

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

IN RE:

COASTAL STAFFING SERVICES, LLC,

Debtor.

§
§
§
§
§
§
§

CASE NO. 17-21088

Chapter 11

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS: (I) AUTHORIZING POST-PETITION USE OF CASH COLLATERAL; (II)
DEEMING THE DEBTOR'S SECURED LENDER TO BE ADEQUATELY
PROTECTED; (III) SCHEDULING A FINAL HEARING;
AND (IV) GRANTING RELATED RELIEF**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Coastal Staffing Services, LLC (the "Debtor" or "Coastal") and files this Emergency Motion for Entry of Interim and Final Orders: (i) Authorizing Post-Petition Use of Cash Collateral; (ii) Deeming the Debtor's Secured Lender to be Adequately Protected; (iii) Scheduling a Final Hearing; and (v) Granting Related Relief (the "Motion"), and in support thereof, respectfully submits as follows:

I. JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. EMERGENCY CONSIDERATION

2. The Debtor requests emergency consideration of this Motion. The Debtor believes a seamless transition into chapter 11 is critical to the Debtor's reorganization process, and that any delay in granting the relief requested could hinder the Debtor's transition, thereby causing

irreparable harm to the Debtor and its constituents. As such, the Debtor believes that emergency consideration is necessary and request that this Motion be heard at the Debtor's First Day Hearings.

III. PROCEDURAL BACKGROUND

3. On November 27, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Louisiana, Lake Charles Division (the "Bankruptcy Court").

4. The Debtor continues to operate its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The U.S. Trustee has not appointed any official committees in this case, and no request has been made for the appointment of a trustee or an examiner.

IV. FACTUAL BACKGROUND

A. Overview

5. Coastal is a premier staffing company specializing in providing complete employee-related services for a diverse client base in various locations across the United States and across a wide array of industries. Coastal has the ability to provide temporary, temporary-to-hire, direct hire, contract, and payroll employees for its clients.

6. As part of its services, Coastal undertakes many administrative responsibilities for its clients, allowing them to focus more of their time on value-added activities that allow them to generate revenue and increase sales. In addition, Coastal handles all the recruiting, screening, employment verification, payroll, tax filings, liability insurance, worker's compensation, and unemployment responsibilities. Overall, Coastal's knowledge and expertise encompasses the full range of employee-related issues that most companies must address—regardless of size or product/service offering.

B. Events Leading to the Debtor's Chapter 11 Filing

7. While Coastal has generally been a profitable company, recent events have led to liquidity concerns. In particular, based on the potential size of alleged claims against the Company (as outlined below), Coastal's management is concerned that the value of Coastal's assets could be less than the outstanding liabilities.

8. On September 27, 2017, a former employee, Robin Scott, filed suit in the Eastern District of Texas against Coastal seeking to recover allegedly unpaid overtime wages on her own behalf and on the behalf of other similarly situated employees under the Federal Labor Standards Act. In addition, on November 7, 2017, two former employees, Clifford Harder and Tabaitha Vital, filed suit in the Western District of Louisiana on their own behalf and on the behalf of other similarly situated employees under the Federal Labor Standards Act. Both litigations are collectively referred to as the "FLSA Actions." In addition to the FLSA Actions, Coastal has been contacted by other attorneys in both Louisiana and Texas that represent other former or current employees that are allegedly asserting similar claims. Thus, while uncertain at this time, it is possible that numerous other former or current employees may assert claims against Coastal similar to the claims being asserted in the pending FLSA Actions. While Coastal strongly disputes the claims asserted in the FLSA Actions as well as the claims that have been made only informally thus far, Coastal retained counsel to defend them in the FLSA Actions and to respond to the informal claims. Indeed, Coastal has attempted to negotiate with a number of these parties in order to set up an acceptable settlement structure to deal with known litigants as well as other potential similarly situated creditors. However, those discussions were unsuccessful and appear unlikely to result in any reasonable resolution.

