

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



  
John P. Gustafson  
United States Bankruptcy Judge

Dated: October 12 2016

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In Re:	*	Case No. 16-32270
		Judge John Gustafson
Sidney Transportation Services, LLC	*	
	*	Chapter 11 Proceeding
	*	
Debtors	*	
	*	
	*	
*	*	*

**FINAL ORDER (I) AUTHORIZING DEBTOR TO UTILIZE CASH  
COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (II) GRANTING  
ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES  
PURSUANT TO 11 U.S.C. §§ 361, 362, 363.**

\* \* \*

This matter came before the Court on the "Motion" of the Debtor, Sidney Transportation Services, LLC ("Debtor"), requesting that this Court enter a final order

pursuant to §§ 105, 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving the Debtor's use of cash collateral as defined under 11 USC 363(a) in the ordinary course of the business of the Debtor and setting adequate protection for such use of cash collateral.

The Court being duly advised in the premises, and finding that notice of the Motion and the opportunity to be hearing on the matter was provided to all parties entitled to receive notice under the Bankruptcy Code and Rules, and finding that no objection to the Motion was filed by any party, the Court hereby grants the relief requested by the Debtor.

Pursuant thereto, it is

**IT IS HEREBY FOUND AND DETERMINED THAT**

A. Petition Date: On July 18, 2016 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of the United States Bankruptcy Code.

B. Debtors in Possession: The Debtor is continuing to manage and operate its business and property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.

C. Jurisdiction and Venue: This Court has core jurisdiction over this Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. On July 19, 2016, the Debtor filed a motion for the interim use of cash collateral. (Doc. No. 5) ("Original Motion"). Pursuant to this Original Motion, three prior interim orders have been entered by the Court on the Debtor's use of cash collateral: (1)

First Interim Order, dated July 22, 2016 (Doc. No. 15); (2) a second Interim Order, dated August 5, 2016 (Doc. No. 36); and a third Interim Order, dated September 8, 2016 (Doc. No. 51).

E. Party with Interest in Cash Collateral: Under documents and circumstances more fully set forth in the Original Motion, the following Parties may claim an interest in the Debtor's Cash Collateral: (1) PNC Bank, National Association, ("PNC Bank"); (2) Karl E. and Judith B. Bemus ("Bemus"); and (3) Central States, Southeast and Southwest Areas Pension Fund; and Arthur H. Bunte, Jr., as Trustee, ("Central States"). For these parties, the Court hereby finds that only PNC Bank and Bemus are entitled to adequate protection for their claimed interest in the Debtor's Cash Collateral.

F. The Debtor stipulates to the following facts:

1. Prior to the commencement of Debtor's Chapter 11 case, PNC Bank made a loan and provided other credit accommodations to the Debtor pursuant to that certain Promissory Note dated September 22, 2011 in the original principal amount of \$200,000 (the "PNC Bank Line of Credit").
2. The PNC Bank Line of Credit is secured by, *inter alia*, a Commercial Security Agreement dated September 22, 2011 (the "Security Agreement") whereby the Debtor granted the Bank a blanket security interest in the Debtor's personal property. To perfect the interests granted to it by the Debtor, the Lender filed financing statements (the "Financing Statements") with the Ohio Secretary of State on September 28, 2011 at File No. OH 00153133732 and continued on April 5, 2016 at File No. 20160960320.

G. Necessity of Relief Requested. In the event the Debtor were not permitted to use cash collateral, the Debtor would be unable to operate in the ordinary course of business or to maintain its property. As such, the continued operation of the Debtor's business would not be possible and would likely result in immediate and irreparable harm to the Debtor, its estate and creditors, and the possibility for a successful outcome in this Chapter 11 Case would be gravely jeopardized. The relief requested in the Motion is, therefore, necessary, essential, and appropriate for the continued operation of the Debtors' business, and to facilitate the management and preservation of the Debtor's property. Entry of this Final is, therefore, in the best interests of the Debtor, its estate and creditors and other parties in interest.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. Motion Granted. The Motion is granted to the extent set forth in this Order, and the Debtor is hereby authorized to use Cash Collateral, subject to the terms and conditions set forth in this Final Order.

