

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky. Case No. 17-40075
Chapter 11

Midwest Asphalt Corporation

Debtor.

Jointly Administered with:
MAR Farms, LLC
Delta Milling, LLC

Bky. Case No. 17-41371
Bky. Case No. 17-41372

This pleading applies to:

All Debtors.
 Specified Debtor(s).

**NOTICE OF HEARING AND MOTION FOR AN ORDER AUTHORIZING THE
CONTINUED USE OF CASH COLLATERAL**

TO: ALL PARTIES IN INTEREST AND OTHER ENTITIES AS SPECIFIED IN LOCAL
RULE 9013-3:

1. Midwest Asphalt Corporation, a Minnesota Corporation (“Debtor”), by and through its undersigned attorneys, moves the court for the relief requested and gives notice of hearing herewith.
2. The court will hold a hearing on this motion at 11:30 a.m., on July 25, 2017, or as soon thereafter as counsel may be heard, in Courtroom 2B of the U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, before the Honorable William J. Fisher, United States Bankruptcy Judge. THE HEARING ON THIS MOTION MAY BE CONTINUED BY THE COURT, AT THE HEARING, WITHOUT FURTHER NOTICE TO ANY PARTY.
3. Any response to this motion must be filed and delivered not later five days before the time set forth for the hearing. IF OBJECTIONS ARE NOT SERVED AND FILED IN A TIMELY MANNER, THE COURT MAY GRANT THE REQUESTED RELIEF WITHOUT A HEARING IN ACCORDANCE WITH LOCAL RULE 9013-2(f).

4. The petition commencing this Chapter 11 case was filed on January 12, 2017 (the “Filing Date”), and the case is now pending before this court.

5. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 4001, 5005, and Part IX of the Local Rules. This motion is filed under Bankruptcy Rule 4001(b) and Local Rule 4001-2. This proceeding arises under 11 U.S.C. §§ 361, 363, and 364 of the Bankruptcy Code, and applicable national and local rules.

Request for Relief

6. Movant requests the following relief:

- (a) For an order allowing Debtor the continued use of cash collateral as defined in 11 U.S.C. § 363 in the Bankruptcy Code, through December 31, 2017.
- (b) For an order approving the granting of a post-petition security interest in certain property, as adequate protection.
- (c) For such other and further relief as the court deems just and equitable.

Background

7. Debtor is a construction company, primarily in the business of constructing and paving roads. The Debtor has been in business since 1968.

8. The Company currently employs approximately 150 people. The seasonal work begins to grow in April, reaches its peak in June and July, and is completed in November each year. The Company carries out other work during the off season.

9. This Court previously granted the Debtor the right to use cash collateral in two prior orders, the most recent granted the use of cash through July 31, 2017 (See Docket #183) (the “Cash Collateral Order”).

10. Per Local Rule 4001-2, attached hereto and made a part hereof, are Exhibit A, constituting a liquidation analysis of the Debtor as of the date of filing; Exhibit B, constituting a list of all Secured Lenders, the approximate amounts due to each and a brief description of their collateral; Exhibit C, a cash flow showing the sources and uses of cash collateral, and the projected value thereof through December 31, 2017.

11. Of the creditors with secured claims, the only parties with a pre-petition interest in cash collateral is Callidus Capital Corporation (“Callidus”) Additional post-petition lien in cash collateral have ben granted to MAC Investment- Chanhassen, LLC and Mr. Gary Welty. All of Debtor’s other Secured Lenders have liens in only certain specified equipment; and have no liens in cash collateral (see Exhibit B). As of the date of the filing, Callidus was owed approximately \$15.0 Million. Callidus is undersecured (see Exhibits A and B).

12. Cash collateral assets (consisting of cash, inventory, accounts receivable, and the retainer for debtor’s counsel) had a value, as of the filing date, of \$4,063,045.00

Adequate Protection

13. The Debtor agrees to grant to Callidus, the standard items of adequate protection (ie. Replacement Lien, etc.) as more fully set forth below. (See. e.g. paragraphs 19 and 20).

