

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: ) Chapter 11  
 )  
FREEMAN GRADING & EXCAVATING, LLC, ) Case No. 18-00037-JJG-11  
 )  
Debtor. )

**FIRST DAY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING DEBTOR (A) TO UTILIZE CASH COLLATERAL  
PURSUANT TO 11 U.S.C. §363, AND (B) GRANTING ADEQUATE  
PROTECTION TO PREPETITION SECURED LENDER PURSUANT  
TO 11 U.S.C. §361, *NUNC PRO TUNC*, TO PETITION DATE**

Freeman Grading & Excavating, LLC, debtor-in-possession (the “Debtor”), by  
counsel, and for its *First Day Motion for Entry of Interim and Final Orders (A)*  
*Authorizing Debtor to Use Cash Collateral Pursuant to 11 U.S.C. §363, and (B)*  
*Granting Adequate Protection to Pre-Petition Secured Lender Pursuant to 11 U.S.C.*  
*§361, Nunc Pro Tunc to Petition Date* (the “Cash Use Motion”), respectfully states as  
follows:

**I. Jurisdiction**

1. On January 3, 2018, (the “Petition Date”), the Debtor filed its voluntary  
petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101  
*et seq.*, as amended (the “Bankruptcy Code”). The Debtor continues to operate its  
businesses and manage its property as debtor-in-possession pursuant to sections  
1107(a) and 1108 of the Bankruptcy Code.

2. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§1157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. The statutory bases for relief requested herein are sections 105(a), 361, 363, 1107 and 1108 of the Bankruptcy Code.

4. No Trustee or examiner has been appointed in this chapter 11 case. No committee of unsecured creditors has yet been appointed in this chapter 11 case.

5. The Debtor has discussed the filing of its case with the Office of the United States Trustee for the Southern District of Indiana (the "Trustee"), and advised the Trustee of its first day motions. This motion is a First Day Motion pursuant to S.D. Ind. L.R. B-9013-3.

6. The Debtor owns and operates a commercial excavating company located in Trafalgar, Indiana. The Debtor provides preparation, grading, and excavation services on commercial construction projects, which primarily consists of site-work and site-utility work. Historically, the Debtor has provided services to customers in Indiana and the surrounding states but has more recently focused on projects located only in Indiana. The Debtor's work is seasonal and slows down when the ground is frozen. During the busy times, the Debtor employs approximately fifty (50) employees. The Debtor currently employs twenty (20) hourly employees and two (2) salaried employees. The Debtor was incorporated on December 12, 2006.

## **II. Relief Requested**

7. By this Motion, the Debtor seeks the entry of interim and final orders authorizing the Debtor to use cash collateral.

8. As of the Petition Date, the Debtor is indebted to MainSource Bank (“MainSource”). The Debtor has performed a preliminary investigation and analysis of the related UCC filings, and based upon preliminary investigation believes, that without waiver of rights to challenge the validity, priority and extent of the liens, all of the Debtor’s obligations to MainSource may be valid, enforceable and non-avoidable, first-priority liens and security interests in substantially all of the Debtor’s personal property.

9. The Debtor has an immediate need to use cash collateral which is the subject of the liens in favor of MainSource, in order to permit, among other things, the orderly continuation of the operation of the Debtor’s business, to maintain business relationships with vendors and suppliers and to satisfy other working capital needs. Use of cash collateral is necessary to prevent the immediate and irreparable harm to the Debtor and its respective estate that would otherwise result if the Debtor is prevented from obtaining use of cash collateral for the foregoing purposes.

10. All of the Debtor’s cash, cash equivalents and cash on deposit as of the Petition Date and all proceeds of the Debtor’s personal property securing the Debtor’s obligation to MainSource, among other things, may constitute MainSource’s “cash collateral” (as that term is defined in Section 363(a) of the Bankruptcy Code).

MainSource has placed an administrative hold on the Debtor's bank account at MainSource, which has approximately \$20,000.00 in it and constitutes cash collateral.

11. MainSource may be entitled to adequate protection of its interests in the Debtor's personal property, including any cash collateral thereof, for any diminution in value of such property or cash collateral, including any diminution resulting from the use of cash collateral and the imposition of the automatic stay. The Debtor believes, in an exercise of its prudent business judgment, that the adequate protection given by the proposed granting of replacement liens over cash collateral to the same extent, validity and priority of MainSource's pre-petition liens is fair, reasonable and necessary under the circumstances. As additional adequate protection to MainSource, the Debtor agrees to operate under the budget attached hereto as Exhibit "A" which covers the Petition Date through February 9, 2018 . The Debtor shall also maintain insurance on MainSource's collateral naming MainSource as a loss payee. Finally, the Debtor shall provide MainSource with the following weekly reports, which reports shall be current as of the end of the previous week: (a) a detailed aging of accounts receivables; (b) a detailed aging of accounts payable; (c) a detailed retainage report; and (d) a work in process report.

12. The Debtor believes that the use of cash collateral is fair, reasonable and necessary under the circumstances, and reflects the Debtor's/MainSource's exercise of prudent business judgment consistent with its fiduciary duties.

WHEREFORE, the Debtor, by counsel, requests that the Court enter an Interim Order *nunc pro tunc* to the Petition Date providing for the following:

- (a) Granting replacement liens over cash collateral in favor of MainSource pursuant to section 361(2) of the Bankruptcy Code to the same extent, validity and priority of MainSource's pre-petition liens, and deem such liens as adequate protection to MainSource for use of the cash collateral;
- (b) Authorizing the Debtor to use cash collateral as provided in the projections or budget attached hereto as Exhibit "A"; and
- (c) All other appropriate relief under the circumstances.

Respectfully submitted,

HESTER BAKER KREBS LLC

By /s/ John J. Allman

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*Proposed Attorneys for Debtor*

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

- Laura A DuVall [Laura.Duvall@usdoj.gov](mailto:Laura.Duvall@usdoj.gov), [Catherine.henderson@usdoj.gov](mailto:Catherine.henderson@usdoj.gov)
- Curt Derek Hochbein [chochbein@rubin-levin.net](mailto:chochbein@rubin-levin.net), [mralfh@rubin-levin.net](mailto:mralfh@rubin-levin.net), [lking@rubin-levin.net](mailto:lking@rubin-levin.net), [atty\\_chochbein@bluestylus.com](mailto:atty_chochbein@bluestylus.com)
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- U.S. Trustee [ustpreion10.in.ecf@usdoj.gov](mailto:ustpreion10.in.ecf@usdoj.gov)

I further certify that on January 5, 2018, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

n/a

/s/ John J. Allman

David R. Krebs

John J. Allman

Hester Baker Krebs LLC

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**Freeman Grading & Excavating Cash Use Budget 1/3/18 thru 2/3/18**

**Income** **\$97,500.00**

**Expenses**

<b>Wages</b>	<b>\$31,940.00</b>
<b>Payroll Taxes</b>	<b>\$4,800.00</b>
<b>Pre-Pet Trust Taxes</b>	<b>\$6,900.00</b>
<b>Insurance</b>	<b>\$4,500.00</b>
<b>Fuel</b>	<b>\$3,000.00</b>
<b>Dec. Union Dues</b>	<b>\$40,000.00</b>
<b>Maintenance</b>	<b>\$2,500.00</b>
<b>Misc</b>	<b><u>\$2,500.00</u></b>

**Total Expenses** **\$96,140.00**

**Net Cash** **\$1,360.00**

**Beginning Cash** **\$30,000.00**

**Ending Cash** **\$31,360.00**