2. Authorization to Use Cash Collateral.

The Debtor shall be entitled to and is authorized to use Cash Collateral to pay all ordinary and necessary expenses consistent with Debtor's "Budget" as attached as Exhibit "A" to this Order. For this purpose, the following terms and conditions shall apply with respect to the Budget:

(a) without Court approval, and only upon notice to PNC Bank and Bemus, no individual expense on the Budget shall be exceeded by more than 15%, except that this limitation shall not apply to the Debtor's expense for fuel and outside repair costs.

(b) The overall expenses of the Budget shall not be exceeded by more than 10% except that due allowance shall be made with respect to this threshold to account for reasonable and necessary contingencies in the Debtor's business operations so long as the basis therefor is disclosed by email to counsel of record for PNC and Bemus at the time that Debtor becomes aware of any such contingency. Either PNC or Bemus may object to such allowance at which time the matter shall be submitted to the Court for determination.

In addition, as and for its use of cash collateral, it is required that the Debtor's cash and accounts receivable position shall not be eroded more than 10% from \$540,000.00 (the "Floor Amount"),<sup>1</sup> which Debtor acknowledges is the amount in existence at the date of this Order. Otherwise, PNC Bank or Bemus may give notice in writing to the Debtor, counsel for the Debtor, the United States Trustee and any official committee appointed in this case (the "Committee") of such diminishment of the cash and accounts receivable below the Floor Amount, which shall be a default under this Order. Should the Debtor not cure the default within ten days from the notice by bring the amount of the cash and receivables to less than 10% below the Floor Amount, PNC Bank, the Committee or Bemus may file a notice of such failure to cure with the Court whereupon the Debtor shall immediately cease all further use of cash collateral and Debtor shall segregate and preserve all cash collateral pending further Order of the Court. In order to monitor the amount of cash and accounts receivable, the Debtor shall provide PNC Bank, the Committee and Bemus with a monthly listing of cash and deposit

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<sup>1</sup>Pursuant to the Motion made by the Debtor for the use of cash collateral, this figure consists of the following: \$15,869.59 in PNC Bank Accounts; \$111,151.53 in an account with Mutual Federal Savings Bank; \$445,771.73 in accounts receivable of which the Debtor estimated that \$431,236.85 is collectible; and \$100.00 in petty cash.

accounts and aging accounts receivable list. Provided that the adequate protection payments made herein are paid, the Debtor shall be further entitled to pay from its budget, the following expenses and costs:

- (a) Fees of the United States Trustee assessed under 28 U.S.C. § 1930;
- (b) Professional fees and expenses upon application to and allowance by the Court;
- (c) any further adequate protection payments ordered by the Court; and
- (d) after notice and the opportunity for hearing, any further expenses and/or costs allowed pursuant to court order.

3. Adequate Protection. Central States shall not be entitled to any adequate protection payments during the period of this Final Order. As and for adequate protection for the Debtor's use of Cash Collateral, PNC Bank and Bemus shall be entitled to the following:

(a) To the extent permissible under the Bankruptcy Code, after paying expenses and costs in accordance with the terms of the Budget, and further limited to only those expenses which are reasonable and necessary for the operation of its business, the Debtor, as set forth in the Budget, shall pay to the PNC Bank and Bemus on August 1, 2016, and on the first business day of each month thereafter, contractually due interest to PNC Bank and Bemus unless the Court orders otherwise. These payments shall be as follows:

PNC Bank:     \$1,975.00

Bemus:         \$1,863.34

(b) Notwithstanding the provisions of Section 552(a) of the Bankruptcy Code, and in addition to the security interests preserved by Section 552(b) of the Bankruptcy Code, as adequate protection of the asserted interests in the Debtor's Cash Collateral by PNC

Bank and Bemus, PNC Bank and Bemus are hereby granted replacement liens to the same extent, validity and priority as existed on the Petition Date under their respective Loan and Security Documents, as of or acquired by the Debtor after the Petition Date to the extent, as provided in 11 U.S.C. section 361(2), the stay, use, sale, or grant of an interest in the Cash Collateral result in a decrease in the value of the interest held by PNC or Bemus in the Cash Collateral. This interest shall be deemed perfected immediately upon entry of this Order.

