

UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: :
: CHAPTER 11
Powell Steel Corporation, :
: BANKRUPTCY NO. 13-11275 (MDC)
Debtor. :
:

**SECOND INTERIM ORDER AUTHORIZING USE OF
CASH COLLATERAL AND RELATED RELIEF**

AND NOW, this 1st day of ^{March} February, 2013, this matter coming to be heard on the motion of Powell Steel Corporation ("Debtor"), for authority to use cash collateral on an interim basis pursuant to 11 U.S.C. § 363 and Rule 4001(b)(2) of the Bankruptcy Rules (the "Motion"). Notice of the Motion together with notice of the preliminary hearing thereon has been given and served by the Debtor to the (1) Office of the United States Trustee, (2) the Debtor's secured creditors, and (3) the twenty (20) largest unsecured creditors on the Rule 1007(d) list. The Court having considered the Motion, the testimony of the Debtor's principal, the representations of counsel to the Debtor, and after due deliberation and good and sufficient cause appearing for the entry of the within order, it is hereby found, as follows:

A. **Notice and Hearing.** Notice of the Motion pursuant to Federal Rule of Bankruptcy Procedure 9006(c) and 9013 for the first preliminary hearing on the Debtor's use of cash collateral has been served in accordance with Section 102(1) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001(b), or if by Consent, under Federal Rule of Bankruptcy Procedure 4001(d) which notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules in respect to the relief requested.

B. **Chapter 11 Filed.** The Debtor filed a voluntary petition for relief under chapter 11 of the United States Code, as amended (the "Bankruptcy Code") on February 13, 2012 (the

“Petition Date”) and is presently operating as a debtor-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

C. **Pre-Petition Debt.** M&T Bank (the “Lender”) has asserted a secured claim against the Debtor in the approximate principal amount of \$3,102,047.41 (“Pre-Petition Debt”) as of Petition Date. The Lender has asserted, and the Debtor has acknowledged and agreed with Lender that the Lender has, of the Petition Date, a valid and subsisting first lien and security interest in Collateral (defined below). The Pre-Petition Debt is as follows:

OBLIGATION	ORIGINAL EFFECTIVE DATE	ORIGINAL LOAN AMOUNT	AMOUNT DUE AS OF 2/22/13
42	6/30/2008	\$2,500,000.00	Principal Amount - \$2,500,000.00 Interest Amount - \$7,656.25 Amount Due as of 2/22/13 - \$2,507,656.25
59	6/30/2008	\$1,400,000.00	Principal Amount - \$1,400,000.00 Interest Amount - \$2,401.69 Amount Due as of 2/22/13 - \$556,639.16
83	05/28/2009	\$400,000.00	Principal Amount - \$37,608.36 Interest Amount - \$143.64 Amount Due as of 2/22/13 - \$37,752.00

“Collateral” shall be referred and include (i) all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles, (including trademarks, service marks, trade names, patents, copyrights, licenses, and franchises),

instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible, or instrument); (ii) all additions to accessions to, substitutions for, replacements of and supporting obligations of the foregoing; (iii) all proceeds and products of the foregoing, including, without limitation, insurance proceeds; and (iv) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information. Debtor acknowledges and agrees that the foregoing Collateral description is intended to cover all assets of the Debtor.

The Debtor has acknowledged and agreed that the Collateral secures the Pre-Petition Debt which indebtedness is not subject to defense, offset or counterclaim of any kind or nature and that said Pre-Petition Debt is an allowed, secured claim under Sections 506(a) and 502 of the Bankruptcy Code.

D. **Cash Collateral.** “Cash collateral” as defined by Section 363(a) of the Bankruptcy Code includes post-petition proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in Section 552(b) of the Bankruptcy Code and as the term “proceeds” is described in UCC Sections 9-102 and 9-315.

