in the Interim Order; (ii) modifying the automatic stay pursuant to section 362 of the Bankruptcy Code to the extent as set forth Interim Order; (iii) subject to entry of the Final Order, and except to the extent of the Carve-Out (as defined below), waiving all rights to

---

<sup>1</sup> The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hampshire Group, Limited (7107), Hampshire Brands, Inc. f/k/a Hampshire Designers, Inc. (1174) and Hampshire International, LLC (5327). The address of the Debtors’ corporate headquarters is 1924 Pearman Dairy Road, Anderson, South Carolina 29625.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Interim Order.

surcharge any Prepetition Collateral or Adequate Protection Collateral (each, as defined below) under sections 506(c) or 552(b) of the Bankruptcy Code or any other applicable principle of equity or law; (iv) waiving any applicable stay with respect to the effectiveness and enforceability of the Interim and Final Orders (including a waiver pursuant to Bankruptcy Rule 6004(h)); (v) scheduling the Final Hearing; and (vi) granting related relief. The Debtors understand that the Secured Parties consent to entry of the Interim Order.

In support of the Motion, the Debtors rely upon and fully incorporate by reference the Declaration of William Drozdowski in Support of Chapter 11 Petitions and Various First Day Motions (the "First Day Declaration"), filed with the Court concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference dated February 29, 2012, from the United States District Court for the District of Delaware. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2.

**RELIEF REQUESTED**

5. By this Motion, the Debtors request that the Court schedule the Final Hearing and enter the Interim Order and the Final Order, *inter alia*, authorizing use of cash collateral as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), providing adequate protection on the terms set forth in the Interim Order to the Secured Parties (as defined below), modifying the automatic stay to the extent as set forth Interim Order, waiving rights to surcharge any Prepetition Collateral or Adequate Protection Collateral (each, as defined in the Interim Order), scheduling the Final Hearing, and granting related relief.

6. As more fully set forth in the First Day Declaration, the Debtors have an urgent and immediate need for use of Cash Collateral. The Debtors have not obtained postpetition financing and, without the use of Cash Collateral, the Debtors will not be able to continue operations, pay critical obligations, satisfy administrative expenses, or effectuate the wind down of their businesses in a manner that will maximize value for creditors.

7. The Debtors are informed that the Secured Parties consent to entry of the Interim Order based on the terms set forth therein. As such, the use of Cash Collateral will be consensual and is authorized pursuant to section 363(c)(2)(A) of the Bankruptcy Code.

**BACKGROUND**

**A. General Background**

8. On November 23, 2016 (the “Petition Date”), each of the Debtors commenced in this Court a voluntary case under chapter 11 of the Bankruptcy Code. Each Debtor operates its businesses and manages its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these Cases, and no official committees have been appointed to date. Concurrently with the filing of this Motion, the Debtors have requested that their Cases be jointly administered for procedural purposes.

9. The Debtors are providers of fashion apparel across a broad range of product categories, channels of distribution, and price points. They specialize in designing and marketing men's sportswear to department stores, chain stores, and mass market retailers under licensed brands, their own proprietary brands, and the private labels of customers. Brands manufactured and sold pursuant to license agreements have included Dockers® and James Campbell®. The Debtors' website can be found at [www.hamp.com](http://www.hamp.com). Recent customers of the Debtors include JC Penney, Kohl's, Sears, Burlington Stores, and Nordstrom, among others.

10. Debtor, Hampshire Group, Limited ("HGL"), a Delaware corporation, is the sole shareholder of debtor and debtor in possession Hampshire Brands, Inc. ("HBI"), a Delaware corporation, and the sole managing member of debtor and debtor in possession Hampshire International, LLC, a Delaware limited liability company ("HIL"). HGL is also the parent of certain non-debtor affiliates as more fully described in the First Day Declaration.

