UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

ANCHOR GLASS CONTAINER CORPORATION,

Debtor.

_____/

CHAPTER 11

CASE NO. 8:05-bk-15606

**FINAL ORDER AUTHORIZING DEBTOR TO USE CASH COLLATERAL**

On August 8, 2005, the Court conducted a preliminary expedited hearing upon Debtor's Emergency Motion to Use Cash Collateral Subject to Junior Liens Held by Madeleine L.L.C. (the "Motion"), filed by Anchor Glass Container Corporation, Debtor and Debtor in Possession. By Order dated August __, 2005 (the "Interim Order"), the Court authorized the interim use of cash collateral pursuant to the terms of the Interim Order and Madeleine L.L.C.'s ("Madeleine") consent through August 30, 2005. Based on the evidence proffered, the entire record in this case and Madeleine's continued consent, the Court has determined that Debtor should be permitted to continue to use Cash Collateral (as herein defined) on the terms set forth below in this Order (the "Final Order"). It is therefore

ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157.

2. Madeleine asserts a claim in this case in the amount of approximately $15,373,879.63 as of the Petition Date.

3. Madeleine asserts that its' claim is secured by property owned by the Debtor, including but not necessarily limited to a junior security interest on Debtor's accounts and inventory, and all other collateral provided by that certain Loan and Security Agreement by and among, inter alia, the Debtor and Madeleine dated as of February 14, 2005 (as amended, along with all related and attendant documents, the "Madeleine Loan Agreement").

4. Debtor's presently existing and hereafter arising cash may constitute the proceeds of accounts of inventory in which Madeleine claims a security interest, and, may therefore constitute cash collateral within the meaning of 11 U.S.C. § 363 ("Cash Collateral").

5. The Debtor's use of Cash Collateral is necessary to avoid immediate and irreparable harm to the estate. If Debtor is not authorized the use of the proceeds of its' accounts and inventory, which may constitute Cash Collateral, there will be an immediate diminution of the value of Debtor's property and business operations.

6. Notice of a preliminary hearing on the Motion was given to Madeleine. Such notice was appropriate in the particular circumstances and the opportunity for a hearing was appropriate and the particular circumstances within the meaning of 11 U.S.C. § 102(1)(A).

7. Attached to this Order as Exhibit A is Debtor's budget (the "Budget").

8. Debtor is authorized the use of Cash Collateral, which may be subject to Madeleine's junior security interest , solely for the purpose of funding its ordinary and necessary expenses pursuant to and in substantial accordance with the Budget.

9. As adequate protection for Madeleine's prepetition security interest in Debtor's accounts and inventory, Madeleine is hereby granted a security interest and lien on all of the Debtor's post-petition accounts and inventory and all other collateral (the "Collateral") in which

Madeleine asserts a security interest pre-petition (the "Replacement Lien"). The Replacement Lien shall have the same validity, priority and perfection as, and will be subject to the same objections, avoidance and other claims, if any, that may exist with respect to Madeleine's prepetition security interest and liens upon Debtor's Collateral. The Replacement Lien shall secure Madeleine's claim in this case to the extent of Debtor's use of Madeleine's Cash Collateral and shall secure all of Madeleine's actual and reasonable fees, costs and expenses provided for under the Madeleine Loan Agreement, including, but not limited to actual and reasonable legal fees and costs of Madeleine's counsel to the extent allowable under Section 506 of the Bankruptcy Code.

10. The Replacement Lien herein granted: (i) is and shall be in addition to all security interests, liens and rights of set-off existing in favor of Madeleine on the Petition Date; (ii) is and shall be valid, perfected, enforceable and effective as of the date of the entry of this Order without any further action by the Debtor or Madeleine and without the necessity of the execution, filing or recordation of any financing statements, security agreements, vehicle lien applications, filings with the United States Patent and Trademark Office, mortgages or other documents; and (iii) shall secure the payment of indebtedness owed to Madeleine pursuant to the Madeleine Loan Documents.

