

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Case No. 17-32006
PREMIER MARINE, INC., Chapter 11
Debtor.

**NOTICE OF HEARING AND MOTION FOR ORDER AUTHORIZING
USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

TO: Entities Specified in Local Rule 9013-3.

1. Premier Marine, Inc. (“Debtor or Premier Marine”), through its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **2:00 p.m. on January 19, 2018**, before the Honorable Katherine A. Constantine, Courtroom 2C, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than **Sunday, January 14, 2018**, which is five (5) days before the time set for the Final Hearing (including Saturdays, Sundays, and holidays). **Unless a response opposing the motion is timely filed, the Court may grant the relief requested in the motion without a hearing.**

4. This Court has jurisdiction over this motion under 28. U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 19, 2017 (the “Petition Date”). This case is now pending before this Court.

5. This motion arises under 11 U.S.C. § 363 and Bankruptcy Rule 4001(b). This motion is filed under Bankruptcy Rules 9014 and Local Rules 4001-2 and 9013. By this motion Debtor seeks authority for use of cash collateral through March 17, 2018, make adequate protection payments and to grant replacement liens (“Motion”).

BACKGROUND

6. By Order dated June 23, 2017 [Docket No. 31] the Court authorized use of cash collateral through July 11, 2017. By Order dated July 11, 2017 [Docket No. 85] the Court approved a Cash Collateral and Adequate Protection Stipulation dated July 10, 2017 [Docket No. 79] authorizing the Debtor to use cash collateral through September 11, 2017. By Order dated October 19, 2017 [Docket No. 151] the Court approved the Second Amendment to Stipulation for use of Cash Collateral dated October 17, 2017 [Docket No. 149] authorizing the Debtor to use cash collateral through February 3, 2018 (“Stipulation”).

7. The Debtor filed a Disclosure Statement and Plan of Reorganization dated December 8, 2017 [Docket Nos. 176 and 177]. A hearing to consider approval of the Disclosure Statement is set for January 19, 2018.

8. The Debtor anticipates Disclosure Statement approval on or about January 19, 2018 and a Plan confirmation hearing before March 1, 2018.

SECURED LENDERS WITH INTEREST IN CASH COLLATERAL

9. The Debtor is indebted to American Bank of the North (“ABN”) in the approximate total principal amount of \$6,521,648 (“ABN Debt”) as of the Petition Date. The ABN Debt evidenced by two Notes and a revolving credit account is secured by a duly perfected first priority lien in substantially all assets of the Debtor, including inventory, accounts, equipment and general

intangibles. As of the date of this Motion, ABN has not consented to the use of cash collateral. The ABN Debt is over secured.

10. The Debtor is indebted to Trusek, LLC (“Trusek”) in the approximate amount of \$500,000 (“Trusek Debt”) as of the Petition Date. The Trusek Debt evidenced by loan and security documents is secured by a duly perfected lien in substantially all assets of the Debtor, including inventory, accounts, equipment and general intangibles. The Trusek Debt is junior in priority to the lien of ABN. As of the date of this Motion, Trusek has not consented to the use of cash collateral.

11. The Debtor seeks authority to use cash collateral for the purposes and in the approximate amounts set forth in the budget attached as **Exhibit A** (“Budget”) and to grant adequate protection.

ESTIMATED COLLATERAL VALUE

12. As of February 3, 2018, and the date of the hearing on this Motion, the Debtor's collateral has the following estimated value:

Cash	\$ 309,000
Accounts Receivable (Liquidation Value)	\$ 504,180
CD Pledged for LOC in Favor of Wells Fargo	\$ 1,000,000
Cash Reserve with NorthPoint Floorplan Lender	\$ 45,348
Inventory (Book Value)	\$ 8,200,000
WIP	\$ 333,450
Equipment	\$ 1,936,000
Web Domains and Other Intellectual Property	<u>\$ 871,200</u>
Total	\$13,199,178

As of March 17, 2018 the Debtor estimates that the Collateral's value, will be:

