

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

IN RE:  ZEIGER CRANE RENTAL, INC., <i>et al.</i> , <sup>1</sup>  Debtors.	CHAPTER 11  CASE NO. 14183-BKC-EPK (Jointly Administered)
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**MOTION OF THE DEBTORS FOR AUTHORITY TO USE CASH COLLATERAL AND  
REQUEST FOR EXPEDITED HEARING**

***(EMERGENCY HEARING REQUESTED)***

ZEIGER CRANE RENTAL, INC. (“Zeiger Crane”), ATLANTIC LEASING, INC. (“Atlantic Leasing”) and DYER ROAD PROPERTY, LLC (“Dyer Road” and, together with Zeiger Crane and Atlantic Leasing, the “Debtors”), by and through undersigned counsel, file their *Motion for Authority to Use Cash Collateral and Request for Expedited Hearing* (“Motion”), and in support of this Motion, state as follows:

**BRIEF STATEMENT OF RELIEF REQUESTED**

1. By this Motion, the Debtors request that this Court enter an order authorizing the Debtors to use cash collateral in accordance with the budgets attached hereto as Exhibits “A” and “B.”
2. Approval of the instant Motion is necessary and critical to the Debtors’ ongoing business operations, as well as for the preservation of asset and collateral value.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (M).

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<sup>1</sup> The last four digits of each Debtor’s tax identification number are: (i) Zeiger Crane Rental, Inc. [1591]; (ii) Atlantic Leasing, Inc. [6597]; and (iii) Dyer Road Property, LLC [2286].

28 U.S.C. §157(b)(2)(A) and (M).

4. The statutory predicates for the relief requested herein is sections 105, 361, 362, and 363 of the Bankruptcy Code.

### **GENERAL BACKGROUND**

#### **A. Petition Date**

5. The Debtors commenced the above-styled cases (the “Cases”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code<sup>2</sup> (the “Bankruptcy Code”) on February 18, 2011 (the “Petition Date”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are in possession of their assets and managing their affairs as debtors-in-possession. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in the Cases.

6. Concurrently with this Motion the Debtors have filed their *Ex Parte Motion by Debtors for Joint Administration* pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1(B).

#### **B. Organizational Background**

7. Zeiger was incorporated under the laws of the State of Florida in 1986 and has been operating continuously for the past twenty-five (25) years. Atlantic Leasing was incorporated under the laws of the State of Florida in 1997. Dyer Road was organized as a Florida limited liability company in 2005. Steve Zeiger is the sole shareholder and director of Zeiger and Atlantic, and is the sole member and managing member of Dyer Road.

#### **C. Business Operations**

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<sup>2</sup> 11 U.S.C. § 101 *et seq.*

8. Zeiger is a nationwide crane rental company that has been operating out of Palm Beach County, Florida since 1986.

9. Zeiger operates a fleet of Manitowoc and Link-Belt Crawler Cranes ranging from 150-ton to 550-ton, all of which are 2004 or newer and hold annual and third party certifications. Zeiger also operates a fleet of rough terrain cranes from 30-ton to 90-ton, hydraulic truck cranes from 40-ton to 90-ton, and all-terrain cranes up to 200-ton. Zeiger derives revenues from both bare equipment and manned rentals. Equipment is rented on both short and long-term bases. The foregoing equipment is owned by either Zeiger or Atlantic.

10. Dyer Road owns real property situated at 4651 Dyer Boulevard, Riviera Beach, Florida, from which both Zeiger and Atlantic conduct their business operations.

**D. Pre-Petition Financing**

11. In order to finance operations, the Debtors borrowed from People's United Equipment Finance, Inc. ("Peoples"), Wells Fargo Equipment Finance, Inc., FCC Equipment Financing, Inc. ("FCC"), TCF Equipment Finance, Inc. ("TCF") and Kelly Tractor Corporation ("Kelly"). As of the Petition Date, the Debtors approximately owed the following (collectively, the "Lenders"):

- a. People's: \$20,700,000.00
- b. FCC: \$4,900,000.00
- c. TCF: \$1,600,000.00
- d. Kelly: \$1,200,000.00

12. Accordingly, the total amount due to the Lenders as of the Petition Date is approximately \$28,500,000.00.

13. Each of FCC, TCF and Kelly hold liens against certain equipment and proceeds, while People's holds a blanket lien against all remaining collateral. People's also holds a mortgage on real property owned by Dyer Road. In some instances, the debt is cross-collateralized and cross-guaranteed by Zeiger, Atlantic and/or Dyer Road.

**E. Events Precipitating Bankruptcy**

14. The recent and prolonged economic crisis has particularly affected both the real estate market and construction industry in Florida, and the Debtors are not excepted from those who have suffered from this crisis. As a direct result of the crisis, construction starts are down and, therefore, demand for the Debtors' equipment has decreased and revenues have diminished.

