

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Case

Premier Marine, Inc.,

Case No. 17-32006

Debtor.

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

This case is before the Court on the Debtor's "Motion for Interim and Final Orders Authorizing Use of Cash Collateral and Granting Adequate Protection" (the "Motion") [Doc 7]. Prior to the hearing a stipulation was filed (the "Stipulation") [Doc 79]. Appearances were noted on the record. Except as otherwise defined herein, all capitalized terms have the meaning ascribed to them in the Stipulation.

Based on the record, and as more fully discussed and provided on the oral record during the hearing on the Motion, and pursuant to the form of stipulated order provided, the Court finds, concludes, and orders as follows¹:

I.

JURISDICTION

1. On June 19, 2017 (the "Petition Date"), Debtor filed a voluntary petition for reorganization under the Bankruptcy Code.
2. The Debtor continues to operate its businesses as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 27, 2017, the United States Trustee

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 9014 and 7052.

for the District of Minnesota appointed the Official Committee of Unsecured Creditors (the "Committee").

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Consideration of this action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II.

LOAN DOCUMENTS

4. As of the Petition Date, Debtor was indebted to American Bank of the North ("ABN" or "Lender") in the principal amount of \$6,491,041.66, accrued but unpaid interest of \$19,437.04, and any and all reasonable fees and other debts and obligations of the Debtor to ABN owing under the Loan Documents and applicable law (the "Prepetition Claims").

5. The Prepetition Claims are owing to ABN and are fully due and payable according to the Loan Documents.

III.

USE OF CASH COLLATERAL

6. The Debtor is seeking to use cash collateral as set forth in the Stipulation. To the extent any conflict may exist between the Loan Documents and the Stipulation, the Stipulation controls.

7. The Debtor's use of the cash collateral as set forth in the Stipulation is necessary to avoid immediate and irreparable harm to the Debtor, its business and its creditors. Without use of cash collateral, the Debtor will not have the funds necessary to operate its businesses, maintain assets, or pay employees, payroll taxes, insurance, utilities, and other vendors,

overhead, lease expenses and other expenses required for the reorganization of the Debtor's business and to maximize the value of the Debtor's estate.

8. Lender has indicated a willingness to consent to the Debtor's use of cash collateral, but only under the terms and conditions set forth in the Stipulation. The Debtor, Trusek, LLC ("Trusek" or "Junior Lender") and Committee agree the terms and conditions of the Stipulation and this Order are a fair and reasonable response to Debtor's request for use of cash collateral.

9. Entry of this Order approving the agreements contained in the Stipulation will minimize disruption of Debtor as a "going concern," will increase the possibilities for a successful reorganization, and, therefore, is in the best interests of the estate and its creditors.

10. The Debtor, ABN, Trusek, and the Committee agree, but the Court makes no determination that: the agreements and arrangements contained in the Stipulation authorized in this Order have been negotiated at arms' length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are enforceable in accordance with their terms and have been entered into in good faith.

Therefore, it is hereby,

ORDERED, ADJUDGED AND DECREED THAT:

11. The Stipulation is hereby approved on a final basis as set forth and to the extent provided here. The Debtor is authorized to enter into, perform and be bound by the Stipulation. The Debtor is authorized to perform its obligations in accordance with the terms of the Stipulation. The Stipulation shall be and become obligations of the Debtor and its estate upon entry of this Order.

12. All cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code which constitutes or relates to the Prepetition Collateral or Adequate Protection Collateral that is now in the Debtor's possession, custody or control, or in which the Debtor will obtain an interest during the pendency of this Bankruptcy Case (collectively, the "Cash Collateral"), shall constitute the Cash Collateral of ABN.

13. The Debtor is authorized to use Cash Collateral to the extent: (i) such actual expenditures are reasonable, necessary and incurred in the ordinary course of Debtor's business; and (ii) the type and amount of expenditure is authorized in the Budget, which is attached to the Stipulation as Exhibit B, plus or minus ten percent of any Budget line item. Performance to Budget shall be tested weekly commencing the Budget week of July 22, 2017 and measure cumulative actual performance for the trailing three weeks to Budgeted performance for the same period (the "Budget Test"). Notwithstanding the foregoing, the Debtor's authorization to use Cash Collateral shall expire on October 28, 2017 (unless terminated earlier upon a default), but such expiration date may be extended by a stipulation and an agreed order between the Debtor and ABN.

14. As adequate protection for any use or diminution in the value of ABN's interests in the Prepetition Collateral, and the Debtor's use of Cash Collateral, the Debtor is hereby authorized to grant to ABN effective as of the Petition Date, valid and perfected replacement first-priority security interests on all post-petition assets of the Debtor (excluding causes of action arising under Chapter 5 of the Bankruptcy Code) and all products and proceeds thereof (including without limitation claims of the Debtor against loss or damage to such property), including all accessions thereto, substitutions and replacements therefor, and wherever located (collectively, the "Adequate Protection Collateral").

15. If and to the extent the adequate protection of the interests of ABN in the Prepetition Collateral and/or the Cash Collateral pursuant to the Stipulation proves insufficient, ABN shall have an allowed claim under Section 507(b) of the Bankruptcy Code in the amount of any such insufficiency.