Cash	\$ 397,801
Accounts Receivable (Liquidation Value)	\$ 460,630
CD Pledged for LOC in Favor of Wells Fargo	\$ 1,000,000
Cash Reserve with NorthPoint Floorplan Lender	\$ 45,348
Inventory (Book Value)	\$ 8,200,000
WIP	\$ 333,450
Equipment	\$ 1,936,000
Web Domains and Other Intellectual Property	<u>\$ 871,200</u>
Total	\$13,244,429

ADEQUATE PROTECTION

13. Pursuant to the requirements of 11 U.S.C. § 363(e), the Debtor proposes as adequate protection for ABN to grant (i) replacement liens in ABN's respective collateral; and (ii) to make monthly cash payments of interest at the contract rate under the prepetition ABN loan each in the amount of \$29,681.00. The interest of ABN is adequately protected by the monthly cash payment of interest.

14. Pursuant to the requirements of 11 U.S.C. § 363(e), the Debtor proposes as adequate protection for Trusek to grant (i) replacement liens in Trusek's respective collateral; and (ii) to make monthly cash payments of interest at the contract rate under the prepetition Trusek loan each in the amount of \$5,000.00. The interest of Trusek is adequately protected by the monthly cash payment of interest.

15. With the continued use of cash collateral the Debtor will operate in the ordinary course through the earlier of the effective date of a confirmed plan of reorganization or March 17, 2018.

16. Pending confirmation of a plan of reorganization the Debtor has a need to use cash collateral through the earlier of the effective date of a confirmed plan of reorganization or March 17, 2018 to pay operating expenses in the amounts identified in the Budget attached as Exhibit A. If the Debtor is not permitted to use cash collateral in the amounts and for the purposes set forth in the Budget from February 3, 2018 through March 17, 2018 the Debtor cannot continue to operate and will suffer immediate and irreparable harm.

17. Prior to the hearing on this Motion the Debtor anticipates that the terms and conditions of the Stipulation will be extended through March 17, 2018 in substantially the form attached as **Exhibit B**. In the event Debtor enters into any such stipulation, Debtor will seek approval of the stipulation without further notice of hearing pursuant to Bankruptcy Rule 4001(d)(4), and **DEBTOR HEREBY GIVES NOTICE OF INTENT TO SEEK APPROVAL OF ANY SUCH STIPULATION.**

18. The Debtor may offer additional evidence in support of this motion, including the testimony of Richard Gallagher, the financial advisor to Debtor, if such is necessary in connection with this Motion.

WHEREFORE, the Debtor moves the Court for an order:

1. Authorizing the continued use of cash collateral through March 17, 2018 in accordance with the Budget; and
2. Authorizing the Debtor to grant adequate protection as set forth in the Motion;

Dated: January 5, 2018

RAVICH MEYER KIRKMAN McGRATH
NAUMAN & TANSEY,
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610
Will R. Tansey #323056

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ATTORNEYS FOR DEBTOR

VERIFICATION

I, Lori J. Melbostad, President of Debtor, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection, are true and correct.

