

IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

In the Matter of:	)	
	)	
Monster Concrete and Excavation, Inc.,	)	CASE No. 18-80279-CRJ11
EIN: XX-XXX8547	)	CHAPTER 11
_____	)	
	)	
Monster Concrete, LLC.,	)	
EIN: XX-XXX7032	)	CASE NO. 18-80280-CRJ11
	)	CHAPTER 11
Debtor.	)	
_____	)	

**DEBTORS AMENDED MOTION FOR USE OF CASH COLLATERAL**

COME NOW, Monster Concrete and Excavation, Inc., and Monster Concrete, LLC, both Debtors and Debtors in Possession (hereinafter jointly as “Debtors”), and file this Amended Motion for Use of Cash Collateral pursuant to 11 U.S.C § 363 and Rule 4001(d) of the Federal Bankruptcy Code and in support thereof would show:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C § 1344. This matter constitutes a core matter under 28 U.S.C. § 157.
2. On February 1, 2018, (“Petition Date”) both Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in this district and division.
3. This motion has been served in accordance with Rule 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure upon the Bankruptcy Administrator, the Debtor’s Twenty Largest Unsecured Creditors in each case.
4. Both Debtors are involved in the concrete business and are owned by Mr. Steve Williams. The main office for both debtors is 4507 Triana Blvd. Huntsville, Alabama 35805.
5. Since the Petition Date, the Debtors have continued to operate and manage their concrete

businesses as debtors in possession under §§1107(a) and 1108 of the Bankruptcy Code. To date, this Court has not appointed a trustee or examiner nor has any official committee been established in this bankruptcy case.

6. Through the filing of the chapter 11 case, Debtors seek to successfully reorganize their business operations which will allow them to continue to operate and pay their creditors pursuant to a confirmed plan.
7. The business relationship of these Debtors is intertwined insofar as the assets of Monster Concrete are used in the business operations of Monster Concrete and Excavation which in turn generates revenues which it uses to pay its own normal operating expenses as well as the debts owed by Monster Concrete.
8. Pre-petition, the Debtor, Monster Concrete (but not Monster Concrete and Excavation) entered into two loans with Cardinal Equity and with Gibraltar Capital Advance. Both of these loans were purportedly secured by the accounts receivable of Monster Concrete (but not Monster Concrete and Excavation). However, neither of these companies have filed a lien or financing statement claiming lien in the accounts or accounts receivable of either company. Nonetheless, Debtors are obviously aware of the “interest” that both Cardinal and Gibraltar purportedly have in the accounts of Monster Concrete although it is unperfected.<sup>1</sup>
9. “Cash collateral” is property “in which the estate and an entity other than the estate have

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<sup>1</sup> Monster Concrete (but not Monster Concrete and Excavation) also entered into credit transaction with a company that was represented by the Corporation Service Company, as representative (“CSC”) pre-petition. While the CSC filed a UCC-1 financing statement, it has subsequently released its lien as the debt which was secured by this lien had been satisfied more than 90 days prior to the filing of these bankruptcies.

an interest.” 11 U.S.C. §363(a). In order to have such an interest a party has to have some ownership or property interest in the cash collateral. *In re Las Vegas Monorail Co.*, 429 B.R. 317, 328 (Bankr. D. Nev. 2010). This component is satisfied if the “interest” is a security interest or lien recognized under nonbankruptcy law. *Id.* Since neither Gibraltar nor Cardinal have recorded liens against the accounts receivable of Monster Concrete or Monster Concrete and Excavation, neither creditor has a lien on the cash collateral of either Debtor.

