

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA – READING DIVISION**

In re:

VCW ENTERPRISES, INC. d/b/a M&W  
PRECAST, f/k/a MODERN PRECAST  
CONCRETE, INC.,

Debtor.

Chapter 11

Case No. 12-21304-REF

**ORDER APPROVING STIPULATION BY AND  
BETWEEN DEBTOR AND DEBTOR-IN-POSSESSION  
AND M&T BANK ALSO KNOWN AS MANUFACTURERS AND  
TRADERS TRUST COMPANY, AS ASSIGNEE OF WILMINGTON  
TRUST COMPANY AND/OR WILMINGTON TRUST FSB, AUTHORIZING  
DEBTOR’S AND DEBTOR-IN-POSSESSION’S USE OF CASH COLLATERAL**

Upon the Stipulation By and Between Debtor and Debtor-in-Possession and M&T Bank, Also Known As Manufacturers and Traders Trust Company, As Assignee of Wilmington Trust Company and/or Wilmington Trust FSB, Authorizing Debtor’s and Debtor-in-Possession’s Use of Cash Collateral (the “Stipulation”); due and proper notice as required by law having been given; and the Court having jurisdiction over the subject matter of this proceeding;

**IT IS HEREBY ORDERED THAT**

1. The Stipulation is hereby approved.
2. Authorization to Use Cash Collateral<sup>1</sup>. Subject to the terms, conditions and limitations contained in the *Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, and (III) Modifying the Automatic Stay* [Docket No. 171] (the “First Cash Collateral Order”) (a copy of the First Cash Collateral Order is attached to the Stipulation as Exhibit A and incorporated herein), the *Order Approving Stipulation by and between Debtor and Debtor-in-Possession and M&T Bank also known as Manufacturers and Traders Trust*

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Stipulation and/or First Cash Collateral Order.

*Company, as Assignee of Wilmington Trust Company and/or Wilmington Trust FSB* [Docket No. 445] (the "Second Cash Collateral Order") (a copy of the Second Cash Collateral Order is attached to the Stipulation as Exhibit B and incorporated herein), and the *Order Approving Stipulation by and between Debtor and Debtor-in-Possession and M&T Bank also known as Manufacturers and Traders Trust Company, as Assignee of Wilmington Trust Company and/or Wilmington Trust FSB* [Docket No. 505] (the "Third Cash Collateral Order") (a copy of the Third Cash Collateral Order is attached to the Stipulation as Exhibit C and incorporated herein), as modified hereby, and this Order, the Debtor is authorized to use Cash Collateral for the period (the "Subject Period") from July 19, 2013 through the date which is earliest to occur of (a) July 26, 2013 or (b) a Termination Date strictly pursuant to and in accordance with the Budget attached hereto as Exhibit 1 (the "Budget"). Upon the date of the expiration of the Subject Period (the "Expiration Date"), the Debtor's authority to use Cash Collateral shall cease absent further Order of this Court. The ability of the Debtor to use any Cash Collateral shall terminate on the earlier of the occurrence of an Event of Default (as defined herein) or the Expiration Date (the "Termination Date").

3. Events of Default. The occurrence of any of the following events, unless waived by M&T Bank, also known as Manufacturers and Traders Trust Company, as assignee of Wilmington Trust Company and/or Wilmington Trust FSB (the "Bank"), shall constitute an event of default (each individually, an "Event of Default," and collectively, the "Events of Default"):

- a. Violation of any of the terms of this Order;

b. The occurrence of any default, Event of Default or violation of any of the terms of the Loan Documents, the First Cash Collateral Order, the Second Cash Collateral Order and/or the Third Cash Collateral Order;

c. The Debtor's failure to cause the \$5,000 interest payments towards the West Term Loan to be paid;

d. The Debtor's failure to pay any monthly payments of cash-pay interest with respect to the Debtor's interest rate swap obligations in the amount of approximately \$13,000;

e. The Debtor makes any distributions or payments to (A) any direct or indirect holder (at any level of the ownership structure) of any of Debtor's capital stock or any person that holds a partnership or membership interest in Debtor or (B) any principals, shareholders, members and/or partners of Debtor; provided, however, that the foregoing restriction shall not apply to salary payments by the Debtor to Mr. Vernon Wehrung, subject to the Budget;

f. The Debtor's failure to comply with the reporting requirements contained in the Loan Documents, First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or this Order within two (2) business days after receiving notice of such failure from the Bank;

