

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

In re:	)	
	)	Case No.: 17-01071-TLM
PAVEMENT MARKINGS NORTHWEST,	)	
INC.	)	(Chapter 11)
	)	
Debtor.	)	
	)	
	)	
_____	)	

**SECOND INTERIM ORDER ALLOWING USE OF CASH COLLATERAL**

The Court, having previously entered its Order for Use of Cash Collateral (Dkt. #54) and Secured Creditor, Bank of the West (“Primary Lender”), Berkley Insurance Company (“Surety”), Secured Lender, Idaho Lines & Signs, LLC (“ILS” and collectively with Primary Lender and Surety, the “Stipulating Creditors”) as successor-in-interest to KeyBank, N.A. and the Debtor Pavement Markings Northwest, Inc. (“Debtor”) having entered into this additional stipulation for the use of cash collateral, and good cause appearing therefore:

IT IS HEREBY ORDERED, AND THIS COURT DOES ORDER THAT:

1. Debtor shall be authorized to use Cash Collateral (as defined in Section 363(a) of the Bankruptcy Code, the “Cash Collateral”) of the Stipulating Creditors through the final hearing on November 13, 2017, on the terms and conditions set forth in this Second Interim Order Allowing Use of Cash Collateral (“Second Interim Order”) and solely for the purposes and in the amounts set forth for the time period through November 13, 2017, in the monthly budget, attached as Exhibit A to this stipulated order (the “Budget”) and incorporated herein by this reference. The Debtor is prohibited from using cash collateral for any purpose not listed in the budget listed on Exhibit A, except for the payments made to Primary Lender and ILS as provided herein.

2. Stipulating Creditors shall maintain adequate protection liens (“Adequate Protection Liens”) on all post-petition collateral to the same extent as existed pre-petition to the extent of cash collateral actually used by the Debtor. The Adequate Protection Liens are granted in addition to any and all security interests, liens and rights of setoff existing in favor of each applicable Stipulating Creditor on the petition date and are valid, perfected, effective and enforceable without the necessity of any further action under otherwise applicable law or the execution of any further instruments.

3. As to secured creditor ILS, Debtor shall comply with all terms of the Stipulation between Debtor and KeyBank Regarding Use of Collateral (Dkt. #31), the terms of which are incorporated herein.

4. Debtor shall comply with the following:

A. Debtor shall submit to Primary Lender a weekly report specifying for each line item in the budget the amount actually expended during the previous week and the amount remaining in each line item. All such reports are due on Friday for the previous week;

B. Debtor shall submit to Primary Lender and Surety copies of bank statements for each of the Debtor’s bank accounts within two (2) days of the Debtor’s receipt of the same;

C. Debtor shall submit to Primary Lender and Surety copies of all reports filed with the United States Trustee on the same day the reports are filed with the United States Trustee;

D. Debtor shall provide Primary Lender and Surety any other financial information reasonably requested by Primary Lender, Surety, or the United States Trustee;

E. The Debtor shall provide an adequate protection payments of \$20,000.00 each to Primary Lender on or before October 10, 2017, and November 10, 2017, to be applied to accrued and accruing debt service obligations to Primary Lender as Primary Lender may direct.

F. Debtor shall allow the Stipulating Creditors access to its premises during all business hours on reasonable prior notice and shall allow them to examine and copy all financial and other business records and data.

G. Except as otherwise specifically set forth herein, the terms and conditions of all the agreements between Debtor and the Stipulating Creditors are in full force and effect and unchanged.

5. Debtor shall operate in compliance with the U.S. Trustee's Guidelines.

6. All Cash Collateral shall be segregated into a separate bank account in accordance with the requirements of 11 U.S.C. §363(c)(4), except as otherwise described in the escrow provisions.

7. The Debtor and Surety shall comply with the following escrow provisions:

A. Surety claims an interest in proceeds related to the Debtor's construction contracts ("Bonded Contracts") with the State of Idaho (related to the I-90 project) and Ascorp, dba DebCo Construction (collectively, "Payors") on which Surety posted payment and performance bonds ("Bonds"). Receivables from the Bonded Contracts ("Escrowed Funds") shall be paid to Surety directly per certain Letters of Direction

which were submitted to Payors on or about July 12, 2017. Surety will hold the Escrowed Funds in trust for the benefit of the Debtor, the debtor's estate and the Stipulating Creditors, with all the fiduciary duties of a trustee under applicable law. Surety waives any and all lien rights or rights to set off against the Escrowed Funds arising by reason of Surety's possession of the same pursuant to these escrow provisions.