14. The Debtor will continue to offer Callidus new liens in all unencumbered assets of the Debtor as set forth in the First and Second Cash Collateral Orders. Specifically, the Debtor proposes to continue grant liens in the (i) Unencumbered Vehicle Collateral, as adequate protection of Callidus’ position, (ii) the equity in all equipment financed outside of Callidus, (iii) the cash value in life insurance, and (iv) the value in Chapter 5 claims. In addition, the Debtor is willing to grant a mortgage in the equity in real estate owned by the Debtor. (Hereinafter, collectively the “Additional Post-Petition Collateral”).

15. Thus, as stated, as of the Filing Date, the Debtor had cash collateral assets with a value of approximately \$4,063,045.00 (consisting of cash, inventory, accounts receivable, and the retainer of Debtor's counsel) (see Exhibit C). With the Additional Post-Petition Collateral added, the Debtor projects that the value of collateral securing the cash collateral, going forward will be in excess of the value of cash collateral as of the filing date, and continue to rise as the summer season gets into full swing. (See Exhibit C.) (At all times collateral securing the cash collateral will remain in excess of its value as of the Filing Date.)

16. Thus, by reason of the foregoing, and based upon the projected values and the cash flow projection, the position of Callidus's cash collateral including cash, accounts receivable and inventory (along with the Additional Post-Petition Collateral), remains stable and increases in value.

17. Debtor requires the use of cash collateral in order to carry on its business activities, to pay for its current operations, including purchases, insurance, utilities, payroll, and payroll taxes and rent. Debtor shall be able to continue operations, and believes that it will be able to obtain a confirmed plan and reorganization in accordance with existing rules and statutes.

18. In addition to that set forth above, as and for adequate protection, Debtor proposes that it be authorized to grant to Callidus (i) a replacement lien or a security interest in any new assets, materials and accounts receivable, generated from the use of cash collateral, with the same type, priority, dignity, and validity of prepetition liens or security interests. Specifically, the Debtor proposes granting a replacement lien to the Callidus to the extent that it protects them against diminution of the value of their collateral as it existed at the time of the commencement of this proceeding; and (ii) grant to Callidus liens in the Additional Post-Petition Collateral, as additional adequate protection of its position.

19. As additional adequate protection, Debtor proposes (1) to maintain insurance on all of the property in which the Callidus (and all other secured creditors) claim a security interest; (2) to pay all post-petition federal and state taxes, including timely deposit of payroll taxes; (3) provide the Callidus (and all other secured creditors, upon 24 hour prior notice), access during normal business hours for inspection of their collateral and the Debtor's business records; and in a manner not disruptive to normal business operations of the Debtor; and (4) all cash proceeds and income of the Debtor will be deposited into a Debtor in Possession Account (i.e., the "DIP" account).

20. Debtor believes it can operate in Chapter 11, and can, within a reasonable time period, propose and confirm a plan of reorganization through the use of the advantages of Chapter 11, including the use of §1129 of the Bankruptcy Code, and other sections.

21. Debtor has given notice by ECF and U. S. mail (as set forth in the affidavit of service) of this motion to parties in interest specified in Local Rule 9013-3.

22. Pursuant to Local Rule 9013-2(c), the Debtor states that should testimony be necessary at either the preliminary or final hearing on this matter, Debtor reserves the right to call the following witness(es):

- a) Blair Bury, president of the Debtor;
- b) Gregg Prest, CFO of the Debtor;
- c) Jeffrey Reed, Blue Water Capital Fund, consultants to the Debtor;
- d) Other employee or agent of Midwest Asphalt Corporation, and
- (e) Other witnesses needed to rebut the testimony of any adverse party.