10. To the extent that the Court were to find otherwise, then pursuant to §363(c)(2)(B), the Debtors seek authorization from this Court, after notice and hearing, to use the cash collateral pursuant to the terms and conditions encompassed generally as follows:

- a. Use of Cash Collateral. The Debtors shall strictly account for all income received and used by them. All such income shall be deposited into the Debtor in Possession bank account. The Debtor seeks to use the Cash Collateral on a limited basis satisfy those expenses shown on the attached Exhibit “A”. Then upon further notice, the Debtor reserves the right to seek the ability to use cash collateral as needed to satisfy (i) those expenses reasonable and necessary to the operation and maintenance of Debtor’s business as shown on the Budget; (ii) the Statutory Fees); and (iii) the allowed fees and expenses payable under §§ 330 and 331 of the Bankruptcy Code to any professional persons retained by an order of this Court.<sup>2</sup>

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<sup>2</sup> As used in this Motion, “Carveout” means (i) the unpaid fees of the Clerk of the Bankruptcy Court and the Office of the United States Bankruptcy Administrator pursuant to 28 U.S.C. § 1930(a) and (b) (the “Statutory Fees”) and (ii) the aggregate allowed unpaid fees and expenses payable under Sections 330 and 331 of the Bankruptcy Code to any professional persons retained by an order of this Court.

- b. No Waiver of Rights: The granting of relief requested herein is without waiver by the Debtor to subsequently file a complaint to determine the validity, priority and extent with such lien.
- c. No Waiver or Cure. Consent by such creditors to use of Cash Collateral shall not be deemed as a waiver or cure of any defaults of the Debtor under any loan agreement or as a waiver of any acceleration of the debt owed by the Debtor to the creditors.
- d. Immediate Need. The Debtor has an immediate need for authority to use the Cash Collateral in its ongoing business operations. If Debtor does not receive such authority forthwith it will have to close down without further prospects of reorganization. Accordingly, the Debtor requests that the Court grant this Motion on an Emergency Basis for a period of not more than 30 days during which Debtor requests that the Court schedule a final hearing on the Debtor's Motion for Use of Cash Collateral.

WHEREFORE, PREMISES CONSIDERED, Debtor, Monster Concrete and Excavation, Inc., and Monster Concrete, LLC., respectfully requests that this Honorable Court hold a preliminary hearing pursuant to Rule 4001(b) of the Federal Bankruptcy Rules of Procedure on its Amended Motion for Use of Cash Collateral and find that either there is no such cash collateral or pending a final hearing on this motion, authorize the Debtor to use cash collateral for the purposes herein stated. Debtor further requests that this Court hold a final hearing on this motion in the event an objection is timely filed, after such hearing grant the motion, and grant such further and additional relief to which the Debtor may be justly entitled.

Respectfully submitted on this 12<sup>th</sup> day of February, 2018.

/s/ Kevin D. Heard  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of February, 2018, I served a copy of the foregoing **Amended Debtor's Motion for Use of Cash Collateral** on the parties listed below and on the attached matrix by depositing the same in the United States Mail, postage prepaid and properly addressed, via electronic email at the e-mail address below, unless the party being served is a registered participant in the CM/ECF System for the United States Bankruptcy Court for the Northern District of Alabama, service has been made by a "Notice of Electronic Filing" pursuant to FRBP 9036 in accordance with subparagraph II.B.4. of the Court's Administrative Procedures as indicated below:

**Notice will be electronically mailed to:**

Richard Blythe  
[Richard\\_Blythe@alnb.uscourts.gov](mailto:Richard_Blythe@alnb.uscourts.gov), [courtmaildec@alnb.uscourts.gov](mailto:courtmaildec@alnb.uscourts.gov)

**Notice will be mailed to**

Gibraltar Capital Advance  
400 Skikie Blvd. Ste 375  
Northbrook, IL 60062-0000

Cardinal Equity  
30 Wall Street  
New York, NY 10005-0000

**All parties on the attached matrix were served via U.S. Mail.**

/s/ Kevin D. Heard  
Kevin D. Heard

**EXHIBIT A**

Weekly Budget

Estimated Revenue

\$43,000.00-\$46,000.00

Estimated Expenses

Payroll \$17,000,  
Payroll Taxes: \$5,000  
Insurance 7,500.00  
Fuel 1,650.00  
Job Materials 5,600.00  
Shelter Door 2,850.00  
Skid Steer Rental 2300.00  
Utilities 560.00