15. Consequently, the Debtors have defaulted under certain of their loans, and certain Lenders have commenced litigation in an effort to recover the collateral securing the loans.

16. The Debtors efforts to resolve the loans through an out-of-court restructuring fell short and, consequently, the Debtors filed the Chapter 11 petitions in order to preserve the value of the Debtors' assets and to develop and implement a comprehensive restructuring plan.

**FACTS IN SUPPORT OF RELIEF REQUESTED**

17. By this Motion, the Debtors seek an order authorizing the Debtors to utilize cash collateral in order to operate the Debtors' businesses. There are numerous UCC-1 liens recorded against the Debtors' assets. One or more of these liens *may* extend to collateral representing cash collateral within the meaning of section 363 of the Bankruptcy Code.

18. The Debtors seek authority to use cash collateral in accordance with the budgets attached hereto as Exhibits "A" and "B." Exhibit "A" represents the "interim budget" (the "Interim Budget") which will govern use of cash collateral pending a final hearing on this Motion (the "Interim Period") in order to avoid immediate and irreparable harm to the estates.

Exhibit "B" represents the budget which will govern use of cash collateral following a final hearing on this Motion (the "Final Budget")(the Interim Budget and the Final Budget are hereinafter collectively referred to as the "Budgets").

19. During the Interim Period,<sup>3</sup> the Debtors project the following: (a) total receipts in the amount of approximately \$546,000.00 representing cash collateral; and (b) total disbursements in the amount of approximately \$441,000.<sup>4</sup> Net cash for the Interim Period is projected to be \$105,000.00.

20. The Debtors request that the Court conduct a preliminary hearing pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and authorize the Debtors to use cash collateral on an interim basis pending a final hearing in accordance with the Interim Budget.

21. The Debtors request that the Court conduct a final hearing and authorize the Debtors' use of cash collateral in accordance with the Final Budget.

22. It is essential to the continued operation of the Debtors' businesses for the Debtors to have the ability to utilize cash collateral. Without the use of cash collateral to continue the Debtors' business, the Debtors will be required to discontinue their business operations.

23. The Debtors believe that adequate protection will be provided through the maintenance of existing collateral levels or otherwise. The proposed utilization of cash collateral will not, in any event, impair the Lenders' position.

24. There is insufficient time for a full hearing to be held before the Debtors must use cash collateral. If this Motion is not considered on an expedited basis, and if the Debtors are denied the ability to immediately use cash collateral, there will be a direct and immediate

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<sup>3</sup> Through March 13, 2011.

<sup>4</sup> The amount of \$257,000.00 represents payroll, benefits and a professional fee reserve.

material and adverse impact on the continuing operation of the Debtors' businesses and on the value of their assets. In order to continue their business operations in an effort to achieve a successful reorganization, the Debtors must use cash collateral in their ordinary business operations. The inability of the Debtors to meet ordinary business expenses will require the Debtors to discontinue normal operations, which will result in irreparable injury to the Debtors and could negatively impact the Debtors' chances for a successful reorganization.

25. If allowed to use cash collateral, the Debtors believe they can maintain their business operations.

**AUTHORITY IN SUPPORT OF RELIEF REQUESTED**

26. Pursuant to Section 363(c)(2)(B) of the Bankruptcy Code, a debtor-in-possession may use cash collateral with court approval after notice and a hearing. 11 U.S.C. § 363(c)(2)(B). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by a debtor, the Court "shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Here, the Court should approve the Debtors' proposed use of cash collateral because the affected Lenders' interests in cash collateral will be adequately protected during the Debtors' continued business operations.

27. Adequate protection can be provided by a number of different methods. Section 361 of the Bankruptcy Code provides that adequate protection may be provided by (1) making "a cash payment or periodic cash payments to [an] entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of [the] entity's interest in such property," (2) "providing to [an] entity an additional or replacement lien to the extent that such ... use . . . results in a decrease in the value of [the]

entity's interest in such property" or (3) "granting such other relief . . . as will result in the realization by [an] entity of the indubitable equivalent of [the] entity's interest in such property." 11 U.S.C. §§ 361(1), (2), (3). Adequate protection may also be provided or otherwise realized by the existence of an equity cushion in the collateral.