11. The Debtors have experienced operating losses and negative cash flow for several years. Over the past approximately fifteen (15) months, the Debtors have taken certain steps in an effort to stem losses, increase operating efficiencies, and increase cash flow, as more fully described in the First Day Declaration. In an effort to maximize value for the benefit of stakeholders, since June 2016, the Debtors have been engaged in an out-of-court orderly liquidation and wind-down of their licensed businesses. Creditors have been informed of this effort. However, the success of this orderly wind-down effort recently was jeopardized when a large unsecured creditor (Onewoo Corporation) obtained a prejudgment order of attachment in litigation commenced by it in June 2016 against HGL, HBI, and the Debtors' chief executive officer and chief financial officer.

12. Additional details regarding the Debtor's business, assets, capital structure, and the circumstances leading to the filing of these Cases are set forth in the First Day Declaration.

**B. Prepetition Secured Indebtedness**

13. The Debtors, their non-debtor affiliate, Scott James, LLC ("Scott James") and a former non-debtor affiliate, Rio Garment, S.A. ("Rio Garment")<sup>3</sup> as borrowers and the lenders party thereto (the "Prepetition Secured Lenders") and Salus Capital Partners, LLC as administrative agent and collateral agent (in such capacity, the "Prepetition Agent" and together with the other lenders party to the Prepetition Credit Agreement (as defined below), the "Prepetition Secured Parties") are parties to that certain *Credit Agreement*, dated as of September 26, 2013 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement" and together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as amended, restated, extended, supplemented, and/or otherwise modified from time to time in accordance with the terms thereof, collectively, the "Prepetition Credit Facility Documentation"). The Prepetition Credit Agreement provides for the making of revolving loans and term loans to the borrowers as provided therein.

14. As of the Petition Date, the Debtors were indebted to the Prepetition Secured Parties pursuant to the Prepetition Credit Agreement in the aggregate principal amount of approximately \$7,400,000, plus accrued and unpaid interest, fees, expenses, penalties, premiums, charges and any other obligations incurred in connection therewith, in each case in accordance

---

<sup>3</sup> On September 15, 2015, pursuant to the terms of a Stock Purchase Agreement dated as of April 10, 2015, as amended, HGL sold all shares of Rio Garment to a buyer group headed by David Gren, a former executive of HGL.

with the Prepetition Credit Facility Documentation (collectively, the “Prepetition Secured Debt” or “Prepetition Secured Obligations”).

15. The Prepetition Secured Debt is secured by substantially all personal property of the Debtors (collectively, the “Prepetition Collateral”) on which the Debtors respectively granted to the Prepetition Agent for the benefit of the Prepetition Secured Parties valid, binding, perfected, first-priority liens and security interests, prior to the Petition Date (the “Prepetition Liens”) pursuant to, and to the extent set forth in, the documentation governing the Prepetition Credit Agreement.

### **SUMMARY OF PROPOSED ORDERS**

16. In accordance with Bankruptcy Rules 4001(b) and (d) and Local Rule 4001-2(a)(ii), below is a summary<sup>4</sup> of the terms of the proposed use of Cash Collateral:

- a. Amount of Cash Collateral to Be Used. (Interim Order ¶ 8(b)). The Debtors seek authority to use Cash Collateral in an amount consistent with the expenditures described in the 13-week budget, the initial form of which is attached to the proposed Interim Order as **Exhibit 1** (the “Budget”).
- b. Parties with an Interest in Cash Collateral. The principal parties with an interest in the Cash Collateral are the Prepetition Agent (hereafter referred to as the “Agent”) and the other Prepetition Secured Parties (hereafter collectively referred to as the “Secured Parties”).
- c. Use of Cash Collateral. (Interim Order ¶ 9). The Debtors seek authority to use Cash Collateral, wherever such Cash Collateral may be located, in accordance with the terms of the Interim Order and the Budget. The Interim Order authorizes the Debtors to use Cash Collateral in excess of the disbursements expressly set forth in the Budget so long as the percentage deviation from the amount of each line-item set forth in the Budget does not exceed ten percent (10%) over (i) a rolling three-week period and (ii) the cumulative period beginning on the Petition Date. The Debtors intend to use Cash Collateral for among other things, (i) providing funding between and among the Debtors, consistent with prepetition practices as set forth in