16. All the liens and security interests of ABN in the Adequate Protection Collateral, , except for the amounts funded for the Professional Fee Carve Out (as provided in the Final Order: (I) Regarding Debtor's Expedited Motion for Post-Petition Financing; and (II) Authorizing Liens and Security Interests Pursuant to 11 U.S.C. § 364(c) (the "Final DIP Order")), shall be senior to all liens and security interests of any other lender or party, including any and all liens or security interests granted to Trusek pursuant to the Final DIP Order or any subsequent order or agreement, except for, if any, Prior Security Interests. In addition, except for the amounts funded for the Professional Fee Carve Out, the administrative claim of ABN shall have priority in all respects over all administrative expenses incurred in this Chapter 11 reorganization proceeding, including any administrative claim granted to the Junior Lender pursuant to the Final DIP Order or any subsequent order or agreement, or of the kind specified in Section 507(b), 507(a)(2) or 503(b) of the Code, whether incurred or arising prior or subsequent to the date of the Petition, the entry of this Order authorizing Debtor to enter into the Stipulation or a conversion of this case pursuant to Section 1112 of the Code or in any other proceeding related hereto, and whether incurred pursuant to Section 726(b) of the Code or otherwise.

17. The replacement security interests of ABN granted pursuant to the terms of the Stipulation shall not have priority over valid, perfected, enforceable and non-avoidable security interests, if any, that had priority over the interests of ABN in the Prepetition Collateral as of the Petition Date (the "Prior Security Interests"), provided that the foregoing is without prejudice to

the rights of the Debtor or any other party in interest, including ABN and Committee, to object to the validity, priority, or extent of such Prior Security Interests, or the allowance of such debts secured thereby, or to institute any action or adversary proceedings with respect thereto.

18. The replacement security interests granted to ABN pursuant to the Stipulation and this Order shall constitute valid, automatically perfected and unavoidable first-priority security interests, and the Stipulation, the Loan Documents and this Order shall be sufficient and conclusive evidence of the first-priority, perfection, attachment and validity of all of the security interests upon the Prepetition Collateral, the Cash Collateral and the Adequate Protection Collateral granted to ABN hereunder (collectively, the “Collateral”), and ABN shall not be required to create, file, record or serve any financing statements, mortgages, notices or other documents which may otherwise be required under federal or state law in any jurisdiction or to take any other action (including, without limitation, the taking of possession) to validate or perfect (a) the security interests granted to ABN in the Stipulation or this Order, or (b) the adequate protection replacement security interests granted herein to ABN for all purposes.

19. Notwithstanding any other provision, all parties in interest, including the Committee, other than the Debtor and additional parties identified in the Stipulation, shall have until September 11, 2017, which date may be extended by written agreement of the Committee and ABN, to object to the extent, priority, validity, perfection, amount, enforceability or allowability of ABN’s security interest in, and liens upon, the Collateral and during that time period no admission by the Debtor of any fact, claim, or defense made herein, if any, shall be binding on such parties. If no objection is made thereto by such date, then without the need for either the actual adjudication by the Court or for the entry of any separate order, ABN’s security interests in, and liens upon, the Collateral shall be automatically deemed to be first in priority

(except as to Prior Security Interests), valid and enforceable, which determination shall bind Debtor and its respective assigns. In the event the Bankruptcy Case converts to Chapter 7 less than sixty (60) days prior to the expiration of September 11, 2017, the Chapter 7 trustee shall have a period of sixty (60) days from the date of appointment to perform the above investigations and object, if appropriate.

20. After September 11, 2017, no portion of the Cash Collateral shall be used to fund fees or expenses incurred by any entity, including the Debtor, any committee of unsecured creditors, any Chapter 11 trustee, any Chapter 7 trustee, or any professionals retained thereby, in objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, enforceability or allowability of the Prepetition Claims, the Prepetition Collateral, Adequate Protection Collateral, the Loan Documents, ABN's security interests under the Loan Documents, or any other rights, claims, or interests of ABN.

21. Upon a default under the Stipulation by the Debtor and failure to cure the default within three (3) business days following receipt of written notice of default (with a copy of such written notice simultaneously be provided to the Committee), ABN may immediately and at its option and discretion:

- a. Seek expedited relief from the stay pursuant to 11 U.S.C. § 362 on 5 days' notice, and
- b. Take such other action as may be available at law or in equity.

22. The Debtor is authorized to grant as further adequate protection to ABN and as adequate protection to Junior Lender, Wells Fargo Equipment Finance ("WFEF"), Ford Motor Credit ("FMC") and TD Auto Finance ("TD Auto") as follows:

a. As further adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to ABN, the Debtor will (i) grant replacement liens as previously provided in this Order; and (ii) make monthly cash payments of interest at the contract rate under the prepetition ABN loan each in the amount of \$29,681.00;

b. As adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to Junior Lender, the Debtor will (i) grant replacement liens in Junior Lender's respective collateral and any replacement liens granted hereunder shall have the same dignity, priority and effect as the lienholder's prepetition interests; and (ii) make monthly cash payments of interest at the contract rate under the prepetition Junior Lender loan each in the amount of \$5,000.00;

c. As adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to WFEF, the Debtor will (i) grant replacement liens in WFEF's respective collateral and any replacement liens granted hereunder shall have the same dignity, priority and effect as the lienholder's prepetition interests; and (ii) make monthly cash payments of interest at the contract rate under the prepetition WFEF loan each in the amount of \$684.00;

d. As adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to FMC, the Debtor will (i) grant replacement liens in FMC's respective collateral and any replacement liens granted hereunder shall have the same dignity, priority and effect as the lienholder's prepetition interests; and (ii) make monthly cash payments of interest at the contract rate under the prepetition FMC loan each in the amount of \$169.00; and

e. As adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to TD Auto, the Debtor will (i) grant replacement liens in TD Auto's respective collateral

and any replacement liens granted hereunder shall have the same dignity, priority and effect as the lienholder's prepetition interests; and (ii) make monthly cash payments of interest at the contract rate under the prepetition TD Auto loan each in the amount of \$54.00.

23. All objections to the entry of this Order were resolved pursuant to this stipulated Order.

Dated: July ___, 2017.

July 11, 2017

/e/ Katherine A. Constantine

UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 07/11/2017 Lori Vosejka, Clerk, by WM

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