E. **Necessity and Best Interest.** The Debtor does not have sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11. The Debtor requires the immediate authority to use cash collateral as defined herein in order to continue its business operations without interruption toward the objective of formulating an effective plan of reorganization. Debtor’s use of cash collateral to the extent and on the terms and conditions set forth herein is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. The amount of cash collateral authorized to be used by Debtor pending a final hearing or entry of a final order is not to exceed the amounts reflected in the budget, annexed hereto as

Exhibit A, for the time period from February 24, 2013 through March 31, 2013 (the "Cash Collateral Budget").

F. **Purposes.** The Debtor is authorized to use cash collateral to meet the ordinary cash needs of the Debtor (and for such other purposes as may be approved in writing by the Lender) for the payment of actual expenses of the Debtor necessary to (a) maintain and preserve its assets, and (b) continue operation of its business, including payroll and payroll taxes, and insurance expenses as reflected in the Cash Collateral Budget.

The Court having been informed that the parties have indicated consent hereto, and for good cause shown,

IT IS ORDERED as follows:

ORDERED, that the Debtor's Use of Cash Collateral in accordance with this Order is hereby approved, subject to the terms of this Order and the Cash Collateral Budget attached hereto as Exhibit "A" through March 31, 2013 and in the amounts as authorized herein including, but not limited to \$41,886.82 to Lender and \$12,922.00 to PMBDA; and it is further

ORDERED, that as adequate protection for the use of cash collateral on an interim basis through March 31, 2013, the Lender is hereby granted a replacement perfected security interest under Section 361(2) of the Bankruptcy Code to the extent Lender's cash collateral is used by the Debtor, to the extent and with the same priority in the Debtor's post-petition collateral, and proceeds thereof, that the Lender held in the Debtor's pre-petition collateral, subject to payments due under 28 U.S.C. § 1930(a)(6); and it is further

ORDERED, that all replacement liens granted herein will attach in the same order of priority as existed pre-petition; and it is further

ORDERED, that the Debtor shall continue to make monthly interest payments to the Lender due under the Pre-Petition Debt; and it is further

ORDERED, the Debtor shall provide written proof of insurance and maintain insurance on all assets; and it is further

ORDERED, in the event the Debtor fails to make timely weekly payroll tax deposits to the Internal Revenue Service, the Commonwealth or the City during the term of this Order (collectively, the "Taxing Authorities"), one or more of the Taxing Authorities may, at its option, serve a Certification of Default upon counsel for the Debtor, the United States Trustee, and counsel for Lender via email. After the expiration of a five (5) day cure period if such weekly payroll tax deposits are not made, upon service of a Certification of Default for failure to make timely weekly payroll deposits, the Debtor's use of cash collateral shall immediately cease and one or more of the Taxing Authorities, or any other party, may request and schedule an expedited hearing on the continued use of cash collateral with the Bankruptcy Court; and it is further

ORDERED, the Debtor shall send weekly payroll tax deposits of all federal payroll taxes to:

Insolvency, IRS, Room 5200
600 Arch Street
Philadelphia, PA 19106
Attn: Catherine Staskin

ORDERED, the Debtor shall provide weekly reports to the Lender, the Office of the United States Trustee, and counsel to the Committee, if any, setting forth the cash receipts and disbursements made by the Debtor under this Order. Each reporting shall include information for the pay period ending the previous week and such reporting periods shall run consecutively. Each reporting shall be delivered within two (2) business days of the conclusion of the prior reporting period; and it is further

ORDERED, that as a condition to the use of cash collateral, the Debtor will close its current Debtor-In-Possession Account at Fulton Bank and will set up and transfer all funds into a

Debtor-In-Possession Account at M&T Bank within thirty (30) days from the entry of this Order; and it is further

ORDERED, that in the event Debtor defaults or violates this Order, Debtor's right to use cash collateral shall automatically cease until further Order of this Court; and it is further

ORDERED, that the Debtor's use of cash collateral is approved in accordance with the Cash Collateral Budget. All proceeds shall remain with the Debtor for use in operations subject to the liens of the Lender and the Cash Collateral Budget; and it is further