Moreover, under no circumstance shall this replacement lien be (A) subject or subordinate to any lien or security interest arising on or after the respective Relief Date, or (B) subordinated to or made pari passu with any other lien, claim or interest under sections 363 or 364 of the Bankruptcy Code or otherwise. Notwithstanding, under no circumstances shall either PNC Bank or Bemus have a lien on any causes of action arising under 11 U.S.C. 542 et seq., 547, 548, 549, 550, 551 or any of the Debtor's assets on which they it did not have a lien or security interest prepetition.

Furthermore, the replacement liens provided to PNC and Bemus shall not prime any preexisting liens which were in existence, duly perfected and otherwise unavoidable as of the Petition Date.

(c) The Debtor shall maintain insurance on its Property in amount which is customarily appropriate for the nature of the Property.

4. Duration. The Debtor, subject to the terms herein, is authorized to use cash collateral from the Petition Date to the earliest occurrence of any of the following events: (a) the confirmation, conversion or dismissal of this Chapter 11 case; (b) Debtor's unauthorized use of the Cash Collateral; (c) the Debtor ceasing operation of its business as a Debtor-In-Possession under the Bankruptcy Code; provided, however, that any

security interest or priority granted or recognized pursuant hereto shall remain in effect until all indebtedness incurred and secured thereunder has been repaid in full; (d) the date of entry of a Court Order terminating this Order for cause; (e) entry of an order granting either PNC Bank or Bemus relief from the automatic stay; or (f) a specific order of the Court terminating this Order.

5. Binding Effect. This Order shall be binding upon PNC Bank, Bemus, Central States and the Debtor. Nothing, however, in this order shall be construed so as to prejudice or prevent the Debtor, any future committee, the United States Trustee or any party-in-interest, including Central States, from challenging the secured interest claimed by either PNC Bank or Bemus.

6. No action or inaction by PNC Bank, Bemus and/or Central States in (i) accepting the Budget, covenants and statements of Debtor herein, (ii) funding any post-petition Debt, or (iii) taking any action directed by this Order shall be used, construed, or deemed to hold PNC Bank, Bemus and/or Central States to be in control of the Debtor's estate, or the governance, management or operations of the Debtor's estate for any purpose, without limitation, or to be participating in the management of the Debtor or acting as a "responsible person" or "owner or operator" or a person in "control" with respect to the governance, management or operation of the Debtor's estate or its business (as such terms, or any similar terms, are used in the Bankruptcy Code, or the Internal Revenue Code, Comprehensive Environmental Response, Compensation and Liability Act, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon PNC Bank, Bemus and/or Central States under this Order including,



without limitation, such rights and remedies as may be exercisable by PNC Bank, Bemus and/or Central States in connection with this Order.

**IT IS SO ORDERED**

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Service made electronically:

Jordan Seth Blask on behalf of Creditor PNC Bank, National Association  
[jblask@tuckerlaw.com](mailto:jblask@tuckerlaw.com), [smarch@tuckerlaw.com](mailto:smarch@tuckerlaw.com), [agilbert@tuckerlaw.com](mailto:agilbert@tuckerlaw.com)

James H. Gordon on behalf of Creditor Star Leasing Co.  
[jgordon@gordonlawco.com](mailto:jgordon@gordonlawco.com)

Joshua Koltak on behalf of Creditor B & B Warehouses, Inc.  
[jkoltak@fgks-law.com](mailto:jkoltak@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com); [mbrautigam@fgks-law.com](mailto:mbrautigam@fgks-law.com)

Joshua Koltak on behalf of Creditor Judith B Bemus  
[jkoltak@fgks-law.com](mailto:jkoltak@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com); [mbrautigam@fgks-law.com](mailto:mbrautigam@fgks-law.com)

Joshua Koltak on behalf of Creditor Karl E Bemus  
[jkoltak@fgks-law.com](mailto:jkoltak@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com); [mbrautigam@fgks-law.com](mailto:mbrautigam@fgks-law.com)