9. Coastal is uncertain as to the number of employees that might assert claims and

uncertain as to the potential liability associated with these potential claims. Given the potentially significant number and amount of these possible claims, the costs associated with mounting a defense on multiple fronts across multiple jurisdictions, and Coastal's liquidity struggles, the Company has become increasingly concerned about its ability to manage these litigations costs and/or pay the potential claims in a way that is fair to this entire class of creditors.

10. Coastal's liquidity concerns, combined with the significant uncertainty surrounding the FLSA Actions and the potential for other similar claims that could exceed Coastal's assets, led Coastal's management to conclude that it should undertake an orderly restructuring of its business in a Chapter 11 proceeding in order to try to maximize value for its creditors.

11. The Debtor is currently considering all restructuring options. However, given the uncertainty of the potential number and amount of the alleged FLSA claims and because this is such a critical issue in this case, the Debtor first plans to obtain a bar date order from the Court in order to bring certainty to the total claims pool. After having certainty on the amount of these claims, Coastal will be in a better position to make a determination regarding which reorganization path will maximize value for all of Coastal's creditors.

C. The Debtor's Prepetition Secured Obligations

12. On October 23, 2017, the Debtor, as borrower, and WWS Holdings, LLC (WWS"), as lender, entered into that certain Promissory Note for Line of Credit (the "WWS Note,") in the aggregate amount of \$100,000.00.¹ The obligations underlying the WWS Note are secured by that certain Commercial Security Agreement (the "WWS Security Agreement,"), dated October 23, 2017 and pursuant to which the Debtor granted WWS a first-priority security interest in: (i) all of the Debtor's past and future rights, title and interest to all of the Debtor's furniture, fixtures, and

¹ Notably, WWS is an affiliate of Coastal that provided some short-term liquidity to the Debtor via the WWS Note in order to fund payroll at a time where the Debtor's cash situation was dire.

equipment located in Sulphur, Calcasieu Parish, Louisiana; (ii) all of the Debtor's present and future rights to all past, present and future rights to the entirety of its accounts receivable (collectively, the "Collateral"); and (iii) all proceeds and products of the Collateral, including all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, and insurance proceeds (collectively, the "Cash Collateral").

13. On October 23, 2017, WWS perfected its security interest in the Collateral by filing a UCC-1 financing statement (No. 10-120085) with the Louisiana Secretary of State in Calcasieu County. Accordingly, the Debtor believes that WWS holds a perfected, first-priority lien (the "WWS Lien") on the Cash Collateral.

14. Of note, WWS is massively oversecured on the WWS Lien, as the Cash Collateral is valued well in excess of \$2,000,000.00, including over \$2,000,000.00 in cash currently residing within the Debtor's possession.

V. RELIEF REQUESTED

15. By the Motion, the Debtor requests that the Bankruptcy Court: (i) enter an interim order (the "Interim Order") authorizing the Debtor to use the Cash Collateral on a three-week interim basis for the payment of minimum operating expenses and in accordance with the budget attached hereto as **Exhibit A** (the "Budget," and the three-week portion of the Budget for which the Debtor is requesting interim usage, the "Interim Budget"); (ii) deem WSS to be adequately protected pursuant to sections 361 and 363(e) as to the Cash Collateral during the interim period; and (iii) schedule a final hearing on the Debtor's use of the Cash Collateral no later than thirty days following the entry of the Interim Order to consider entry of a final order (the "Final Order") authorizing the Debtor's use of the Cash Collateral on a final basis.

VI. BASIS FOR RELIEF

A. Interim Use of the Cash Collateral is Appropriate and Necessary

16. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. The Debtor requests that the Bankruptcy Court conduct an emergency preliminary hearing on the Motion (the "Preliminary Hearing") and authorize the Debtor to use the Cash Collateral for the period after entry of the Interim Order until entry of the Final Order in accordance with the Interim Budget and in amounts not to exceed each category of expenditures by more than 10% of the amount listed without the prior consent of WWS.

