

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION**

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In re:	)	
	)	Chapter 11
BAILEY’S EXPRESS, INC.,	)	
	)	Case No. 17-31042(AMN)
	)	
Debtor.	)	Re: ECF No. 3

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**SECOND INTERIM ORDER GRANTING AUTHORITY TO USE CASH  
COLLATERAL AND TO PROVIDE ADEQUATE PROTECTION  
AND NOTICE OF FINAL HEARING**

By motion (the “Motion”) dated July 13, 2017, Bailey’s Express, Inc. (the “Debtor”), the above-captioned debtor and debtor in possession, moved this Court for entry of this interim order in this Chapter 11 case (the “Case”) authorizing it to use funds that constitute cash collateral of Bankwell Bank (“Bankwell” or “Lender”) pursuant to certain prepetition financing arrangements described below. Pursuant to Bankruptcy Rule 4001(b), an emergency interim hearing was held on July 19, 2017 and a second interim hearing was held on August 7, 2017 and after due notice and a hearing, and the Court hereby finds and orders as follows.

**THE COURT FINDS:**

A. Filing of Petition. On July 13, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief (the “Petition”) under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor has retained possession of its assets and is authorized to continue the operation and management of its respective business as debtor-in-possession.

B. No Creditors' Committee. No creditors' committee has yet been appointed in the case pursuant to section 1102 of the Bankruptcy Code. Any creditors' committee subsequently appointed shall hereinafter be referred to as the "Committee."

C. Prepetition Indebtedness to Bankwell and Security Therefor. On February 25, 2011, the Debtor executed and delivered to Quinnipiac Bank and Trust Company ("QBT"), as lender, a certain Business Loan Agreement (the "Loan Agreement") and Promissory Note in the principal amount of \$150,000 (the Note"), a Commercial Security Agreement (the "Security Agreement") and a UCC-1 financing statement covering all of the Debtor's assets (the "UCC-1") (the Loan Agreement, the Note, the Security Agreement and the UCC-1 shall be collectively referred to as the "Loan"). The Loan was guaranteed by the John M. Hall Marital Trust as evidenced by a Commercial Guaranty executed and delivered on February 25, 2011, which guaranty is secured by an Open-End Mortgage on property located at 15 Rock Landing Road, Haddam Neck, Connecticut 06424 and an Assignment of Rents (the "Secured Guaranty"). The Loan's maturity period was extended several times through and to November 25, 2014. Upon information and belief, on or about October 1, 2014, QBT merged with Bankwell and Bankwell became successor by merger to QBT. On December 23, 2014, the Debtor and Bankwell executed an Allonge to the Note extending the Loan's maturity through and to December 26, 2017 and restating that all of the Loan's other terms and conditions until the Loan is paid in full. As of the Petition Date, the amount of approximately \$11,000 was due and owing to Bankwell on the Loan. The foregoing obligations of the Debtor as described in ¶C hereof are hereinafter referred to as the "Bankwell Prepetition Obligations." The Bankwell Prepetition Obligations are secured by valid and duly perfected security interests (the "Bankwell Prepetition Liens") in all of

Debtor's personal property existing as of the Petition Date (the "Bankwell Prepetition Collateral").

D. SAIA's Assertion of an Interline Trust. SAIA, Inc. ("SAIA") asserts that Debtor is holding certain cash in trust on behalf of SAIA pursuant to the Interline Trust Doctrine.

E. Need for Use of Cash Collateral. The Debtor has an immediate need to continue to use cash to fund the next several weeks of operations until a final hearing on the Motion can be held. Substantially all of the Debtor's cash on hand and cash flow from operations consists of proceeds of prepetition accounts or inventory that is subject to liens in favor of Bankwell and the cash which SAIA asserts should be held in trust for its benefit and, therefore, all such cash is Cash Collateral in which Bankwell has an interest and SAIA may have an interest. If the Debtor is not able to use Cash Collateral as provided herein, it will be unable to fund payroll and other expenses that are necessary to maintain the value of its estates and to enable Debtor to maximize recoveries for all parties in interest.