---

<sup>4</sup> The summary of the Interim Order and the terms and conditions for the use of Cash Collateral set forth in this Motion is intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summary is qualified in its entirety by the Interim Order. If there is any conflict between this Motion and the Interim Order, the Interim Order will control in all respects.

the Debtors' separate cash management motion; (ii) conducting their operations and generating revenue in the Cases, subject to the terms and conditions of the Interim Order; (iii) working capital purposes; (iv) other general corporate purposes; (v) satisfying the costs and expenses of administering the Cases including, without limitation, paying allowed fees and expenses incurred by the professionals retained under sections 327, 328, 363, and/or 1102 of the Bankruptcy Code by the Debtors and any statutory committees appointed in these Cases (each, a "Committee"); and (vi) making certain adequate protection payments to the Agent and the Secured Parties, as provided in the Interim Order, solely in accordance with the Budget during the period from the Petition Date through and including the Termination Date (as defined below).

- d. Termination Date. (Interim Order ¶¶ 18-19). The ability to use Cash Collateral pursuant to the Interim Order shall end on the earliest to occur of: (i) the end of the time period as set forth in the Budget; (ii) the failure to obtain a final order approving the Motion by December 30, 2016; (iii) January 28, 2017; (iv) the date any Debtor makes a material disbursement not contemplated by the Budget (giving effect to the variance set forth in Paragraph 9 of this Interim Order) without having received the prior written consent of the Agent (which consent may be withheld in its sole discretion); (v) dismissal or conversion of these Cases; (vi) entry of an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code providing relief to any entity other than the Agent in an amount greater than \$75,000 with respect to the Prepetition Collateral or the Adequate Protection Collateral without the written consent of the Agent, which consent may be withheld in its sole discretion; (vii) appointment or election of a trustee, examiner with expanded powers or any other representative with expanded powers to operate Debtors' business; (viii) the effective date of a chapter 11 plan for the Debtors; (ix) entry of an order reversing, staying, vacating or otherwise modifying in any material respect the terms of this Interim Order; (x) a filing by any Debtor of any motion, pleading, application or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the Prepetition Secured Debt or asserting any other cause of action against and/or with respect to the Prepetition Secured Debt or the Prepetition Collateral; and (xi) the expiration of the five (5) business day Notice Period following the delivery of a notice of an Option Termination Event.
- e. Adequate Protection. (Interim Order ¶¶ 10-11, 16). Subject to the Carve-Out and the terms of the Interim Order, and solely to the extent of any diminution in the value of the Prepetition Collateral (including the Cash Collateral) from and after the Petition Date, the Debtors grant to the Secured Parties continuing, valid, binding, enforceable and perfected first priority liens and security interests in favor of the Secured Parties on the Prepetition Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens shall be subordinate only to (i) any valid, enforceable, and non-avoidable liens and security interests in and against the Prepetition Collateral with priority over the liens of the Secured Parties as of the Petition Date (ii) any priming liens in favor of the Agent or its affiliates, for the

benefit of the Secured Parties subsequently approved by the Bankruptcy Court, and (iii) the Carve-Out.

Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, valid, binding, enforceable and perfected first-priority liens and security interests by each of the Debtors in and on all of the Debtors' unencumbered assets, and any proceeds from any disposition of any unencumbered asset, or any asset which did not constitute Prepetition Collateral (excluding any causes of action arising under the Bankruptcy Code, including, without limitation, under sections 544 to 551, and the related proceeds, (the "Additional Liens"). The Additional Liens shall be subordinate only to the Carve-Out.