17. The cash needs of the Debtor are immediate. Unless the Debtor is able use the Cash Collateral, the Debtor will be forced to terminate its operations and will be unable to manage its business. Such a termination of operations and management would destroy the value of the Debtor's business enterprise as a whole, minimizing the potential recovery to its creditors and diminishing the overall value of the bankruptcy estate.

18. The Interim Budget provides for an approximate 3-week period of Cash Collateral usage by the Debtor to prevent a decline in the value of the Debtor's estate as it transitions into chapter 11 pending final approval of the Budget, only contemplates the expenditure of amounts necessary to prevent "immediate and irreparable harm" to the Debtor, and therefore meets the requirements for interim relief under section 4001(b)(2) of the Bankruptcy Code.

B. WSS is Adequately Protected as to the Cash Collateral by Virtue of the Debtor's Equity Cushion in the Cash Collateral

19. A debtor's use of property of the estate, including cash collateral, is governed by Section 363 of the Bankruptcy Code. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral if "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of [Section 363]." Section 363(e) of the Bankruptcy Code further provides that "on request of an entity that has an interest in property . . . to be used, sold or leased, by the trustee, the court . . . shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest."

20. Section 361 of the Bankruptcy Code, which governs adequate protection of a secured creditor's interest in cash collateral, does not expressly define the term "adequate protection." Generally, courts decide what constitutes adequate protection on a case-by-case basis. *In re Braniff Airways, Inc.*, 783 F.2d 1283, 1286 (5th Cir. 1986); *see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) ("[A] determination of whether there is adequate protection is made on a case by case basis"). The purpose of adequate protection is to ensure that a secured party's economic position is not worsened because of the filing of a bankruptcy case. *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006).

21. As discussed above, the Collateral has an approximate value of well in excess of \$2,000,000.00, including over \$2,000,000.00 in cash residing within the Debtor's possession – an amount which is far greater than the amount of the \$100,000.00 WSS Lien. As noted by Collier's:

The purpose of providing adequate protection is to protect an entity's interest in property. If the property is worth substantially more than the entity's interest, a decrease in the property value may not threaten that interest or its value...This

excess value is often referred to as an “equity cushion.” The equity cushion may itself provide adequate protection, obviating the needs for periodic payments to protect the entity against the decline in value.

3 COLLIER’S ON BANKRUPTCY ¶ 363.03[1] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. Rev.); *Matter of Mendoza*, 111 F.3d 1264, 1272 (5th Cir. 1997) (“in determining whether a secured creditor’s interest is adequately protected, most court’s engage in an analysis of the property’s ‘equity cushion’ – the value of the property after deducting the claim of the creditor...and all senior claims”).

22. Here, the Cash Collateral dwarfs the amount of the WSS Lien, and more than constitutes adequate protection. Because there are no other encumbrances on the Cash Collateral and the Cash Collateral can be quantified as it is largely liquid, adequate protection should be found. Courts within the Fifth Circuit have routinely found adequate protection to exist in situations involving equity cushions of 20% or more – a standard which is easily met in the instant case. *In re Las Torres Development, LLC*, 413 B.R. 687 (Bankr. S.D. Tex. 2009) (finding equity cushion of 20% sufficient for stand-alone adequate protection – “the record here reflects that there is more than a 20% equity cushion in the [collateral], and case law is clear that an equity cushion of 20% or more constitutes adequate protection”); *In re Knight Energy Corp.*, 2009 WL 1851739 (Bankr. N.D. Tex. June 26, 2009) (applying the 20% equity cushion test to determine whether the secured lender was adequately protected). Accordingly, the Bankruptcy Court should deem WSS adequately protected as to the Cash Collateral during the period of interim usage by the Debtor, and should permit the use of the Cash Collateral by the Debtor during the interim period.