F. Cause. The entry of this order will provide adequate protection to Bankwell and SAIA for the Debtor's use of Cash Collateral and will also minimize disruption of the Debtor's business and will preserve and maintain the assets of each Debtor's estate, will avoid immediate and irreparable harm to, and is in the best interest of, the Debtor, its creditors and its estates.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Use of Cash Collateral. For purposes of this order, the term "Cash Collateral" shall refer to any cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtor, whether generated or received before or after the Petition Date. The Debtor is authorized to use Cash Collateral solely in accordance with the following terms:

(a) The Debtor is authorized to use an amount of Cash Collateral until the Termination Date (as defined below) not to exceed \$159,885.00 (the "Total Authorized Expenditure Amount") solely to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit "A" (the "Budget"). For each weekly period set forth in the Budget, the Debtor's actual cash disbursements for such period shall not exceed the line item amount for such category as set forth in the Budget, provided, however, that notwithstanding the foregoing, (i) expenditures of the Debtor under any line item of the Budget for any period may exceed the expenditure amount budgeted for such line item by 20%, so long as aggregate total expenditures during the term of this order do not exceed the total amount budgeted for such period, and (ii) any line item expenditures budgeted during any given week, but not actually paid or expended during such week, may be paid during the following week. In no event shall aggregate total expenditures by the Debtor through the Termination Date exceed the Total Authorized Expenditure Amount, provided, however, that through the Termination Date, Bankwell, SAIA, and the Debtor may, in their sole discretion, agree to increase cash disbursements and operating expenditures in the Budget, and upon written agreement by Bankwell and SAIA to so modify the Budget, Debtor will be authorized to use Cash Collateral in such amount without the need for any further order of the Court. It is understood that Bankwell and SAIA may assume that the Debtor will comply with this requirement and Bankwell and SAIA shall have no duty to monitor such compliance.

(b) The Debtor's authority to spend Cash Collateral without further order of the Court issued after notice and hearing or the written consent of Bankwell shall automatically expire upon the soonest to occur of (i) September 2, 2017 at 5:00 p.m., or (ii) regardless of whether the Debtor has expended the entire amount set forth in ordering paragraph 1(a), the failure by the

Debtor to materially comply with any provision of this Order, which failure is not remedied within three business days after receiving written notice from Bankwell or SAIA of such failure (the earlier of such date, the “Termination Date”). Upon the Termination Date, the Debtor’s authority to use or spend any further Cash Collateral shall automatically terminate unless and until the Debtor obtains the written consent of Bankwell and SAIA or a further order of this Court issued after notice and an opportunity for a hearing.

(c) This Order is without prejudice to the rights of any party in interest (other than the Debtor) to challenge the liens or security interests of Bankwell. The priority claims and Replacement Liens (as hereafter defined) provided to Bankwell hereunder shall be valid only to the extent that Bankwell held a valid and perfected lien on Cash Collateral expended pursuant to this Order.

2. Bankwell Replacement Liens for Cash Collateral. As adequate protection for any Cash Collateral expended by the Debtor pursuant to this Order, Bankwell is hereby granted, pursuant to sections 361(1) and 363(e) of the Bankruptcy Code, a first lien (the “Replacement Liens”) to secure an amount of Bankwell’s prepetition claims equal to (i) the amount of Cash Collateral actually expended by the Debtor and (ii) an amount equaling the aggregate decline in the value of the Bankwell Prepetition Collateral (whether as a result of physical deterioration, consumption, use, shrinkage, decline in market value or otherwise). The Replacement Liens shall be subject only to non-avoidable, valid, enforceable and perfected liens and security interests in the assets of Debtor, as prepetition Debtor, that existed on the Petition Date and that are not subject to avoidance pursuant to the Bankruptcy Code, in favor of third parties, that are superior in priority, after giving effect to any existing subordination or intercreditor arrangements, to the Bankwell Prepetition Liens. The Replacement Liens shall attach to personal property and assets

of the Debtor, of any kind or nature whatsoever, whether now owned or hereafter acquired by any Debtor, and all proceeds, rents or profits thereof (collectively, the “DIP Collateral”). Bankwell’s Replacement Liens hereunder shall at all times be senior to the rights of the Debtor and any successor trustee or estate representative in this case or any subsequent case or proceedings under the Bankruptcy Code. Any security interest or lien upon the DIP Collateral which is avoided or otherwise preserved for the benefit of any Debtor’s estate under section 551 or any other provision of the Bankruptcy Code shall be subordinate to the security interests in and Replacement Liens upon the DIP Collateral granted to Bankwell.

3. Perfection of Replacement Lien. The Replacement Liens granted to Bankwell by this Order shall be perfected by operation of law upon execution and entry of this Order by the Court; Bankwell shall not be required to take any action, including, without limitation, the filing of financing statements, mortgages, deeds of trust or other documents, in order to validate or perfect such Replacement Liens. If Bankwell, in its sole discretion, nonetheless chooses to file financing statements, mortgages, deeds of trust or other documents or otherwise confirm perfection of such security interests and liens, Bankwell is authorized to effect such filings and recordations, and all such financing statements, deeds of trust or similar documents shall be deemed to have been filed or recorded as of the Petition Date.