g. The Debtor's failure to comply with the Budget, subject to any variance agreed to in writing by the Bank;

h. The failure of the Debtor to deliver to the Bank and/or the Committee's counsel any of the weekly reports required in paragraphs 4 and/or 13 of the First Cash Collateral Order;

i. The failure of the Debtor to deliver to the Bank and/or the Committee's counsel any of the weekly reports of the Debtor's cash disbursements for each of the Debtor's expense categories;

j. The failure of the Debtor to deliver to the Bank and/or the Committee's counsel any weekly report of the amount of variance, if any, from the corresponding amounts set forth in the Budget;

k. The Debtor expends amounts that exceed an aggregate variance of ten percent (10%) of the Budget for any calendar week;

l. The resignation or removal of James Loew as Chief Financial Officer to the Debtor;

m. The failure of the Debtor to permit the Bank's Consultant to have complete unfettered access to all of the Debtor's facilities, books and/or records, and/or management, which may include the Bank's Consultant's daily presence at the Debtor's Ottsville location or any other place where Debtor's records may exist;

n. Conversion of the Debtor's Case to a Case under chapter 7 of the Bankruptcy Code;

o. The appointment of a trustee pursuant to § 1104(a)(1) or (a)(2) of the Bankruptcy Code in the Debtor's Case;

p. The appointment of an examiner with expanded powers, other than a fee examiner;

q. Dismissal of the Debtor's Case or any subsequent chapter 7 Case without the express written consent of the Bank, in its sole and absolute discretion;

r. The entry of any order materially modifying, reversing, revoking, staying, rescinding, vacating, or amending this Order, First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order without the express prior written consent of the Bank, in its sole and absolute discretion;

s. The failure of the Debtor to provide to the Bank a first priority priming lien on all of the assets of the Debtor, including but not limited to the Collateral and cash and/or cash equivalents;

t. The failure of the Debtor to serve the Bank and its counsel and the Committee's counsel with a copy of each monthly operating report filed by the Debtor in this Case as required by the Court, the U.S. Trustee or applicable law;

u. Default in the payment of any amounts owed by the Debtor to the Bank as due and owing pursuant to the Budget and the terms of this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order;

v. The rendering against the Debtor of an arbitration award, a final judgment, decree or order, in each case requiring the post-petition payment of money in excess of \$25,000 in the aggregate or a post-petition lien on any of the Collateral, and the continuance of such arbitration award, judgment, decree or order unsatisfied and in effect for any period of thirty (30) consecutive days;

w. The filing by the Debtor of any motion or proceeding that could reasonably be expected to result in material impairment of the Bank's rights under the Loan Documents, as modified by this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order, including any

motion to surcharge the Bank, the Loans, or the Collateral under section 506(c) of the Bankruptcy Code or otherwise;

x. The filing of a motion by the Debtor for entry of an order staying or otherwise prohibiting the prosecution of any enforcement action or any motion or pleading seeking to challenge the Bank's Prepetition Liens or otherwise commencing any cause of action against the Bank;

y. The Debtor (except following the Bank's prior written request or with the Bank's express prior written consent) shall file a motion with the Bankruptcy Court or any other court with jurisdiction in the matter seeking an order, or an order is otherwise entered, modifying, reversing, revoking, staying, rescinding, vacating, or amending this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order, the Confirmation Order, or any of the Loan Documents as modified by this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order, without the Bank's express prior written consent (and no such consent shall be implied from any other action, inaction, or acquiescence of the Bank);

z. The Debtor shall file any motion or application, or the Bankruptcy Court allows the motion or application of any other party, which seeks approval for or allowance of any claim, lien, security interest ranking equal or senior in priority to the claims, liens and security interests granted to the Bank under this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order, the Confirmation Order or the Loan Documents as modified by this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order, or any such equal or prior claim, lien, or security interest shall be established in any manner, except, in any

case, as expressly permitted under this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order;

aa. This Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order or the Confirmation Order shall cease to be in full force and effect at any time after the date of entry thereof by the Bankruptcy Court;

bb. Entry of an order in the Case appointing a chapter 11 trustee or appointing an examiner with the power to take any action other than to investigate and report;

cc. Entry of an order granting any other super-priority claim or lien equal or superior to that granted to the Bank, prior to full and indefeasible repayment of the Pre-Petition Obligations and the Adequate Protection Obligations (as defined in this Order and/or First Cash Collateral Order);