23. This motion is further supported by memoranda of law, incorporated by reference herein.

WHEREFORE, Debtor prays for an order of the court as follows:

1. Authorizing the Debtor to continue to use cash collateral within the provisions of Section 363, through December 31, 2017.
2. Authorizing the Debtor to grant to Callidus as and for adequate protection of its secured interest, (i) the right to a replacement lien and post-petition security interest, to the same validity, priority, and extent of its security interest held prepetition, in any and all new cash collateral including new inventory receivables of Debtor. Such replacement lien will secure it against diminution of the value of its collateral, as it existed as of the commencement of this case; and (ii) granting to Callidus a security interest in the Additional Post-Petition Collateral, as additional adequate protection, to secure Callidus against diminution of the value of its cash collateral, as it existed as of the commencement of this case.
3. Granting such other further protections as the court deems reasonable, so as to adequately protect the secured creditors' position, and allow the Debtor to use cash collateral in the ordinary course of business.
4. For such other and further relief as the court may deem just and equitable.

Respectfully submitted,

Dated: July 11, 2017

/e/Thomas J. Flynn
Thomas J. Flynn (30570)
Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Ste. 1000
Minneapolis, Minnesota 55437-1060
952-835-3800
tflynn@larkinhoffman.com
Attorneys for Debtor

Exhibit A
MIDWEST ASPHALT CORPORATION
Liquidation Analysis

MIDWEST ASPHALT Liquidation Analysis

January 10, 2017

Assets	Comment	Book Value	Liquidation Value
(1) Cash		\$ 249,745	\$ 249,745
(2) Accounts Receivable	See attached detail	\$ 4,941,680	\$ 2,727,735
(3) Inventory	See attached detail	\$ 1,911,060	<u>\$ 779,310</u>
Total Line of Credit Collateral			\$ 3,756,790
Less: Callidus LOC Debt	Includes Airball, closing fee & PIK		<u>\$ (9,636,062)</u>
Over/(Under) Secured LOC Tranche:			\$ (5,879,272)
(4) Equipment	See attached detail		
Machinery/Equipment CALLIDUS PERFECTED SENIOR	Appraised Value	\$ 3,214,030	\$ 2,571,224
Less: Callidus Equipment Debt	Includes PIK		<u>\$ (2,661,483)</u>
Over/(Under) Secured Equipment Tranche:			\$ (90,259)
Real Estate			
Eden Prairie Minnesota Property	Appraised Value 2981000@.70		\$ 2,086,700
Hastings Minnesota Gravel Pit	Appraised Value 2727735@.70		<u>\$ 1,909,145</u>
Totla Real Estate Collateral			\$ 3,995,845
Less: Callidus Real Estate Debt	Includes PIK		<u>\$ (3,237,464)</u>
Over/(Under) Secured Real Estate Tranche:			\$ 758,381
TOTAL COLLATERAL POSITION OVER/(UNDER) SECURED--CALLIDUS			<u>\$ (5,211,150)</u>
TITLED MACHINERY AND EQUIPMENT (Vehicles, Trucks, Trailers)	Appraised Value	\$ 1,148,755	\$ 982,186
NOTE: Callidus not perfected, assets are free and clear of liens at date of filing			
TOTAL AVAILABLE FOR UNSECURED CREDITORS			\$ 982,186
TOTAL GENERAL UNSECURED DEBT	Est.		\$ 15,000,000
% PAID TO UNSECURED CREDITORS	Est.		6.5%

Exhibit B
Secured Lenders

MIDWEST ASPHALT CORPORATION
Chapter 11 Bky. Case No. 17-40075
SECURED CREDITORS

NAME & ADDRESS	AMOUNT DUE (estimated)	COLLATERAL
Callidus Capital Corporation Brookfield Place, Bay Wellington Tower 181 Bay Street, Suite 4620 Toronto, Ontario M5J 2T3 Canada	\$15.0 Million	Blanket Lien (except for titled equipment and mortgage on portion of value of the real estate)
Allegiance Capital, LLC 2935 Country Drive, Suite 102 Little Canada, MN 55117	\$114,434.82	Equipment Loan
Caterpillar Financial Services Corp Attn: Mary Ann P.O. Box 730669 Dallas, TX 75373-0669	\$35,035.93	Equipment Loan
Kinetic Leasing P.O. Box 9785 Fargo, ND 58106-9785	\$43,321.64	Equipment Loan (Capital Lease)
Kraus-Anderson Capital, Inc. Attn: Don Knudsen 523 South Eighth Street Minneapolis, MN 55404	\$299,431.07	Equipment Loan
Scottrade Bank Equipment Finance Scottrade Bank Attn: Vicky Spoerry 12800 Corporate Hill Drive St. Louis, MO 63131	\$319,992.85	Equipment Loan
Susquehanna.com 2 Country View Road, #300 Malvern, PA 19355	\$45,100.35	Equipment Loan
Blaine Johnson 39435 Tree Line Drive Lady Lake, FL 32159	\$2.1 Million	Blanket Lien (subordinated to Callidus Capital Corporation)