4. Priority Claims. In addition to the Replacement Lien, Bankwell shall have a priority claim in an amount equal to the amount of Cash Collateral actually expended by Debtor pursuant to this Order, which claim shall have the highest administrative priority under sections 503(b), 507(a)(1) and 507(b) of the Bankruptcy Code (the “Super-Priority Claim”), and such claim shall have priority over, and be senior to, all other administrative claims.

5. Grant of Security Interest to SAIA. As adequate protection for any Cash Collateral expended by the Debtor pursuant to this Order, SAIA is hereby granted, pursuant to sections 361(1) and 363(e) of the Bankruptcy Code, a lien, subordinate to the security interests held by Bankwell, on the DIP Collateral, but only to the extent that SAIA successfully establishes that SAIA is entitled to impose an interline trust on cash collected by the Debtor (the “SAIA Lien”). Nothing in this Order shall preclude the Debtor from contesting SAIA’s assertion that the Debtor is holding certain cash in trust on behalf of SAIA pursuant to the Interline Trust Doctrine.

6. Perfection of the SAIA Lien. The SAIA Lien granted by this Order shall be perfect by operation of law upon execution and entry of this Order by the Court; SAIA shall not be required to take any action, including, without limitation, the filing of financing statement, mortgages, deeds of trust or other documents, in order to validate or perfect the SAIA Lien.

7. Alternate Financing. If Debtor at any time seeks any third-party financing, and in connection with such financing requests that the Court grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens with a priority equal to or superior to the Bankwell Prepetition Liens or the Replacement Liens, the Debtor shall be required to use the first available proceeds of any such financing to repay Bankwell the full amount of any Cash Collateral expended pursuant to this Order.

8. Cash Collection Procedures. From and after the date of entry of this Order, until further order of the Court, all collections of accounts receivable, customer checks, bank deposits, Cash Collateral and all proceeds of sales of any assets or services provided by the Debtor and all other cash which shall come into the Debtor’s possession or control, or to which the Debtor shall become entitled, shall be deposited into one or more debtor in possession operating and/or payroll accounts.

9. Professional Fees. Notwithstanding anything to the contrary contained in this Order, the Replacement Liens and priority claims granted to Bankwell pursuant to this Order shall be subject and subordinate to the payment of the following (to the extent that there are not sufficient, unencumbered funds in the Estate to pay such amounts at the time payment is required to be made and, in the case of Debtor's professionals, to the extent that such Debtor's professionals do not have an adequate cash security deposit or retainer balance on hand): (a) compensation and expense reimbursement (collectively, "Professional Expenses") of Pullman & Comley, LLC as prospective attorneys for Debtor, to the extent that such Professional Expenses, (i) were incurred on or after the Petition Date and prior to the earlier to occur of the Termination Date or receipt by Debtor's professionals from Bankwell of written notice of a Carve-Out Event (as defined below), (ii) are approved for payment by a final order of the Court, after notice and a hearing, or pursuant to an administrative procedure established by Court order, and (iii) do not exceed, without the prior written consent of Bankwell, in the aggregate as to all amounts paid or to be paid postpetition, the sum of \$25,000; (b) quarterly fees required to be paid to the Office of the U.S. Trustee pursuant to 28 U.S.C.A. § 1930(a)(6); and (c) unpaid wages of the Debtor (collectively, the "Carve-Out"); provided, however, that no Cash Collateral and no amounts received pursuant to the Carve-Out shall be used by any person or entity to pay Professional Expenses incurred in connection with any attempt to invalidate, set aside or subordinate the Bankwell Prepetition Indebtedness, the Bankwell Prepetition Liens or the Replacement Liens or to dispute SAIA's interline trust interest. The term "Carve-Out Event" shall mean any act or omission by Debtor in violation of the terms of this Order.

10. Reservation of Additional Rights of Bankwell and SAIA. Nothing in this Order constitutes a finding with respect to the adequacy of the protection of Bankwell's interests in the



Bankwell Prepetition Collateral. Bankwell shall not have waived any rights it has and shall retain all rights available pursuant to the Bankruptcy Code and applicable law. Nothing in this Order constitutes a finding with respect to the adequacy of the protection of SAIA's interests in the Prepetition Collateral. SAIA shall not have waived any rights it has and shall retain all rights available pursuant to the Bankruptcy Code and applicable law.