Executed on: January 4, 2018

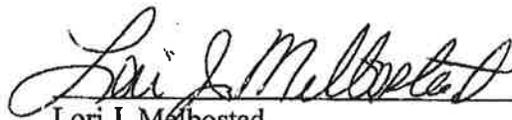

Lori J. Melbostad

EXHIBIT A

Premier Marine							
Third Cash Collateral Budget		W/E	W/E	W/E	W/E	W/E	W/E
		2/10/2018	2/17/2018	2/24/2018	3/3/2018	3/10/2018	3/17/2018
300	<u>Beginning Cash Balance</u>						
305	Checking	309,000	278,692	517,847	266,025	379,117	234,094
310	Omitted						
315	Total Beginning Cash	309,000	278,692	517,847	266,025	379,117	234,094
320							
325	<u>Cash Receipts</u>						
330	Receipts from Sales	780,000	715,000	715,000	715,000	715,000	715,000
335	Omitted						
340	Dealer Labor Warranty Credits	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)
345	Omitted						
350	Total Receipts	752,507	687,507	687,507	687,507	687,507	687,507
355							
360	<u>Cash Disbursements</u>						
365	Costs of Raw Materials	398,064	398,064	398,064	401,011	476,183	476,183
370	Direct Labor (incl Temp Service)	207,759	19,377	190,446	19,764	190,446	26,352
345	Sales, Engr & Admin Labor	73,575	-	73,575	-	71,544	-
375	Benefits	56,184	-	-	3,200	56,184	-
380	Utilities	18,101	-	-	-	18,101	-
385	Telecom	735	547	5,780	-	735	547
390	Freight & Transportation	22,416	22,864	23,321	23,788	12,235	12,235
395	Leases (Real Estate) incl Property Tax				57,696		
400	Insurance				43,527		
405	Omitted						
410	Omitted						
415	Omitted						
420	Repairs & Maintenance	1,380	1,518	920	828	2,500	2,500
425	Other Expenses	4,602	5,983	2,761	4,602	4,602	5,983
430	US Trustee Fees						
435	Professional Fees (Debtor)			135,000			
440	Professional Fees (Debtor Tax Prep)						
440	Professional Fees (Other)			60,000			
445	Equipment Leases						
450	omitted						
455	Farnum Leasing			12,944			
460	Wells Fargo Trac Lease			1,149			
465	Adequate Protection Payments	-	-	-	-	-	-
470	American Bank of the North			29,681			-
475	Wells Fargo Equipment Finance			520			-
480	Ford Motor Credit			169			-
485	TD Auto Finance			-			-
490	Trusek			5,000			-
495	Intrest on DIP Financing	-	-		20,000	-	
505	Total Cash Disbursements	782,815	448,352	939,329	574,415	832,530	523,800
510							
515	Net Change (Receipts less Disburs.)	(30,308)	239,155	(251,822)	113,092	(145,023)	163,707
520							
525	Projected Ending Cash	278,692	517,847	266,025	379,117	234,094	397,801

EXHIBIT B

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MINNESOTA

In re:,

Premier Marine, Inc.,

Debtor.

Case No.: 17-32006

Chapter 11 Case

SECOND AMENDMENT TO STIPULATION FOR USE OF CASH COLLATERAL AND SECOND AMENDMENT TO STIPULATION REGARDING DEBTOR'S MOTION FOR ORDER AUTHORIZING POSTPETITION SECURED BORROWER AND GRANTING JUNIOR LIENS PURSUANT TO 11 U.S.C. § 364(C)(3)

Premier Marine, Inc. (the "Debtor"), American Bank of the North ("ABN"), Trusek, LLC (the "Junior Lender"), and the Official Committee of Unsecured Creditors¹ (the "Committee") stipulate and agree as of October 17, 2017 as follows:

FACTUAL RECITALS

A. On June 20, 2017, the Debtor filed the Motion for Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection [Doc. Entry No. 7].

B. On July 10, 2017, the Debtor and ABN entered into and filed the Stipulation For Use Of Cash Collateral [Doc. Entry No. 79] (the "Cash Collateral Stipulation"). Pursuant to the Cash Collateral Stipulation, the Debtor and ABN agreed to, among other things, use of cash collateral in accordance with the Budget attached to the Cash Collateral Stipulation as Exhibit B subject to the terms of the Cash Collateral Stipulation and proposed order.

C. On July 11, 2017, the Court entered the Final Stipulated Order Authorizing Use of Cash Collateral and Granting Adequate Protection [Doc. Entry No. 85] (the "Cash Collateral

¹ The Committee stipulates and agrees as to paragraph 5 of the Agreement section only.

Order”). Pursuant to the Cash Collateral Order, the Court, among other things, approved the use of cash collateral in accordance with the Budget attached to the Stipulation subject to the terms of the Cash Collateral Order and Cash Collateral Stipulation.

D. On June 20, 2017, the Debtor filed the Motion For Order Authorizing Postpetition Secured Borrowing And Granting Junior Liens Pursuant To 11 U.S.C. § 364(c)(3) [Doc. Entry No. 11].