Exhibit C
Cash Flow Projections

MW Monthly Cash Projections

Month Ending	12-Jan	Jul	Aug	Sep	Oct	Nov	Dec	Totals
LIQUIDATION VALUE OF COLLATERAL / CASH COLLATERAL								
	\$ 4,063,045	\$ 4,063,045	\$ 4,063,045	\$ 4,063,045	\$ 4,063,045	\$ 4,063,045	\$ 4,063,045	
Cash Balance (Ending Cash Balance)	\$ 444,000	\$ 24,790	\$ 29,916	\$ 453,522	\$ 842,962	\$ 1,073,926	\$ 1,507,565	
A/R Liquidation Value	\$ 2,727,735	\$ 3,085,295	\$ 3,338,538	\$ 3,014,123	\$ 2,322,053	\$ 1,811,078	\$ 825,321	
Inventory Liquidation Value	\$ 779,310	\$ 696,995	\$ 696,995	\$ 696,995	\$ 696,995	\$ 696,995	\$ 696,995	
Retainer (Net of Accrual)	\$ 112,000							
TOTAL CASH COLLATERAL	4,063,045	3,807,080	4,065,448	4,164,640	3,862,011	3,581,999	3,029,880	
CASH COLLATERAL USED								
Total Cash Collateral		3,807,080	4,065,448	4,164,640	3,862,011	3,581,999	3,029,880	
Equipment - NOT Perfected Lien - Titled Vehicles		982,200	982,201	982,202	982,203	982,204	982,205	
Cash Surrender Value of Life Insurance Net of Loans		184,103	184,103	184,103	184,103	184,103	184,103	
TOTAL POST FILING COLLATERAL	-	4,973,382	5,231,752	5,330,945	5,028,316	4,748,306	4,196,188	
EXCESS CASH COLLATERAL COVERAGE		910,337	1,168,707	1,267,900	965,271	685,261	133,143	
MODEL ASSUMPTIONS:								
Revenues:								
Gross Billings Backlog		2,700,338	2,827,212	2,305,845	1,592,609	1,456,031		
Retainage (Assumed 5%)		135,017	141,361	115,292	79,630	72,802	-	
Net Billings		2,565,321	2,685,851	2,190,553	1,512,979	1,383,229	-	
Collections on Net Billings (60 Days Turn)		1,056,406	2,284,268	2,565,321	2,685,851	2,190,553	1,512,979	
Collections on Retainage (120 Day Turn)			-	55,600	120,225	135,017	141,361	
		\$ 1,056,406	\$ 2,284,268	\$ 2,620,921	\$ 2,806,076	\$ 2,325,570	\$ 1,654,339	
Cost of Goods Sold								
Labor Costs = 13% Historical wage + benefits	13%	351,044	367,538	299,760	207,039	189,284	-	
Other (material, subcontract, etc.)	64%	1,717,415	1,798,107	1,466,517	1,012,899	926,036	-	
Labor & Material	77%	\$ 2,068,459	\$ 2,165,644	\$ 1,766,277	\$ 1,219,938	\$ 1,115,320	\$ -	
Payment Timing:								
Direct Labor Payroll (Monthly totals)		175,522	183,769	149,880	103,520	94,642	-	
1/2 of Direct Labor is Union Benefits, which is due Net 30		156,292	175,522	183,769	149,880	103,520	94,642	
50% of Material Sub Contractor Etc. - COD		858,707	899,053	733,259	506,450	463,018	-	
50% of Material Sub Contractor Etc - 45 Day Terms		559,123	811,668	878,880	816,156	619,854	484,734	
Totals		\$ 1,749,645	\$ 2,070,012	\$ 1,945,788	\$ 1,576,005	\$ 1,281,034	\$ 579,376	