Pursuant to section 507(b) of the Bankruptcy Code, the Secured Parties shall be granted an allowed super-priority administrative expense claim (the "Adequate Protection Claims") against each Debtor and its respective estate solely to the extent of any diminution in value of the Prepetition Collateral. The Adequate Protection Claims shall be subordinate only to the Carve-Out.

The Adequate Protection Liens, Additional Liens and Adequate Protection Claims shall secure the payment of the adequate protection obligations in an amount equal to any diminution in the value of the interests of the Secured Parties in the Prepetition Collateral from and after the Petition Date (the "Adequate Protection Obligations"). For the avoidance of doubt, the Agent and the Secured Parties are not receiving any adequate protection of their interests in the Prepetition Collateral pursuant to this Interim Order in an amount over and above the amount equal to the diminution in value of the Prepetition Collateral from and after the Petition Date, if any.

As additional adequate protection, the Debtors shall make the following adequate protection payments until the Termination Date: (i) the reasonable and documented fees and expenses of Agent's legal counsel,<sup>5</sup> (ii) periodic payments of the Prepetition Secured Obligations, as and to the extent set forth in the Budget, and (iii) any excess amount of cash in the Debtors' blocked (concentration) account at Sterling National Bank (the "Prepetition Concentration Account") in excess of \$400,000 (the "Adequate Protection Payments" and, together with the Adequate Protection Liens, Additional Liens, Adequate Protection Claims, Adequate Protection Obligations and as more fully set forth in paragraphs 10-11 of the proposed Interim Order and projected in the Budget collectively, the "Adequate Protection Claims and Liens").

- f. Automatic Perfection. (Interim Order ¶ 25). The Adequate Protection Liens and Additional Liens shall be automatically perfected postpetition security interests and liens without the necessity of the execution by the Debtors (or recordation or other

---

<sup>5</sup> The Agent or such counsel shall circulate copies any invoices for fees and expenses incurred (redacted, if necessary to delete any confidential or privileged information contained therein) to the Debtors, Office of the United States Trustee and the Committee, and the Debtors on ten (10) business days' notice to object.



filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents.

- g. Carve-Out. (Interim Order ¶ 17). The Adequate Protection Claims and Liens shall be subordinate to a carve out (the “Carve-Out”) which shall be comprised of the categories set forth in paragraph 17 of the Interim Order, which include (i) fees and expenses payable to the Court and the Office of the United States Trustee; (ii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code up to \$25,000; (iii) all accrued Professional Fees of the Debtors’ Counsel and any Committee Professionals, limited to the amounts set forth in the Budget, incurred before or on the first business day following delivery of a Carve-Out Trigger Notice; and (iv) following the business day after delivery of a Carve-Out Trigger Notice, Professional Fees incurred by the Debtors’ Counsel in an aggregate amount up to \$50,000 and Professional Fees incurred by and Committee Professionals in an amount not to exceed \$15,000; provided, however, that (x) only up to \$10,000 of the Professional Persons’ Carve-Out shall be available to pay the fees or expenses of Professional Persons incurred in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Agent or Secured Parties, and (y) without prejudice to the rights of Professional Persons or the Debtors to contest any such objection, nothing herein shall be construed to impair the ability of any party to object to the allowance of any expenses or any fees, expenses, reimbursements or compensation sought by any Professional Persons.
- h. Events of Default. (Interim Order ¶ 24). The Debtor’s right to use Cash Collateral may be limited if one or more Events of Default occur, all as more fully set forth in paragraph 24.