E. On July 10, 2017, the Debtor and Junior Lender entered into and filed the Stipulation Regarding Debtor’s Motion for Order Authorizing Postpetition Secured Borrower and Granting Junior Liens Pursuant to 11 U.S.C. § 364(c)(3) [Doc. Entry No. 80] (the “Junior Lender Stipulation”). Pursuant to the Junior Lender Stipulation, the Debtor and Junior Lender agreed to, among other things, use of post-petition financing in accordance with the Budget attached to the Cash Collateral Stipulation as Exhibit B subject to the terms of the Junior Lender Stipulation and proposed order.

F. On July 11, 2017, the Court entered the Final Stipulated Order Regarding Debtor’s Motion for Order Authorizing Postpetition Secured Borrowing and Granting Junior Liens Pursuant to 11 U.S.C. § 364(c)(3) [Doc. Entry No. 86] (the “Junior DIP Loan Order”). Pursuant to the Junior DIP Loan Order, the Court, among other things, approved the use of post-petition financing in accordance with the Budget subject to the terms of the Junior DIP Loan Order and Junior Lender Stipulation.

G. On August 21, 2017, the Debtor, ABN and Junior Lender entered into and filed that certain First Amendment to Stipulation for Use of Cash Collateral and First Amendment to Stipulation Regarding Debtor’s Motion for Order Authorizing Postpetition Secured Borrower and Granting Junior Liens Pursuant to 11 U.S.C. § 364(c)(3) (the “First Amended Stipulation”)

[Doc. Entry No. 113]. Pursuant to the First Amended Stipulation, the Budget attached as Exhibit B thereto replaced and superseded the Budget attached as Exhibit B to the Cash Collateral Stipulation.

H. Pursuant to the Cash Collateral Stipulation, the Debtor's authorization to use Cash Collateral expires on October 28, 2017 (unless terminated earlier upon a default thereunder), but such expiration date may be extended by a stipulation and an agreed order between the Debtor and ABN.

I. The Debtor has requested that ABN extend the authorization to use Cash Collateral through February 3, 2018.

J. The Debtor has further requested that ABN and Junior Lender agree to the adoption of the Budget attached as Exhibit B for the period through February 3, 2018.

AGREEMENT

NOW THEREFORE, ABN, Junior Lender, the Debtor, and the Committee stipulate and agree as follows:

1. Consistent with the terms of the Cash Collateral Stipulation, as modified by this Second Amendment, the Debtor's authorization to use Cash Collateral is extended through February 3, 2018.

2. In the event the Debtor does not file by December 8, 2017 (i) a plan and disclosure statement, or (ii) a motion for authority to enter into a purchase agreement for substantially all of its assets and to approve bid procedures, in either case acceptable to ABN in its sole and absolute discretion, the Debtor's authorization to use Cash Collateral shall immediately terminate.

3. The Budget attached as Exhibit B hereby replaces and supersedes the Budget attached as Exhibit B to the Cash Collateral Stipulation and First Amended Stipulation for purposes of use of Cash Collateral from October 29, 2017 through February 3, 2018.

4. In addition to the reporting required by the Cash Collateral Stipulation, and not in lieu thereof, the Debtor shall immediately provide to ABN: (i) a schedule of anticipated production that supports the Budget; (ii) a pro-forma borrowing base that accompanies the budget period of October 16, 2017 through February 3, 2018; and (iii) the second revised monthly operating report for August 2017, which report shall reflect all corrections made by the new controller and be accompanied by a report of accounts receivable (including aging) and a borrowing base certificate. The Debtor and its financial advisor shall hold a weekly call with ABN to discuss budget variances and other such issues as requested by ABN and shall provide such financial reports and information reasonably requested by ABN in advance of such call. The Debtor shall also provide the Committee with a copy of the information in this section produced to ABN, and the Debtor shall invite Committee counsel to the weekly calls referenced herein.

5. The Debtor, ABN, Junior Lender, and Committee stipulate and agree to entry of the accompanying proposed Stipulated Order Approving Second Amendment To Stipulation For Use Of Cash Collateral And Second Amendment To Stipulation Regarding Debtor's Motion For Order Authorizing Postpetition Secured Borrower And Granting Junior Liens Pursuant To 11 U.S.C. § 364(C)(3).