MW Monthly Cash Projections

Month Ending	12-Jan	Jul	Aug	Sep	Oct	Nov	Dec	Totals						
Beginning Cash Balance	\$	100,000	\$	24,790	\$	29,916	\$	453,522	\$	842,962	\$	1,073,926	\$	100,000
Operational Sources of Cash														
Project Related:														
Prepetition Collections		125,000		135,000		60,000								320,000
Prepetition Collections via Northern Escrow		160,000		20,000		20,000								200,000
Postpetition Collections		1,056,406		2,284,268		2,620,921		2,806,076		2,325,570		1,654,339		12,747,580
Materials, Trucking & Rents														
Materials		380,000		540,000		625,000		380,000		245,000		220,000		2,390,000
Trucking		90,000		95,000		110,000		125,000		140,000		50,000		610,000
Rent		10,000		10,000		10,000		10,000		10,000		10,000		60,000
DIP Financing Used		700,000												700,000
DIP Financing Paid Back						(250,000)		(250,000)						(500,000)
DIP Financing Available but Unused		500,000		500,000		500,000		750,000		1,000,000		1,000,000		
Total Operational Sources of Cash	\$	2,521,406	\$	3,084,268	\$	3,445,921	\$	3,071,076	\$	2,470,570	\$	1,934,339	\$	16,527,580
Operational Uses of Cash														
Cost of Goods Sold - Direct Costs		2,056,330		2,448,857		2,291,503		1,829,630		1,467,404		654,586		\$ 10,748,310
Salaries, Wages & Burden - Indirect		253,826		253,826		317,282		253,826		246,702		292,615		\$ 1,618,076
Advertising & Estimating		4,000		4,000		4,000		4,000		4,000		4,000		\$ 24,000
Audit & Tax						30,000								\$ 30,000
Bonds, Permits & Licenses		10,000		10,000		10,000		10,000		10,000		10,000		\$ 60,000
Education, Training and Testing		4,600		4,600		4,600		4,600		4,600		4,600		\$ 27,600
Fuel		15,000		15,000		18,750		15,000		15,000		15,000		\$ 93,750
Insurances		7,000		7,000		7,000		7,000		7,000		270,000		\$ 305,000
Leases & Rented Equipment		80,000		80,000		80,000		80,000		80,000		150,000		\$ 550,000
Legal Fees		30,000		30,000		30,000		30,000		30,000		5,000		\$ 155,000
Maintenance and Repairs		75,000		75,000		75,000		75,000		75,000		75,000		\$ 450,000
Postage & Supplies		2,000		2,000		2,000		2,000		2,000		2,000		\$ 12,000
Telecommunications		6,300		6,300		6,300		6,300		6,300		6,300		\$ 37,800
Training, Safety and Testing		1,280		1,280		1,600		10,000		320		320		\$ 14,800
Travel & Entertainment		1,280		1,280		1,280		1,280		1,280		1,280		\$ 7,680
Trustee Fees		10,000						13,000						\$ 23,000
Utilities		12,000		12,000		15,000		12,000		12,000		10,000		\$ 73,000
Total Use of Cash (Expenses)	\$	2,568,615	\$	2,951,143	\$	2,894,315	\$	2,353,636	\$	1,961,606	\$	1,500,701	\$	14,230,016
Financing Cash Flow														
Adequate Protection Payments		28,000		28,000		28,000		28,000		28,000				\$ 140,000
Prepetition Lienable AP and NE Payments				100,000		100,000		300,000		250,000				\$ 750,000
Net Financing Cash Flow		28,000		128,000		128,000		328,000		278,000		0		\$ 890,000
Increase/Decrease Cash from Operations	\$	(75,210)	\$	5,125	\$	423,607	\$	389,440	\$	230,964	\$	433,638	\$	1,407,565
Ending Cash Balance	\$	24,790	\$	29,916	\$	453,522	\$	842,962	\$	1,073,926	\$	1,507,565	\$	1,507,565
Total Cash Availability W/DIP Line of Credit		524,790		529,916		953,522		1,592,962		2,073,926		2,507,565		

In re:

Bky. Case No. 17-40075
Chapter 11

Midwest Asphalt Corporation

Debtor.