### DISCLOSURES

17. Pursuant to Bankruptcy Rule 4001(c) and Local Rule 4001-2(a)(i), a debtor in possession seeking authority to use cash collateral, or to obtain financing, must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of such provisions. Set forth below are the disclosures required in accordance with such rules:

- a. Local Rule 4001-2(a)(i)(A) requires a debtor to disclose whether it has granted cross-collateralization to prepetition secured creditors in connection with the debtor’s cash collateral usage or additional financing. **The proposed Interim Order and Final Order provide for the Adequate Protection Claims and Liens described above. See Interim Order ¶¶ 10-11.**

- b. Local Rule 4001-2(a)(i)(B) and Bankruptcy Rule 4001(c)(1)(B)(iii) require the disclosure of provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or (ii) involve the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and a creditors' committee at least sixty (60) days from the date of its formation to investigate such matters. **The proposed Interim Order and Final Order will contain stipulations relating to the validity, perfection, enforceability, and amount of the Prepetition Liens and claims. However, all such stipulations are expressly subject to challenge by parties in interest, including any trustee of the Committee, within the time frames provided by the Local Rule. See Interim Order ¶¶ 6(a)(i) & 27.**
- c. Local Rule 4001-2(a)(i)(C) and Bankruptcy Rule 4001(c)(1)(B)(x) require the disclosure of provisions that seek to waive a debtor's rights without notice under section 506(c) of the Bankruptcy Code. **The proposed Interim Order will provide for a waiver of rights under section 506(c) of the Bankruptcy Code, subject to entry of the Final Order. See Interim Order ¶ 22. Hence, adequate notice will be provided before any surcharge waiver goes into effect.**
- d. Local Rule 4001-2(a)(i)(D) and Bankruptcy Rule 4001(c)(1)(B)(xi) require disclosure of provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Bankruptcy Code. **The proposed Interim Order does not contain any provisions that grant liens on claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Bankruptcy Code or the proceeds thereof.**
- e. Local Rule 4001-2(a)(i)(E) requires disclosure of provisions that deem prepetition secured debt be postpetition debt or use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt (other than as provided in section 552(b) of the Bankruptcy Code). **The proposed Interim Order and Final Order will not contain provisions that deem prepetition secured debt to be postpetition debt or use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt (other than as provided in section 552(b) of the Bankruptcy Code).**
- f. Local Rule 4001-2(a)(i)(F) requires disclosure of provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out. **The proposed Interim Order and Final Order will provide for disparate treatment for the professionals retained by a Committee in the Carve-Out. In addition, the Budget projects the Debtor Professionals' fees to exceed the Committee Professionals' fees. See Interim Order ¶ 17, Budget.**

- g. Local Rule 4001-2(a)(i)(G) requires disclosure of provisions that provide for the priming of any secured lien without the consent of that lienholder. **The proposed Interim Order and Final Order will not provide for priming.**
- h. Local Rule 4001-2(a)(i)(H) requires disclosure of provisions that seek to affect the Court's power to consider equities of the case under section 552(b)(1) of the Bankruptcy Code. **The proposed Interim Order will provide for a waiver of the "equities of the case" exception, subject to entry of the Final Order. See Interim Order ¶ 23. Hence, adequate notice will be provided before this waiver goes into effect.**
- i. Bankruptcy Rule 4001(c)(1)(B)(ii) requires disclosure of the provision of adequate protection or priority for claims arising prior to the commencement of the case. **The proposed Interim Order and Final Order will describe the specific forms of adequate protection provided to the Secured Lender. See Interim Order ¶¶ 10-11.**
- j. Bankruptcy Rule 4001(c)(1)(B)(iv) requires disclosure of provisions that constitute a waiver or modification of the automatic stay. **The proposed Interim Order and Final Order will describe the modification of the automatic stay to the extent necessary to implement those orders. See Interim Order ¶ 20.**
- k. Bankruptcy Rule 4001(c)(1)(B)(vii) requires disclosure of provisions that waive or modify the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate. **The proposed Interim Order and Final Order will include provisions that provide for the automatic perfection and validity of the Adequate Protection Liens without the necessity of any further filing or recording under the laws of any jurisdiction. See Interim Order ¶ 25.**

#### **BASIS FOR RELIEF**

18. Without immediate access to Cash Collateral, the repercussions to the Debtors' estates and to creditors likely would be irreparable, ending the Debtors' ability to function as an entity seeking to maximize value for all stakeholders. The Debtors need access to Cash Collateral to fund, among other things, payroll for current employees, operating expenses, and to otherwise fulfill its administrative expense obligations and pay debts in the ordinary course of business.