11. Further Hearing. The Motion is set for a further hearing on August 29, 2017 at 10:00 a.m. If the Debtor, SAIA, and Bankwell agree to the terms of an agreed order providing for more extensive use of cash collateral by such hearing date, then such hearing may consist of a final hearing on the Motion; alternatively, if the terms of an agreement providing for more extensive use of Cash Collateral have not been agreed to by the Debtor, SAIA, and Bankwell by such time, then in accordance with Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, such hearing may be deemed to constitute a further preliminary hearing on the Motion and Debtor shall not be entitled to seek authority to use Cash Collateral for more than an additional 15-day period pending a further order by the Court.

12. Rights of Third Parties. Nothing in this Order shall preclude any creditor, any committee or any subsequently appointed trustee from objecting to or otherwise challenging the validity or amount of the Bankwell Prepetition Indebtedness or the extent, validity or perfection of Bankwell's Prepetition Liens upon and security interests in the Bankwell Prepetition Collateral.

Dated on this 14th day of August, 2017, at New Haven, Connecticut.

*Ann M. Nevins*  
United States Bankruptcy Judge  
District of Connecticut

# EXHIBIT A

Baileys Express, Inc.  
 Post Petition Operating Budget  
 Estimated as of August 4, 2017

This Plan is based on no further Operational Activity

	Actual	Actual	Actual	Estimate	Estimate	Estimate	Estimate	Total
	Thursday to Saturday 7/13 to 7/22 (9 days)	Sunday to Saturday 7/23 to 7/29	Sunday to Saturday 7/30 to 8/5	Sunday to Saturday 8/6 to 8/12	Sunday to Saturday 8/13 to 8/19	Sunday to Saturday 8/20 to 8/26	Sunday to Saturday 8/27 to 9/2	
Opening Cash Balances	\$ 372,010	\$ 509,429	\$ 620,706	\$ 620,396	\$ 636,632	\$ 664,132	\$ 677,982	\$ 372,010
Estimated Receivables Collections	\$ 328,117	\$ 151,239	\$ 114,409	\$ 50,000	\$ 40,000	\$ 40,000	\$ 35,000	\$ 758,765
<b>Total Cash Available</b>	<b>\$ 700,127</b>	<b>\$ 660,668</b>	<b>\$ 735,115</b>	<b>\$ 670,396</b>	<b>\$ 676,632</b>	<b>\$ 704,132</b>	<b>\$ 712,982</b>	<b>\$ 1,130,775</b>
<b>Disbursements</b>								
Payroll	\$ (183,120)	\$ (18,936)	\$ (14,847)	\$ (17,500)	\$ (12,500)	\$ (12,500)	\$ (12,500)	\$ (271,903)
Health Insurance Premiums	\$ -	\$ -	\$ (63,456)	\$ -	\$ -	\$ -	\$ (19,500)	\$ (82,956)
Bankwell Truck Loan	\$ -	\$ (1,827)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,827)
Bankwell Line of Credit	\$ -	\$ (1,698)	\$ -	\$ -	\$ -	\$ (1,698)	\$ -	\$ (3,396)
Liberty Mutual Insurance	\$ -	\$ -	\$ (35,071)	\$ -	\$ -	\$ -	\$ (35,071)	\$ (70,142)
Flat iron Insurance (financing)	\$ -	\$ (5,952)	\$ -	\$ -	\$ -	\$ (5,952)	\$ -	\$ (11,904)
Phone, Light, office	\$ -	\$ (3,859)	\$ (1,345)	\$ (3,500)	\$ -	\$ (6,000)	\$ (4,000)	\$ (18,704)
Office Lease-Lot Lease	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Auto and Fork lift leases	\$ -	\$ -	\$ -	\$ (2,900)	\$ -	\$ -	\$ (2,900)	\$ (5,800)
Yard & Building Security	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Real Estate Taxes - 61 Industrial Park Road	\$ -	\$ (7,690)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7,690)
Remaining shipment delivery	\$ (1,394)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,394)
All other (truck repairs, etc)	\$ (6,184)	\$ -	\$ -	\$ (9,864)	\$ -	\$ -	\$ (13,500)	\$ (29,548)
Environmental underground tank	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Disbursements</b>	<b>\$ (190,698)</b>	<b>\$ (39,962)</b>	<b>\$ (114,719)</b>	<b>\$ (33,764)</b>	<b>\$ (12,500)</b>	<b>\$ (26,150)</b>	<b>\$ (87,471)</b>	<b>\$ (505,264)</b>
<b>Ending Cash Balance</b>	<b>\$ 509,429</b>	<b>\$ 620,706</b>	<b>\$ 620,396</b>	<b>\$ 636,632</b>	<b>\$ 664,132</b>	<b>\$ 677,982</b>	<b>\$ 625,511</b>	<b>\$ 625,511</b>