ORDERED, that to the extent that adequate protection provided for hereby proves insufficient to protect the Lender's interest in and to the cash collateral, the Lender shall have a super-priority administrative expense claim only to the extent of any diminution in the value of the Collateral, pursuant to Section 507(b) of the bankruptcy Code, senior to any and all claims against the Debtor under Section 507(a) of the bankruptcy Code, whether in this proceeding or in any superseding proceeding; and it is further

ORDERED, that upon twenty-four hour written notice, Debtor shall permit the Lender and its agents reasonable and free access to Debtor's records and place of business during normal business hours to review evaluate and appraise the physical condition of the Lender's collateral, to review and inspect financial records and audit cash receipts and disbursements. The Lender may request and Debtor shall provide periodic telephonic updates concerning the business operations and affairs of the Debtor (including without limitation proposals/bids made and contracts entered into); and it is further

ORDERED, that the consent of any creditor of the Debtor to the entry of this interim order shall not constitute any acknowledgement by the creditor(s) of the extent, validity or priority of the Lender's liens, claims or debt; and it is further

ORDERED, that this Order is without prejudice to the rights of the Debtor's creditors, any trustee appointed herein, or other party in interest, to contest the validity, extent or priority of any rights granted Lender by any pre-petition loan agreement or any security interest arising out of or related to any such pre-petition loan agreement; and it is further

ORDERED, that nothing contained herein shall be deemed or construed to (a) limit the Lender to the relief granted herein; (b) bar the Lender from seeking other and further relief (including relief from this Order) for cause shown on appropriate notice to the Debtor and other parties-in-interest entitled to notice of the same; or (c) require the Lender to make any further loan or advance to the Debtor; and it is further

ORDERED, that the Debtor is authorized to move forward with all payments listed in the Cash Collateral Budget; and it is further

ORDERED, that a further interim hearing on the use of cash collateral shall be held on March 20, 2013 at 11:00 a.m. and the Debtor and all parties reserve all rights as to each other on any request by the Debtor to continue to use the Lender's cash collateral, budget items and adequate protection payments; and it is further

ORDERED, that this Order shall be served by the Debtor upon all parties filing a request for notices pursuant to Rule 2002, including the Lender, all secured creditors, the office of the United States Trustee and the IRS within 2 days after entry of the Order.

BY THE COURT:



THE HONORABLE MAGDELINE D. COLEMAN,
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Powell Steel Corporation Projected Cash Flows

February 24, 2013 - March 31, 2013

Starting Balance		\$117,582.26
	Income	
	Contract Income (Includes final retainage and reduction of retainage. See attached schedule for breakdown of anticipated cash receipts)	\$1,284,515.66
	Total Income	\$1,402,097.92
Cost of Goods Sold		
	Supplies	
	Scully Welding	\$1,000.00
	Air Products	\$769.02
	Other Field & Shop Supplies	\$5,500.00
	Inventory	\$20,000.00
	Subcontractors	
	Detailers	\$15,000.00
	Vehicle Expenses	
	Exxon Mobile	\$806.40
	Pacific Pride	\$3,350.00
	Landis Scheaffer (Vehicle Maintenance)	\$1,000.00
	Joint Check and Direct Pay	\$390,681.78
	Total Cost of Goods Sold	\$438,107.20
	Gross Profit	\$963,990.72
Expenses (All expenses are payable from February 24, 2013 - March 31, 2013)		
	Payroll & Taxes	
	Payroll (The month of March has three (3) biweekly payrolls and two (2) additional weekly payroll, plus the last week in February)	\$262,715.40
	Officer Salary (SL Powell)	\$11,529.51
	MS Jackson (1099 Employee)	\$15,000.00
	Fed. Withholding & Soc. Sec/Medicare	\$79,670.17
	State Withholding	\$12,221.25