B. Except as provided in paragraph 7C, below, on receipt of the Escrowed Funds from Payors, Surety is authorized to and shall disburse the Escrowed Funds directly to the relevant subcontractors and suppliers (including, as applicable, the Debtor), for performance of work on the respective Bonded Contract, within five (5) business days following receipt of Debtor's certified payment applications, including all related releases from such subcontractors, suppliers, and the Debtor. The Escrowed Funds shall solely be used to pay claims of subcontractors and suppliers for services performed or materials provided on the Bonded Contracts. The Escrowed Funds shall not be used for any other purpose. Surety may conclusively rely upon and act in accordance with the Debtor's certified payment application, including all related releases from subcontractors and suppliers, for payment related to work or materials provided on the Bonded Contracts, or further order of this Court.

C. In the event that any Payor, subcontractor, or supplier asserts a claim against Surety or Debtor in connection with the Bonded Contracts, Surety or Debtor (as applicable) will provide notice within three (3) business days to Primary Lender, ILS, Surety, Debtor, and the United States Trustee of such claim. In the event of such a claim, Surety shall continue to hold the Escrowed Funds as trustee pending agreement of

Stipulating Creditors, Debtor, and the United States Trustee for disbursement or further order of this Court.

D. Surety will make no reimbursement to itself or exercise any right of set off against the Escrowed Funds, except as otherwise agreed by the Stipulating Creditors, Debtor, and the United States Trustee, or as otherwise ordered by this Court. In addition, Surety waives any and all rights it may have to any fee or compensation for the escrow services it is providing pursuant to this Second Interim Order. In no event shall Surety make any payment to itself or for its own benefit without agreement of the Stipulating Creditors, Debtor, and the United States Trustee, or further order of the Court.

E. To the extent that Surety has rights to equitable subrogation, those rights are not affected by this Second Interim Order.

F. Surety will provide Debtor, Primary Lender, ILS and the United States Trustee with monthly reports reflecting all sums received from Payors and all amounts disbursed from Escrowed Funds, including the name of the recipient of such funds. Surety will provide to Debtor, Primary Lender, ILS and the United States Trustee with supporting documentation for disbursements of Escrowed Funds and for such additional information that each such party may reasonably request.

G. On completion and acceptance by Payors of each Bonded Contract, and assuming that no claims have been asserted by any provider of services or materials on that Bonded Contract for services or materials provided on the Bonded Contract, Surety shall release all remaining Escrowed Funds to Debtor. Debtor shall hold all Escrowed Funds received by Surety in a segregated Cash Collateral deposit account with no

authority to disburse, transfer or spend such funds without consent of all Stipulating Creditors or as authorized by the Court.

H. Notwithstanding any other provision herein, Surety shall not release any Escrowed Funds on or after November 13, 2017, without further order of the Court, and Surety shall only release Escrowed Funds for purposes and amounts as scheduled in the budget (Exhibit A). Surety shall not release Escrowed Funds for any purpose not budgeted in Exhibit A and shall not release Escrowed Funds in any amount that exceeds amounts set forth for that purpose in Exhibit A during the scheduled time period.

8. The parties understand and represented to the Court that this Order contains nonconforming provisions under applicable Local Bankruptcy Rules. However, the parties represented, and this Court believes, that these terms are in the best interest of all creditors of the estate.

9. Debtor's Motion for Use of Cash Collateral shall be and the same previously scheduled for a final hearing on the 18<sup>th</sup> day of September, 2017, at 1:30 p.m., shall now be heard on November 13, 2017 at 1:30 p.m., at the federal courthouse located in Boise, Idaho.

\\end of text\\

DATED: September 19, 2017



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS  
CHIEF U. S. BANKRUPTCY JUDGE

Order submitted by:  
Matthew T. Christensen, attorney for the Debtor

Approved as to form and content by:

/s/ Kelly McConnell  
Kelly Greene McConnell, attorney for Bank of the West

/s/ Jan Sokol  
Jan Sokol, attorney for Berkley Insurance Company

/s/ Patrick Geile  
Patrick J. Geile, attorney for Idaho Lines & Signs, LLC

Approved as to form only by:

/s/ Brett R. Cahoon  
Brett R. Cahoon, attorney for the United States Trustee