11. In addition to the Replacement Lien granted to Madeleine pursuant to this Order, Madeleine is hereby granted an administrative claim under Sections 503(b)(1), 507(a), and 507(b) of the Bankruptcy Code (the "507(b) Claims") for the amount by which adequate protection afforded herein for any diminution of value of the Cash Collateral from and after the Petition Date or any other Collateral proves to be inadequate. Such 507(b) Claims shall be allowed and have propriety over all other costs and expenses of the kind specified in or ordered pursuant to Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 of the Bankruptcy

Code, subject to any "carve out" for professional fees and U.S. Trustee's fees incurred in this Chapter 11 case.

12. Notwithstanding anything to the contrary in this Order, if a Default or Event of Default occurs under the Wachovia Facility unless cured by the Debtor or waived by Wachovia (a "Termination Event"), then the Debtor's right to use Cash Collateral pursuant to the terms of this Order shall immediately cease.[1]

13. The Debtor shall provide to Madeleine copies of all reports and information that is otherwise required to be provided to Wachovia pursuant to the terms of the Wachovia Facility or any Order approving such facility, and any and all reports or information filed by the Debtor in its Chapter 11 case.

14. The Debtor's right to use Cash Collateral under this Order commenced as of the petition date and will expire on the earlier of (i) the close of business on August 7, 2006, unless mutually extended by Madeleine and the Debtor, (ii) the occurrence of a Termination Event as defined in Paragraph 13 of this Order, or (iii) Madeleine's claims and debt owed by the Debtor under the Madeleine Loan Agreement are paid in full or Madeleine's liens are transferred to a separate, segregated cash account as provided for by Paragraph 18 of this Order. In no event shall the Debtor be authorized to use Cash Collateral for any purposes or under any terms other than those set forth herein and in substantial conformity with the Budget or as may otherwise be approved by this Court following notice and hearing as may be required; provided, however, that nothing in this Order shall be deemed a waiver of the Debtor's rights to seek additional use of Cash Collateral or Madeleine's rights to oppose any such request.

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[1] Capitalized terms used in the paragraph 13 and not otherwise defined shall be as defined in that certain Order (A) Authorizing Debtor to Obtain Interim Post-Petition financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364(c); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; (C) Authorizing Debtor to Enter Into Agreements with Wachovia Capital Finance Corporation

15. In consenting to the continued use of Cash Collateral, the Debtor and Madeleine stipulate and agree that:

(a) the certain Madeleine Loan Agreement (as amended, restated, supplemented or otherwise modified from time to time) and related loan documents dated as of February 14, 2005, between and among, inter alia, the Debtor and Madeleine are in all respects, valid and binding agreements and obligations of the Debtor;

(b) as of the petition date the principal balance due and owing under the Madeleine Loan Agreement was $15,373,879.63, plus interest, fees, costs and expenses; and

(c) the Debtor (i) is not aware of any claim, counterclaim, recoupment, setoff or defense of any kind or nature which would in any way affect the validity, enforceability and non-avoidability of the Debtor's obligations owing under the Madeleine Loan Agreement or any of Madeleine's liens claims or security interests, or, reduce or affect the obligations of the Debtor to pay any of Madeleine's claims; (ii) acknowledge and agree that the liens and security interests held by Madeleine with respect to the Madeleine Loan Agreement are valid, enforceable, properly perfected and non-avoidable; and (iii) further acknowledges and agrees that if the Debtor now or ever did have, any offsets, defenses, claims, or counterclaims against Madeleine, or their respective officers, directors, employees, attorneys, representatives, predecessors, successors, or assigns, whether known or unknown, at law or in equity, from the beginning of the world through this date arising under the Madeleine Loan Agreement, all of them are hereby expressly **WAIVED**, and the Debtor hereby **RELEASE** Madeleine and its respective officers, directors, employees, attorneys, representatives, predecessors, successors, and assigns from any liability thereof.