Anthony E. Napoli on behalf of Creditor Central States, Southeast and Southwest Areas Pension Fund  
[tnapoli@centralstates.org](mailto:tnapoli@centralstates.org)

Eric R. Neuman on behalf of Debtor Sidney Transportation Services, LLC  
[eric@drlawllc.com](mailto:eric@drlawllc.com), [kim@drlawllc.com](mailto:kim@drlawllc.com)

Tiara N. A. Patton on behalf of U.S. Trustee United States Trustee  
[tjiara.patton@usdoj.gov](mailto:tjiara.patton@usdoj.gov)

Brett A. Solomon on behalf of Creditor PNC Bank, National Association  
[bsolomon@tuckerlaw.com](mailto:bsolomon@tuckerlaw.com)

Michael A. Staudt on behalf of Creditor B & B Warehouses, Inc.  
[mstaudt@fgks-law.com](mailto:mstaudt@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com)

Michael A. Staudt on behalf of Creditor Judith B Bemus  
[mstaudt@fgks-law.com](mailto:mstaudt@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com)

Michael A. Staudt on behalf of Creditor Karl E Bemus  
[mstaudt@fgks-law.com](mailto:mstaudt@fgks-law.com), [cfisher@fgks-law.com](mailto:cfisher@fgks-law.com)

**Notice will be mailed to:**

Alni Ltd  
2780 Airport Drive  
Suite 342 Box 1  
Columbus, OH 43219

Ball Bounce  
100 Hedstrom Drive  
Ashland, OH 44805

Berglund Armstrong Mastny P.C.  
1010 Jorie Blvd.  
Oak Brook, IL 60523

U.S. Bank Equipment Finance  
1310 Madrid Street  
Marshall, MN 56258

Condata Global  
9830 W 190th St.  
Suite M  
Mokena, IL 60448

De Lage Landen  
PO Box 41602  
Philadelphia, PA 19101

General Transport  
PO Box 7727  
Akron, OH 44306

Goodyear Commercial Tire  
& Service  
1266 Starlight Dr.  
Akron, OH 44306

John Deeds  
100 South Main Avenue  
Suite 300  
Sidney, OH 45365

Marvin Homan  
Kentner Sellers, LLP  
801 Falls Creek Drive  
Vandalia, OH 45377

Karl and Judith Bemus  
234 Overland Dr.  
Sidney, OH 45365

Keith's Truck & Trailer Inc,  
1860 St Rt 47  
Russia, OH 45363

Kirk Nationalease Co.  
PO Box 4369  
Sidney, OH 45365

Mercedes-Benz Financial  
Services  
PO Box 5260  
Carol Stream, IL 60197

PNC Bank  
2221 WEST MICHIGAN STREET  
Sidney, OH 45365

PNC BANK  
249 FIFTH AVE  
MAILSTOP P1-POPP-LB-7  
Pittsburgh, PA 15222

Schaefer Oil Company  
PO Box 13  
Fort Loramie, OH 45845

Toyota Financial Services  
Commercial Finance  
Carol Stream, IL 60132

Item	Weekly	Monthly
Payroll	55000.00	238333.34 (Includes PR taxes paid quarterly)
Steve PR	3147.70	13640.00 (Includes PR taxes paid quarterly)
Owner Operators PR		37000.00
Karl Bemus		1863.34
B&B		5500.00
B&B Utility		600.00 (Winter months will vary)
Tires	1500.00	6500.00
Fuel		100000.00
Eqt. Loans/Leases		16000.00
Eqt Leasing of Sidney		2437.00
Utilities		3000.00 (Winter months will vary)
Phone/Internet		3900.00
Cargo/Eqt Insurance		23800.00
Medical Insurance		21000.00
Life/Short Term Ins		2000.00
Outside Repairs		30000.00
Software (Aurora)		2000.00
Cartage		4500.00
Copier/Printers/Supplies		1500.00
PNC Line of Credit		1975.00
Repair Parts		1500.00
Misc Items		1000.00
Sales Expenses		1000.00
Eqt. Rents		13700.00

**MONTHLY 532748.68**

IFTA, KY USE TAX	600.00	JULY
2290 HUT TAX	16000.00	AUGUST
IRP/LICENSES	24000.00	SEPT.