Bky Case No. 17-41371
Bky Case No. 17-41372

Jointly Administered with:
MAR Farms, LLC
Delta Milling, LLC

**SEPARATE VERIFICATION OF CASH
COLLATERAL AND EXHIBITS
PURSUANT TO LOCAL RULE 4001-2(a)**

This pleading applies to:

- All Debtors.
 Specified Debtor(s).

Pursuant to Local Rule 4001-2(a) the undersigned hereby states under penalty of perjury that he is the CFO of the Debtor, that he has firsthand knowledge of the facts stated in the Notice of Motion and Exhibits A-C attached to the pending motion for use of continued cash collateral by the Debtor and that the facts set forth therein are true and correct, to the best of his knowledge.

Date: _____

7/11/17



Gregg Prest, CFO

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky. Case No. 17-40075
Chapter 11

Midwest Asphalt Corporation

Debtor.

Jointly Administered with:
MAR Farms, LLC
Delta Milling, LLC

Bky. Case No. 17-41371
Bky. Case No. 17-41372

This pleading applies to:

- All Debtors.
 Specified Debtor(s).

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN ORDER
AUTHORIZING THE CONTINUED USE OF CASH COLLATERAL**

Midwest Asphalt Corporation, the above-referenced debtor (the “Debtor”), by and through its attorneys, submits this memorandum of law in support of its motion for expedited relief and for an order authorizing the continued use of cash collateral. The petition commencing this Chapter 11 case was filed on January 12, 2017 (the “Filing Date”). This memorandum incorporates by reference all of the facts set forth in the motions filed herewith. All defined terms therein shall have the same definitions here.

Section 363 of the Bankruptcy Code prohibits a debtor from using cash collateral without the consent of the secured party having an interest in such collateral or court order. Such an order can be entered if the debtor offers adequate protection to the party or parties with a secured interest, in cash collateral.

Adequate Protection in This Case

(A) Cash Collateral Values

As set forth in the facts, the value of cash collateral as of the filing date (consisting of cash, inventory and accounts receivable and all Debtor's attorney retainer) was \$4,063,045.00 million.

The Debtor is required to show that the bank's security in cash collateral will be protected. However, this does not mean that any fluctuations of value in the cash collateral asset will automatically require the Debtor to put in new cash infusions or new assets into the Company to protect the bank. Such a rule would doom most businesses that run in a seasonal manner. Thus, the courts look to the "relevant period" of the Debtor's operations and the request for use of cash. (See In Re Martin, 15 BR 56 (Bky. E.D. Pa. 1981); In Re Dynaco, 162 BR 389 (1993). The appropriate "relevant period" is not a "snapshot" showing fluctuation during a "selected short period" but rather a "motion picture" showing the normal "cycling" of business. (See, Dynaco, supra.) Thus, only if there appears to be a "permanent" decline, should a court require new value, cash or new assets. As stated by the Court in Dynaco Corporation, supra:

"The rationale for this approach stems from the rationale of Chapter 11 itself, a rehabilitative proceeding . . .

* * *

"The concept consists of the stability of collateral value rather than any particular level of value" (citing cases)

Cash collateral values will continue to grow during the high season to a level in excess of the value of cash collateral as of the filing date. Attached to the motion is the Debtor projections showing the value of cash collateral through December 31, 2017. (See Exhibit C).

(B) Grant of New Liens

The Debtor in this case (as stated in the motion) is willing to continue to grant to Callidus new liens in Additional Post-Petition Collateral.

This “Additional” Collateral is more than enough to adequately protect the bank. As this Court is aware, adequate protection may take many forms, only some of which are set forth in Bankruptcy Code § 361. (*See, e.g.*, Collier of Bankruptcy § 361.01; *see also*, In Re Briggs Transportation Company, 780 F.2d 1339 (8th Cir. 1985).