16. The stipulations set forth in Paragraph 16 of this Final Order shall be binding on the Debtors and any of their successors-in-interest and assigns, but are subject to the provisions contained in Paragraph 17 below.

17. Notwithstanding anything herein to the contrary, the Official Committee of Unsecured Creditors (the "Committee") appointed in the Debtor's Chapter 11 case shall be entitled to investigate to and through November 7, 2005 (the "Objection Period"), the validity, amount, perfection, priority, enforceability and recovery of Madeleine's liens, claims and security

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(Central); and (D) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 issued in the Debtor's Chapter 11

interests and the obligations arising under the Madeleine Loan Agreement, including the existence of claims or setoff rights against Madeleine and any right to recharacterize the Madeleine claims as equity. If any action by way of a motion, adversary proceeding or an objection is not filed on or before expiration of the Objection Period, or such other later date as extended by the written consent of Madeleine or upon Order of the Court as provided herein, the stipulations contained in Paragraph 16 of this Final Order and any consideration granted as adequate protection hereunder in this Final Order shall be irrevocably binding on the Committee and all parties in interest without further action by any party or this Court, and the Madeleine Payoff Amount (as hereinafter defined) shall be retained and applied by Madeleine in accordance with the terms of the Madeleine Loan Agreement. Unless Madeleine consents in writing to an extension, the Objection Period may not be extended, unless cause therefor is shown and only after notice to Madeleine and the filing of a motion before the expiration of the Objection Period. The failure of Madeleine to timely produce documents reasonably requested by the Committee upon reasonable notice to Madeleine may constitute "cause" under this paragraph.

18. To facilitate payment of Madeleine's claim under the Madeleine Loan Agreement in connection with that certain $125 million debtor-in-possession financing to be provided by certain Noteholders[2] in accordance with the Noteholders DIP Financing Order providing for such financing, the following shall occur:

(a) On the funding date of the financing provided by the Noteholders DIP Financing Order, Madeleine will receive (i) payment on account of its claims including principal, interest and attorneys' fees and other costs which may be reimbursed under the Madeleine Loan Agreement (the

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case dated August 8, 2005 (the "Noteholders DIP Financing Order").

[2] "Noteholders" shall be as defined in that Final Order (A) Authorizing Debtor to Obtain Post-Petition Financing and Grant Priming Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105 and 364; (B) Modifying the Automatic Stay Pursuant to 11 U.S. C. § 362; (C) Authorizing Debtor to Enter Into Agreements with Wells Fargo Bank, National Association; (D) Authorizing Debtor to Repay Pre-Petition and Post-Petition Loan Obligations; and (E) Granting Adequate Protection (as amended, the "Noteholders DIP Financing Order").

"Madeleine Payoff Amount"), plus (ii) an expense reserve (the "Expense Reserve") in the amount of $100,000 for payment of future legal costs and similar expenses reimbursable and recoverable under the Madeleine Loan Agreement, all as evidenced by a payoff letter to be delivered by Madeleine to the Debtor. Subject to subparagraph (c) below, Madeleine will deposit and hold the Madeleine Payoff Amount in a separate, segregated account pending expiration of the Objection Period. Upon receipt by Madeleine of the Madeleine Payoff Amount and the Expense Reserve, Madeleine's liens, claims and encumbrances against the Collateral shall be deemed released and shall be transferred to the funds held in the segregated account to the same extent, validity, priority and perfection as, and will be subject to the same objections, avoidance and other claims, if any, that may exist with respect to Madeleine's prepetition security interest and liens upon Debtor's Collateral. This Court hereby imposes a trust upon such segregated account and the funds therein.