19. As detailed more fully below, if the Motion is not approved, the Debtors' only alternative would be a rapid and disorderly liquidation or conversion to chapter 7, as the Debtors

would be unable to sustain operations or maximize the value of their assets during the pendency of the Cases. In this regard, the relief sought in this Motion should be granted.

**A. THE DEBTORS HAVE AN IMMEDIATE NEED TO USE CASH COLLATERAL**

20. Bankruptcy Rule 4001(b) permits the Court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Prods. Co.*, 47 B.R. 444, 449 (D. Colo. 1985); *In re Ames Dep't Stores Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). *See also In re Am. Safety Razor Co., LLC*, No. 10-12351 (MFW), 2010 Bankr. LEXIS 5994, at \*37-38, 24 (Bankr. D. Del. July 30, 2010) (approving interim use of cash collateral pursuant to Bankruptcy Rule 4001(b)(2) upon a finding that the proposed use "reflect[s] the Debtors' exercise of prudent business judgment"); *In re Centaur, LLC*, No. 10-10799 (KJC), 2010 Bankr. LEXIS 5795, at \*22, 25 (Bankr. D. Del. March 11, 2010) (same); *In re Penn Traffic Co.*, No. 09-14078 (P JW), 2009 Bankr. LEXIS 5422, at \*16-18 (Bankr. D. Del. Nov. 19, 2009) (same).

21. After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

22. As previously noted, in order to address working capital needs and fund other costs and expenses associated with its efforts to maximize value, the Debtors require access to Cash Collateral. The use of Cash Collateral will provide the Debtors with the necessary capital with which to operate during these Cases, including funding the Debtors' obligations to their employees and postpetition suppliers.

23. Cash is necessary for working capital and capital expenditures and for operating costs and expenses incurred during these Cases. The Debtors do not have any available sources of working capital or financing to carry on their business without the use of Cash Collateral. The Debtors' ability to maximize the value of their estates is dependent on their ability to continue to proceed in an orderly fashion postpetition, and the Debtors cannot proceed in that fashion unless they can fund payments for postpetition goods, services, and other operating expenses. Use of the Cash Collateral thus is essential to preserving the value of the Debtors' assets. Indeed, if interim relief is not obtained, the Debtors' assets will be immediately and irreparably jeopardized, to the detriment of their estates, creditors, and other parties in interest.

24. Further, the alternative in these Cases is "to force the debtor to close down its operations and thus doom any effort at reorganization which will hopefully extract the maximum value of the assets involved to the benefit of *all* classes of creditors and other constituencies involved in this case." *In re Dynaco Corp.*, 162 B.R. 389, 396 (Bankr. D.N.H. 1993). Because this result would be at fundamental odds to the rehabilitative purposes of chapter 11, the relief requested by the Motion is warranted. *See id.* at 394 (noting that "it is apparent that the Congress intended business under reorganization to proceed in as normal a fashion as possible" (quoting *In re Prime, Inc.*, 15 B.R. 216, 219 (Bankr. W.D. Mo. 1981))).

25. Simply put, for the reasons set forth herein, immediate use of Cash Collateral in accordance with the Budget upon entry of the Interim Order is necessary to avert immediate and irreparable harm.

**B. SECTION 363 OF THE BANKRUPTCY CODE AUTHORIZES THE USE OF CASH COLLATERAL**

26. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (i) each entity that has an interest in such cash collateral provides its

consent, or (ii) the Court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

27. Here, the Debtors understand that the Secured Parties consent to entry of the Interim Order, thereby allowing the use of Cash Collateral pursuant to section 363(c)(2)(A) of the Bankruptcy Code.