28. What constitutes adequate protection is determined on a case-by-case basis. See *MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). However, regardless of how adequate protection is provided, the focus of the requirement is to protect a secured creditor from diminution in value of its interest in the collateral during the period of use by the debtor. See *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Ass'n & Fed. Land Bank*, 104 B.R. 824, 827-28 (E.D. Mich. 1989); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Ledgemere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

29. Simply stated, adequate protection is necessary only to the extent the use of the creditor's collateral will result in a decrease in "the value of such entity's interest in such property." 11 U.S.C. §§ 361, 363(e); see *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988) (the "interest in property" entitled to protection is "the value of the collateral" securing the claim). As the court in *In re Megan Racine Assoc., Inc.*, 202 B.R. 660 (Bankr. N.D.N.Y. 1996) noted:

Adequate protection . . . is intended to compensate a creditor for any decrease in the value of its security interest in collateral during the pendency of the debtor's reorganization that is due to the imposition of the stay or is traceable to the use of such property.

*Id.* at 663.

30. The Lenders are only entitled to protection against the decline in value of their security interests in pre-petition collateral resulting from the Debtors' use of cash collateral.

People's recorded the first lien extending to "all assets of the Debtor," including, without limitation, accounts and receivables. While other Lenders may have perfected liens against certain collateral being utilized on current jobs, a question exists as to whether the lien is a valid purchase money security interest or whether they have an interest in revenues being derived from using the collateral on jobs.

31. The interests of the Lenders are adequately protected by virtue of the terms and conditions of any cash collateral stipulation and any consent of the Lenders. Alternatively, absent such consent, the Debtors believe that the Lenders interests are adequately protected by the following: (a) continued maintenance and insurance of the collateral; and (b) equity cushions measured by the amount that the value of the collateral exceeds the amount of the debt owed.<sup>5</sup>

32. In light of the foregoing, the Debtors submit that the use of cash collateral is appropriate in accordance with the Budgets attached hereto as Exhibits "A" and "B", and that the interests of the Lenders will be adequately protected.

#### **REQUEST FOR PRELIMINARY HEARING**

33. The Debtors request that the Court conduct an emergency hearing pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and further conduct a final hearing on not less than 15 days notice.

#### **RESERVATION OF RIGHTS**

34. By submitting this request, the Debtors do not waive any rights, including without limitation the right to object, challenge or contest the extent, validity or priority of any of the Lenders' pre-petition lien(s) and to value any or all of the collateral securing the Lenders' liens.

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<sup>5</sup> The Debtors' reserve the right to: (a) oppose any entitlement to post-petition interest, fees and charges in the event the Court determines that any lender is undersecured; (b) seek valuation for classification purposes under section 506 and section 1122 of the Bankruptcy Code; and (c) to oppose any request for administration priority claims pursuant to sections 361, 503 and 507 of the Bankruptcy Code.



**WHEREFORE**, the Debtors respectfully request that this Court enter an order granting the Motion, scheduling a preliminary hearing on the Motion at the earliest practicable time, authorizing the interim use of cash collateral in the operation of its business, and scheduling a final hearing in order to authorize the Debtors' use of cash collateral, as well as granting such other and further relief that the Court may deem just and proper.

**RESPECTFULLY SUBMITTED** this 18th day of February 2011.

*I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).*

**CERTIFICATE OF EXIGENT CIRCUMSTANCES**

I HEREBY CERTIFY that an emergency hearing has been requested, since the relief requested is critical to the administration of this estate and to the Debtors' business operations in connection with this case commenced on February 18, 2011.

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**ZEIGER CRANE RENTAL, INC., et al.,**

**CASE NO.**

**Exhibit "A" To  
Cash Collateral Motion**

**Zeiger Crane Rental Inc.**  
**Weekly Cash Collateral Budget**

Forecasted as of  
 Amounts in \$000s

Sales	Week Ending					5 Week Budget
	2/20/11	2/27/11	3/6/11	3/13/11	3/20/11	
165	165	165	165	165	165	825

Cash Receipts	Week Ending					5 Week Budget
	2/20/11	2/27/11	3/6/11	3/13/11	3/20/11	
Customer Collections	175	153	183	210	210	931
Other Collections & Rental	-	-	7	-	-	7
Total Cash Receipts	175	153	190	210	210	938

**Cash Disbursements**

Operating Disbursements

Payroll & Taxes	54	54	54	54	54	270
Benefits	-	-	20	-	-	20
Facility Rent	-	-	-	-	-	-
Travel & Entertainment	3	3	3	3	3	15
Credit Card - Travel & Deposit	-	20	-	-	-	20
Permits, Service, Certification	4	4	4	4	4	20
Parts and supplies	7	7	7	7	7	35
Fuel and lubricants	15	15	15	15	15	75
Service, repair & maintenance	3	3	3	3	3	15
Office equipment leases	-	-	-	-	2	2
Utilities & Deposits	-	-	-	-	15	15
Workers compensation ins.	-	-	7	-	-	7
Auto Insurance	-	-	31	-	-	31
Insurance	-	2	-	-	2	4
Property and Sales Taxes	3	3	3	3	3	15
Office Expenses	2	2	2	2	2	10
Other Expenses	91	113	149	104	110	567
Total Operating Expenses	113	149	190	104	110	567