(b) Subject to subparagraph (c) below, if no action is initiated by the Committee with respect to Madeleine's claim on or prior to expiration of the Objection Period then Madeleine shall apply the Madeleine Payoff Amount to its claims in accordance with the Madeleine Loan Agreement. If action is to be initiated by the Committee with respect to Madeleine's claims on or prior to expiration of the Objection Period, then Madeleine will continue to hold the Madeleine Payoff Amount in the segregated account and will not apply such funds to its claims except only upon further Order of the Court following a motion filed by the Committee, with reasonable notice of such motion to Madeleine and a hearing on the motion prior to the expiration of the Objection Period. If no order is entered granting the motion requiring Madeleine to continue to hold the Madeleine Payoff Amount in the segregated account, subject to whatever terms and conditions may be imposed by the Court, then Madeleine shall apply the Madeleine Payoff Amount to its claims in accordance with the Madeleine Loan Agreement.

(c) Legal fees and expenses incurred by Madeleine's counsel shall be paid in accordance with the procedures set forth in this subparagraph (c). If the fees and expenses incurred by Madeleine's counsel are incurred on or prior to receipt of the Madeleine Payoff Amount then such fees and expenses may be paid from the Madeleine Payoff Amount. If the fees and expenses incurred by Madeleine's counsel are incurred from and after receipt of the Madeleine Payoff Amount such fees and expenses shall be paid from the Expense Reserve. Within five (5) business days of the Debtor's receipt of an invoice, with copy to the Committee, of such counsel fees and expenses, unless the Debtor or the Committee objects (the "Fee Objection") to such invoice prior to expiration of such five (5) day period then payment of the fees and expenses may be made. If the Debtor or the Committee asserts such a Fee Objection, the parties shall engage in good faith negotiation to resolve any such objection, and any amounts not in

dispute shall be paid immediately. If the parties cannot resolve the Fee Objection, the Court will consider the Fee Objection at the next regularly scheduled hearing in the Debtor's Chapter 11 case or as soon thereafter as such matter may be heard. Any amount of the Madeleine Payment Amount or the Expense Reserve not used by Madeleine to pay its legal costs and other reimbursable and recoverable costs under the Madeleine Loan Agreement shall be paid to the Debtor.

(d) On or before September 30, 2005, Madeleine will file a proof of claim with respect to its claims and debt owed by the Debtor under the Madeleine Loan Agreement and provide a copy of such proof of claim and all attached exhibits to the Committee. Such proof of claim may not be withdrawn by Madeleine without the consent of the Committee or as may be ordered by this Court after notice to the Committee and the filing of an appropriate motion and scheduling of a hearing.

(e) Madeleine expressly consents to the jurisdiction of this Court with respect to the Committee investigating its claims and debt owed by the Debtor under the Madeleine Loan Agreement and that the Committee, upon completion of its investigation, if it so determines, may file with this Court any objection, claims, counterclaims or adversary proceedings with respect to Madeleine's claims and debt owed by the Debtor under the Madeleine Loan Agreement so long as such action is taken within the Objection Period. Madeleine acknowledges that its filing a proof of a claim as provided for herein is its submission to the jurisdiction of the Bankruptcy Court for determination of the validity, priority, enforceability and recovery of its claims in accordance of Section 506 of the Bankruptcy Code or otherwise.

19. Nothing herein shall be construed by or against Madeleine as an admission of liability for the non-enforceability and recovery of Madeleine's claims and debt owed to it by the Debtor under the Madeleine Loan Documents. Madeleine's agreement to the procedures provided for in this Order shall not be used by any party-in-interest to in any way argue or suggest otherwise.

20. In accordance with Bankruptcy Rule 4001(b)(2), the Court finds that the Debtor's authorization to use Cash Collateral pursuant to this order is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Any objections to the Motion not withdrawn or expressly addressed in this Order are hereby overruled. Within two business days from the date of this order, the Debtor shall serve a copy of this order on Madeleine, each party in

interest in this case, including the United States Trustee, and the Rule 1007-D List of Creditors by mail.

DONE and ORDERED *nunc pro tunc* as of September 8, 2005., on this date 9/21/05.

ALEXANDER L. PASKAY,
United States Bankruptcy Judge

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