VII. REQUESTED RELIEF SATISFIES BANKRUPTCY RULE 6003

23. Rule 6003 of the Federal Rules of Bankruptcy Procedure generally precludes the Bankruptcy Court from authorizing certain relief until 20 days after the petition is filed, except to the extent necessary to prevent “immediate and irreparable harm” to the debtor. The Debtor

believes that the relief sought in this Motion is critical to achieving a smooth transition as a chapter 11 debtor and will help preserve the Debtor's going concern value. The relief sought herein is essential to the Debtor's reorganization, and without such relief, the Debtor will suffer immediate and irreparable harm. Indeed, without such relief, the Debtor would be unable to meet its upcoming weekly payroll and minimum operational expenses, and would otherwise be unable to carry on as a going-concern. Accordingly, the Debtor seeks first-day approval of the Motion, with a final hearing to be set as soon as practicable.

VIII. CONCLUSION

In light of the foregoing, the Debtor respectfully requests that this Court enter the Interim Order: (i) authorizing the Debtor to use the Cash Collateral on a three-week interim basis for the payment of minimum operating expenses and in accordance with Interim Budget; (ii) deeming WSS to be adequately protected, pursuant to sections 361 and 363(e), as to the Cash Collateral during the interim period; (iii) scheduling a final hearing no later than thirty days following the entry of the Interim Order to consider entry of a Final Order authorizing the Debtor's use of the Cash Collateral on a final basis and (iv) granting the relief requested herein and granting such other and further relief as the Court may deem just and proper.

DATED: November 28, 2017

KILMER CROSBY & WALKER PLLC

By: /s/ Brian A. Kilmer

Brian A. Kilmer

Louisiana Bar No.: 26062

Email: bkilmer@kcw-lawfirm.com

Meritt Crosby

Texas Bar No.: 24050462

Email: mcrosby@kcw-lawfirm.com

Shannon A.S. Quadros

Texas Bar No.: 24072766

Email: squadros@kcw-lawfirm.com

712 Main St., Suite 1100

Houston, TX 77002

Tel: 713.300.9662

Fax: 214.731.3117

PROPOSED COUNSEL FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2017, a copy of the foregoing pleading was served via First Class U.S. Mail on the attached master service list.

/s/ Brian A. Kilmer

Brian A. Kilmer

**MASTER SERVICE
LIST (IN RE COASTAL STAFFING SERVICES, LLC)**

DEBTOR

Coastal Staffing Services, LLC
3813 Maplewood Dr
Sulphur, LA 70663

COUNSEL FOR DEBTOR

Kilmer Crosby & Walker PLLC
c/o Brian A. Kilmer
712 Main Street, Suite 1100
Houston, Texas 77002

U.S. ATTORNEY'S OFFICE

U.S. Attorney's Office
Western District of Louisiana
300 Fannin Street, Ste. 3201
Shreveport, LA 71101

INTERNAL REVENUE SERVICE

Centralized Insolvency Operation
PO Box 7346
Philadelphia, PA 19101

U.S. TRUSTEE

Office of the U.S. Trustee
300 Fannin Street, Ste. 3196
Shreveport, LA 71101

LARGEST 20 UNSECURED CREDITORS OF THE DEBTOR

Alabama Dept. of Revenue
50 N. Ripley Street
Montgomery, AL 36132

American Express
P.O. Box 650448
Dallas, TX 75265-0448

Avery Archives
1155 E McNeese St
Lake Charles, LA 70607

Birch Communications
P.O. Box 105066
Atlanta, GA 30348-5066

BMCP LLC
20202 Cresta Avenida
San Antonio, TX 78256

Georgia Department of Revenue
1800 Century Blvd NE
Atlanta, GA 30345

Glenn Shepard Seminars
P.O. Box 2969
Brentwood, TN 37024-2969

Indiana Department of Revenue
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

Lake Area Offices Products
P.O. Box 5391
Lake Charles, LA 70606

Mississippi Department of Revenue
P.O. Box 1033
Jackson, MS 39215-1033

Sparkletts & Sierra Springs
P.O. Box 660579
Dallas, TX 75266-0579

Louisiana Construction
1123 North Causeway Blvd.
Mandevilla, LA 70471

Nagem Orthopedics & Recovery LLC
1001 S. Worthington Street
Lake Charles, LA 70605

Texas Gas Service
P.O. Box 219913
Kansas City, MO 64121-9913