Moreover, the liens being given to Callidus are only given as “adequate protection” of their interest. Thus, the lien will only be effected “to the extent of the diminution in value of their cash collateral.” If the Debtor is allowed to continue to operate until its high season, values are projected to rise, and there will be no liens on the Additional Post-Petition Collateral because there will have been no “diminution in the value of cash collateral” at that time. The new liens, therefore, are a temporary measure, given as belt and suspenders during the low point of the Debtor’s year.

Thus, the granting of the liens favor not only the bank but the entire estate as well as the unsecured creditors.

To summarize, Debtor has cash collateral assets with a value of approximately \$4,063,045.00 as of the Filing Date (consisting of cash, inventory and net receivables, and retainer for Debtor council). Debtor proposes to grant to Callidus Capital (the only lender with a pre-petition lien in cash collateral) replacement liens along with additional collateral. As adequate protection of its position, liens in certain rolling stock and vehicles, cash value in life insurance, Chapter 5 claims, equity in any equipment, along with an additional mortgage on certain real estate.

The exhibits A, B and C, included herewith, show that the secured creditors' positions (as more thoroughly set forth below) will not be harmed by continued operations during the period that Debtor requests use of cash collateral.

The Debtor need only show that it will be able to maintain the value of the collateral over the seasonal nature of its business. (See case cited above.) See also, United Savings Assoc. v. Timbers of Linwood Forest, 108 S. Ct. 626 (1988).

It is proposed therefore that Callidus receive a replacement lien in the assets of the Debtor (with additional liens in the additional post-petition collateral), and that by virtue thereof, it is adequately protected in this case. The grant of replacement liens will be to the same type, extent, priority and dignity of any lien it had or may have had prepetition and grant post-petition liens as set forth above. Furthermore, the lien will be enforceable post-petition, only to the extent necessary to protect against the diminution of value of Cash Collateral as it existed at the time of filing of the case.

Cash flow projections filed with this motion indicate Debtor will be able to maintain the status quo and will improve its condition on a cash basis through December 31, 2017. The secured party's interest, therefore, is adequately protected.

This memorandum is submitted in support of Debtor's motion for an order authorizing the continued use of cash collateral.

Respectfully submitted,

Dated: July 11, 2017

/e/Thomas J. Flynn
Thomas J. Flynn (30570)
Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Ste. 1000
Minneapolis, Minnesota 55437-1060
952-835-3800
tfflynn@larkinhoffman.com
Attorneys for Debtor

In re: Bky. Case No. 17-40075
Chapter 11
Midwest Asphalt Corporation

Debtor.

Jointly Administered with:
MAR Farms, LLC
Delta Milling, LLC

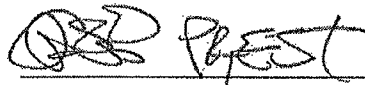
Bky. Case No. 17-41371
Bky. Case No. 17-41372

This pleading applies to:
 All Debtors.
 Specified Debtor(s).

VERIFICATION

The undersigned, the CFO of the Debtor, hereby declare under penalty of perjury that the facts set forth in the Motion for an Order Authorizing the Continued Use of Cash Collateral, and the Memorandum in support of this motion, and the exhibits thereto are correct to the best of my knowledge and belief.

Date: 7/11, 2017


Gregg Prest, CFO

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re: Bky. Case No. 17-40075
Chapter 11

Midwest Asphalt Corporation

Debtor.

Jointly Administered with: Bky. Case No. 17-41371
MAR Farms, LLC Bky. Case No. 17-41372
Delta Milling, LLC

This pleading applies to:

All Debtors.
 Specified Debtor(s).

CERTIFICATE OF SERVICE

I, Thomas J. Flynn, under penalty of perjury, hereby declare that on April 19, 2017, in connection with the above-referenced matter, filed and served the following documents with the Clerk of Court via ECF, and served on the parties listed on the attached service list by the means indicated:

1. Notice of Hearing and Motion for an Order Authorizing Continued Use of Cash Collateral;
2. Exhibits A-C;
3. Verification;
4. Separate Verification of Cash Collateral and Exhibits Pursuant to Local Rule 4001-2(a);
5. Certificate of Service; and
6. Order for Use of Continued Cash Collateral

Dated: July 11, 2017

/e/Thomas J. Flynn

In re:

Midwest Asphalt Corporation
Debtor.