SDI	\$323.37
Lancaster EIT	\$4,379.70
Support Payments	\$9,730.74
Total Payroll & Taxes	\$395,570.14
Bank Charges	\$379.32
Insurance	
Aetna	\$36,253.00
Aflac	\$361.38
Ameritas Life Insurance	\$1,200.00
IPFS Corporation (Workers Comp)	\$34,110.43
Washington National Insurance	\$155.36
NABCO	\$1,300.00
Total Insurance	\$73,380.17
Office Equipment Leases	
Conestoga Copiers	\$150.00
KIP America	\$787.63
De Lage Landen	\$135.80
Cooler Smart	\$124.50
Total Office Equipment Leases	\$1,197.93
Equipment Leases	
Evans Crane (Crane)	\$3,703.05
Field Equipment	\$2,376.03
M&T Bank (Field Trucks)	\$2,488.30
Tow Motor	\$2,740.32
Truck	\$1,993.92
Truck	\$2,017.57
Total Equipment Leases	\$15,319.19
Telephone & Internet	
Verizon Wireless	\$1,500.00
Earthlink Business	\$584.01
Frontier Communications	\$103.69
Total Telephone & Internet	\$2,187.70
Office Supplies & Expenses	\$400.00
Postage & Shipping	\$150.00
Computer Expense	
Fabsuite	\$125.00
Justek	\$565.00
Total Computer Expense	\$690.00

License & Permits		\$375.00
Trash Disposal		
	Waste Management	\$616.22
Total Trash Disposal		\$616.22
Janatorial Services		
	Jerry Buckman	\$561.80
Total Janatorial Services		\$561.80
Meals & Entertainment		\$0.00
Repairs and Maintenance		\$1,000.00
Rent		
	Allen Morehead (Lancaster Plant)	\$4,734.38
	Fisher Realty Co. (Willow St. Plant)	
	[February and March Rent]	\$52,682.72
Total Rent		\$57,417.10
Utilities		
	Allen Morehead - Electric (Lanc. Plan)	\$1,000.00
	Allen Morehead - Water/Sewer (Lanc. Plant)	\$25.00
	PP&L (Willow St. Plant)	\$7,229.59
	UGI - Gas	\$2,165.00
Total Utilities		\$10,419.59
Real Estate Taxes		
	Allen Morehead - Electric (Lanc. Plan)	\$378.32
	Gary J. Crawford (Lime Street, Quarryville)	\$81.00
	Solanco School District (Lime St.)	\$220.93
	Lanc. City Treasurer (Willow St. Plant)	\$493.33
	Penn Manor School Dist (Willow St.)	\$1,625.00
Total Real Estate Taxes		\$2,798.58
Total Expenses		\$562,462.74
Net Operating Income		\$401,527.98
<i>Other Expenses</i>		
Bank Loans		

	M&T Line of Credit	\$10,937.50
	M&T Loans	\$30,949.32
	PMBDA Loans	\$12,922.00
Total Bank Loans		\$54,808.82
State Taxes		
	PA Sales & Use	\$9,000.00
	PA Unemployment Funds	\$5,516.35
	MD Sales Tax	\$1,735.00
	MD Use Tax	\$2,500.00
Total State Taxes		\$18,751.35
Principal Accounts		
	Davis Bacon Fund (Principal Account)	\$54,483.46
	401 K Pension	\$3,703.71
	Matching (Principal Account)	\$505.04
Total Principal Accounts		\$58,692.21
Total Other Expenses		\$132,252.38
Net Income		\$269,275.60

Schedule 1

Anticipated Cash Receipts between March 1, 2013 and March 31, 2013

28027 Haverford Middle School	\$54,105.90	Retention (Final)	
11015 Everyman Theater	\$62,419.81	Retention (Final)	
11017 Elwell Residence	\$66,746.44	Outstanding Reqs. (Nov., Dec. & Jan.)	
10015 Millfrod Mills Academy	\$9,745.88	Retention Reduction	
11026 Waverly Pre-K-8	\$192,401.94	January Re.	\$46,161.52
11032 Hunter's Point	\$366,734.59	January Re.	\$142,356.13
11038 Columbia U-Manhattanville	\$66,354.48	January Re.	
11047 Fort Detrick	\$10,024.50	January Re.	
12011 Va Emergency Generator	\$7,297.28	January Re.	
12014 Binghampton Univ.	\$448,684.84	January Re.	\$202,164.13
	Total		\$390,681.78