Non Operating Expenses

Professional Fee Reserve	25	25	25	25	25	125
US Trustee Fees	-	-	-	-	-	-
Adequate Protection	-	-	-	-	-	-
Accounting & Appraisal	-	-	-	-	-	-
Total Non Operating	25	25	25	25	25	125

Total Cash Inflow (Outflow)

Beginning Cash Balance	225	284	299	315	396	225
Ending Cash Balance	284	299	315	396	471	471

Accounts Receivables

Beginning Balance	1,235	1,225	1,237	1,219	1,174	1,235
Billings	165	165	165	165	165	825
Collections	(175)	(153)	(183)	(210)	(210)	(931)
Write-off	-	-	-	-	-	-
Ending Accounts Receivable	1,225	1,237	1,219	1,174	1,129	1,129

EXHIBIT "A"

**ZEIGER CRANE RENTAL, INC., et al.,**

**CASE NO.**

**Exhibit "B" To  
Cash Collateral Motion**

**Zeiger Crane Rental Inc.**  
**Weekly Cash Collateral Budget**  
 Forecasted as of

Amounts in \$000s

	Week Ending													13 Week
	2/20/11	2/27/11	3/6/11	3/13/11	3/20/11	3/27/11	4/3/11	4/10/11	4/17/11	4/24/11	5/1/11	5/8/11	5/15/11	Total

<b>Cash Receipts</b>														
Customer Collections	145	145	145	145	155	155	180	130	130	135	160	155	160	1,865
Other Collections & Rental	-	-	7	-	-	-	7	-	-	-	7	-	-	21
<b>Total Cash Receipts</b>	145	120	152	120	130	155	187	130	130	135	167	155	160	1,886

**Cash Disbursements**

Operating Disbursements

Payroll & Taxes	53	53	20	53	53	53	20	53	53	53	53	53	53	689
Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-	61
Facility Rent	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel & Entertainment	3	3	3	3	3	3	3	3	3	3	3	3	3	39
Credit Card - Travel & Deposit	-	15	-	-	-	-	10	-	-	-	10	-	-	35
Permits, Service, Certification	-	-	3	-	-	-	-	-	-	-	-	-	-	4
Parts and supplies	6	6	6	6	6	4	6	6	6	4	6	6	6	78
Fuel and lubricants	12	12	12	12	12	12	12	12	12	12	12	12	12	156
Service, repair & maintenance	3	3	3	3	3	3	3	3	3	3	3	3	3	39
Office equipment leases	-	-	-	-	2	-	-	-	-	2	-	-	-	4
Utilities & Deposits	-	-	-	-	15	-	2	-	1	2	-	-	-	24
Workers compensation ins.	-	-	-	-	13	-	-	13	-	-	-	13	-	39
Auto Insurance	-	-	7	-	-	-	7	-	-	-	7	-	-	21
Insurance	-	-	-	31	-	-	31	-	-	-	31	-	-	92
Property and Sales Taxes	-	2	-	-	2	-	75	-	-	2	-	-	-	81
Office Expenses	3	3	3	3	3	3	3	3	3	3	3	3	3	39
Other Expenses	2	2	2	2	2	2	2	2	2	2	2	2	2	26
<b>Total Operating Expenses</b>	82	99	143	95	101	86	227	97	83	92	130	115	88	1,438

Non Operating Expenses

Professional Fee Reserve	25	25	25	25	25	20	20	20	20	20	20	20	20	285
US Trustee Fees	-	-	-	-	-	-	-	-	-	6	-	-	-	6
Adequate Protection	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accounting & Appraisal	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Non Operating</b>	25	25	25	25	25	20	20	20	20	26	20	20	20	291

**Total Cash Inflow (Outflow)**

Beginning Cash Balance	225	263	259	243	243	243	247	296	236	249	276	293	310	330	225
Ending Cash Balance	263	259	243	243	247	296	236	249	276	293	310	330	382	382	263

**Accounts Receivables**

Beginning Balance	1,250	1,250	1,275	1,275	1,275	1,300	1,325	1,325	1,325	1,300	1,325	1,350	1,375	1,375	1,250
Billings	145	145	145	145	145	155	155	155	155	160	160	160	155	160	1,990
Collections	(145)	(120)	(145)	(120)	(130)	(155)	(180)	(130)	(130)	(130)	(135)	(160)	(155)	(160)	(1,865)
Write-off	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Accounts Receivable	1,250	1,275	1,275	1,300	1,325	1,325	1,300	1,325	1,350	1,375	1,375	1,375	1,375	1,375	1,250

**EXHIBIT**

B