28. Further, the Debtors have proposed appropriate forms of adequate protection. Section 361 of the Bankruptcy Code authorizes a debtor to provide adequate protection by granting replacement liens, making periodic cash payments, or granting such other relief “as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.” *See* 11 U.S.C. § 361. Although Bankruptcy Code section 361 provides examples of forms of adequate protection, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., Resolution Trust Corp. v. Swedeland Dev. Grp. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-12869, 2012 WL 6091160, at \*6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at \*14 (Bankr. D.N.J. June 29, 2006); *In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. at 394 (citing 2 COLLIER ON BANKRUPTCY ¶ 361.01[1] at 361–66 (15th ed. 1993) for proposition that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

29. The Debtors believe that the proposed adequate protection components described above are fair and reasonable. Indeed, the terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the dual goals of sections 361 and 363 of the Bankruptcy Code. If the Interim Order is entered, the Debtors will have working capital to continue to operate its business during these Cases and thereby provide an opportunity to maximize value for the benefit of all stakeholders. At the same time, the Secured Parties will be adequately protected in a manner that they have negotiated in exchange for consenting to the use of Cash Collateral. Given the significant value the Debtors' estates stand to lose if the use of Cash Collateral is denied, such protections are wholly appropriate and justified under the circumstances.

#### **INTERIM ORDER AND FINAL HEARING**

30. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the initial hearing that is as soon as practicable, and fix the time and date prior to the Final Hearing for parties to object to the Motion being granted on a final basis.

31. The urgent need to preserve the Debtors' business, and avoid immediate and irreparable harm to their estates, makes it imperative that the Debtors be authorized to use the Cash Collateral as of the Petition Date, pending the Final Hearing, in order to operate and administer the Cases. Without the ability to use Cash Collateral, the Debtors will be unable to meet their postpetition obligations and will be unable to fund their working capital needs, thus causing irreparable harm to the value of their assets. Accordingly, the Debtors respectfully request that, pending the hearing on a Final Order, the Interim Order be approved in all respects and the terms and provisions of the Interim Order be implemented and be deemed binding and, after the Final Hearing, the Final Order be approved in all respects and the terms and provisions of the Final Order be implemented and be deemed binding.

**NOTICE**

32. The Debtors will provide notice of this Motion to (collectively, the “Notice Parties”): (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Salus Capital Partners, LLC; (iii) holders of the twenty (20) largest unsecured claims against the Debtor; (iv) the cash management banks with which the Debtors maintain bank accounts; (v) all parties who are known, after reasonable inquiry, to have asserted a lien, encumbrance, or claim in the Prepetition Collateral; (vi) the United States Attorney’s Office for the District of Delaware; (vii) the Internal Revenue Service; and (viii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

**NOTICE REGARDING THE FINAL HEARING**

33. No trustee, examiner, or statutory committee has been appointed in these Cases to date. Pursuant to Bankruptcy Rule 4001, the Debtors respectfully request they be authorized to provide notice of the Final Hearing by serving, or causing to be served, by first class mail or other appropriate method of service, a copy of the Interim Order on the Notice Parties. The Debtors respectfully submit such notice is sufficient and request that this Court find that no further notice of the Final Hearing and Final Order is required.



**CONCLUSION**

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request entry of the Interim Order, and following the Final Hearing, entry of the Final Order, granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 30, 2016  
Wilmington, Delaware

**BLANK ROME LLP**

/s/ Michael D. DeBaecke  
Michael D. DeBaecke (DE No. 3186)  
Bryan J. Hall (*pro hac vice* admission pending)  
1201 N. Market Street, Suite 800  
Wilmington, Delaware 19801  
Telephone: (302) 425-6400  
Facsimile: (302) 425-6464  
E-mail: DeBaecke@BlankRome.com

Leon R. Barson (*pro hac vice* admission pending)  
One Logan Square  
130 North 18th Street  
Philadelphia, Pennsylvania 19103-6998  
Telephone: (215) 569-5576  
Facsimile: (215) 832-5576  
E-mail: LBarson@BlankRome.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*