6. In all other respects, the Cash Collateral Stipulation, Cash Collateral Order, Junior Lender Stipulation, and Junior DIP Loan Order remain the same and in full force and

effect. The Debtor shall continue to comply with all obligations, covenants, representations and warranties.

7. Pursuant to Local Rule 9011-4(f), the parties hereto have authorized that this stipulation may be submitted with electronic signatures.

Dated: October 17, 2017

Michael F. McGrath (#168610)
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Dated: October 17, 2017

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Dated: October 17, 2017

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Dated: October 17, 2017

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 17-32006

PREMIER MARINE, INC.,

Chapter 11

Debtor.

MEMORANDUM OF LAW

This memorandum of law is submitted in support of the Debtor's Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection. A hearing has been scheduled on **January 19, 2018 at 2:00 p.m.**

FACTS

The factual basis for this memorandum are set forth in the verified Motion and incorporated herein. All capitalized terms not defined herein have the meaning ascribed in the Motion.

LEGAL ARGUMENT

11 U.S.C. §363(c)(2) provides that a debtor may use cash collateral only with the consent of each entity that has an interest in such cash collateral, or if the court, after notice and a hearing, authorizes such use. Use of cash collateral must be restricted or conditioned as is necessary to provide adequate protection to any entity that has an interest in the property which the Debtor proposes to use. 11 U.S.C. §363(e). In this case, the Debtor proposes to use cash collateral through March 17, 2018, to the extent necessary to operate the business in the ordinary course according to the Budget attached to the Motion as Exhibit A. As adequate protection, the Debtor proposes

to provide replacement liens and reporting of information to secured parties. The Debtor also proposes to make certain interest and principal payments to secured parties.

The Eighth Circuit Court of Appeals has stated:

In any given case, the bankruptcy court must necessarily (i) establish the value of the secured creditor's interest, (ii) identify the risk to the secured creditor's value resulting from the debtor's request for use of cash collateral, and (iii) determine whether the debtor's adequate protection proposal protects value as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.

In re Martin, 761 F.2d 472, 476-77 (8th Cir. 1985). The adequate protection offered by the Debtor satisfies the Bankruptcy Code requirements for adequate protection.

CONCLUSION

The Debtor respectfully requests that an order be entered granting this Motion authorizing the use of cash collateral in accordance with the terms of the Budget attached to the Motion and authorizing the Debtor to make adequate protection payments and to grant replacement liens as adequate protection as set forth in the Motion.

Dated: January 5, 2018

RAVICH MEYER KIRKMAN McGRATH
NAUMAN & TANSEY,
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610
Will R. Tansey #323056

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ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 17-32006

PREMIER MARINE, INC.,

Chapter 11

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Michael F. McGrath, declare under penalty of perjury that on January 5, 2018, copies of the attached:

1. Notice of Hearing and Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection;
2. Memorandum of Law; and
3. Proposed Order Authorizing Use of Cash Collateral and Granting Adequate Protection;

were served by sending true and correct copies via ECF, e-mail, or U.S. mail to parties on the attached service list.

- Carla O. Andres canders@gklaw.com, kboucher@gklaw.com; mfuller@gklaw.com
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Executed on: January 5, 2018

/e/ Michael F. McGrath, #168610

PREMIER MARINE, INC.
CASE NO. 17-32006

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Case No. 17-32006
PREMIER MARINE, INC., Chapter 11
Debtor.

**ORDER AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION**

This case is before the court on the debtor's Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection [Docket No. ____] (the "Motion") and the Third Amendment to Stipulation for Use of Cash Collateral [Docket No. ____] (the "Stipulation").
Appearances were noted on the record.

Based on the Motion, the Stipulation, and the record, and for the reasons set forth by the court at the hearing, **IT IS ORDERED:**

The agreements set forth in the Stipulation are approved.

Dated:

Katherine A. Constantine
United States Bankruptcy Judge