Bky. Case No. 17-40075
Chapter 11

Jointly Administered with:
MAR Farms, LLC
Delta Milling, LLC

Bky. Case No. 17-41371
Bky. Case No. 17-41372

This pleading applies to:

- All Debtors.
 Specified Debtor(s).
-

ORDER REGARDING FURTHER USE OF CASH COLLATERAL

On motion by Midwest Asphalt Corporation for continued use of cash collateral,

IT IS HEREBY ORDERED:

1. The Debtor is authorized to use cash collateral in the ordinary course in accordance with the Debtor's "Projections" (Debtor's Exhibit C, attached to its motion). Deviations from the Projections will be dealt with pursuant to Paragraph 7. The payment of any prepetition claims are subject to the further procedures set forth in the Agreed Order Resolving Debtor's Motion for Payment of Certain Pre-Petition Claims (Docket No. 61).

2. Unless further extended by an order of the Court, the Debtor's authorization to use cash collateral terminates December 31, 2017.

3. For purposes of additional adequate protection, the Debtor grants to Callidus Capital Corporation ("Callidus"), only to the extent of diminution in the value of cash collateral or other types of collateral during the pendency of this case, a post-petition lien on all assets of the Debtor (and their proceeds), whether now existing or hereafter arising or acquired, whether arising or acquired pre-petition or post-petition, of every kind and nature whatsoever, including

but not limited to all titled vehicles, rolling stock, causes of action under Chapter 5 of Title 11 of the United States Code and any and all state-law causes of action recognized, permitted and/or incorporated therein, and the cash value of life insurance policies held by the Bury Family Trust and Blaine M. Johnson. The Bury Family Trust and Blaine M. Johnson are prohibited from taking any further loans against the cash value of the life insurance without further order of the Court. The liens granted herein are deemed properly perfected without any further act or notice on the part of the Debtor or Callidus.

4. As additional adequate protection, Debtor agrees to: (a) maintain insurance on all of the property in which Callidus (and any other secured creditors) claim a security interest and maintain all of its equipment, including titled vehicles, according to its normal pre-bankruptcy maintenance schedules; (b) pay all post-petition federal and state taxes, including timely deposit of payroll taxes; (c) provide Callidus and its financial advisor(s) and any other secured creditors, upon 24 hour notice (with disclosure of the documents needed or explanation of the issues to be discussed), access during normal business hours for inspection of their collateral and the Debtor's business records (including updated backlogs and accounts receivable), and to discuss the Debtor's ongoing operational and financial status directly with Debtor's management; (d) deposit all cash proceeds and income into the Debtor's DIP account; (e) on Monday of each week provide to Callidus, for the prior week (i) copies of the Debtor's check register (in Excel) showing all deposits and expenditures, (ii) copies of all bank transactions (by PDF), and (iii) an updated A/R Aging (in Excel); and (g) both the Debtor and Callidus shall timely respond to each other regarding any reasonable request for explanation or information, including information necessary to timely calculate, and attempt to timely resolve any disputes regarding, the financial performance of the Debtor.

5. As additional adequate protection for Continued Use of Cash Collateral, the Debtor agrees to make an adequate protection payment of \$20,000 to Callidus on or before the

15th day of each month until Debtor's right to use cash collateral terminates under Paragraph 2 above.

6. As additional adequate protection, if the Debtor materially violates this Order (or in the event the Debtor materially deviates from the Projections and Callidus' adequate protection position is or may be materially prejudiced thereby), then Callidus may move the Court for appropriate relief, including but not limited to stay relief or further adequate protection. Callidus may move on an emergency basis if warranted. The Debtor and any other party-in-interest may oppose such relief, and waive no rights, at law or in equity, in defense of any such motion.

Dated: _____

William J. Fisher
United States Bankruptcy Judge