dd. Default in the performance, or breach, of any covenant or agreement of the Debtor contained in the Loan Documents as modified by this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order, and/or the Confirmation Order, or any term or condition of this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order;

ee. The Debtor shall fail to comply in any material respect with the Budget (after accounting for any variances permitted under this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order);

ff. The entry of an order (a) which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code with respect to any material contract, lease, or obligation or against any critical vendor; (b) allowing a third party to proceed

against any material assets or contracts of the Debtor; (c) staying or otherwise prohibiting the prosecution of any enforcement action; (d) otherwise materially adversely affecting the Bank's Prepetition Liens;

gg. Any representation or warranty made by the Debtor in the Loan Documents, or by the Debtor (or the Debtor's officers) in any agreement, certificate, instrument or financial statement or other statement contemplated by or made or delivered pursuant to or in connection with the Loan Documents shall prove to have been incorrect in any material respect when deemed to be effective;

hh. The Bank believes in good faith that the prospect of payment in full of any part of the Pre-Petition Obligations and/or Adequate Protection Obligations, or that full performance by the Debtor under the Loan Documents and/or this Order and/or the First Cash Collateral Order and/or the Second Cash Collateral Order and/or the Third Cash Collateral Order and/or the Confirmation Order, is impaired, or that there has occurred any material adverse effect in the business or financial condition of the Debtor, provided that the Court shall have power to determine whether such belief is objectively reasonable upon motion by any party in interest, filed within five (5) business days of the Bank's filing and service of notice, rendering any non-reasonable belief ineffective;

ii. If any creditor of the Debtor receives any adequate protection payment, other than as provided herein;

jj. A change in control occurs with respect to the Debtor;

kk. The Debtor's failure to pay any post-petition obligation when due, unless otherwise ordered by this Court;



ll. Any material impairment of the Collateral or the termination of any state or federal license or authorization or material contract;

mm. The Debtor's obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest or other lien on all or any portion of the Collateral which is equal or senior to any security interest or other lien of the Bank, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Bank;

nn. Any lien or security interest purported to be created under the Loan Documents shall cease to be, or shall be asserted by the Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required herein;

oo. Any misrepresentation of a material fact made after the Petition Date by the Debtor or its agents to the Bank or its counsel or agents about the financial condition of the Debtor, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;

pp. A material default by the Debtor in reporting financial information as and when required under this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order;

qq. The sale of any material portion of the Debtor's assets outside the ordinary course of business without the prior written consent of the Bank, in its sole discretion;

rr. The Debtor fails to comply with any of the covenants, conditions and agreements contained herein or in any other agreement, document or instrument at any time executed by the Debtor in connection herewith.

ss. The failure by the Debtor to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Order;

tt. The entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral without the express written consent of the Bank, or (ii) with respect to any lien on or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtor;

uu. Dismissal of the Case or conversion of the Case to a chapter 7 case, or appointment in the Case of a chapter 11 trustee or examiner with enlarged powers or other responsible person;

vv. Any misrepresentation of a material fact made after the Petition Date by the Debtor or its agents to the Bank about the financial condition of the Debtor, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;

ww. The failure to comply with the Budget in accordance with paragraphs 3 and 4 of the First Cash Collateral Order for any period, measured weekly as of the close of business on Wednesday of each following work week; or

xx. The filing by the Debtor of any motion seeking, or the granting of any motion providing for, reversal or modification of this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order.

4. Rights and Remedies Upon Termination Date. Immediately upon the occurrence of the Termination Date, the Debtor's right to use Cash Collateral shall automatically cease. The automatic stay shall automatically be terminated without further notice or order, and the Bank

shall be permitted to exercise all remedies set forth herein, in the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order, the Confirmation Order and in the Loan Documents, as applicable, and as otherwise available at law against the Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the Collateral or any other rights and remedies granted to the Bank with respect thereto pursuant to the Loan Documents, this Order, the First Cash Collateral Order, the Second Cash Collateral Order, the Third Cash Collateral Order and/or the Confirmation Order, as applicable.

5. Carve Out. Subject to the terms and conditions contained in this paragraph, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subordinate to the following (collectively, the "Carve-Out"): (i) all fees required to be paid to the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a); (ii) all allowed compensation for services actually rendered or expenses actually incurred (whether paid or unpaid) prior to the occurrence of an Event of Default (as defined in this Order, the First Cash Collateral Order, the Second Cash Collateral Order and/or the Third Cash Collateral Order) by the Debtor retained by final order of the Court pursuant to Sections 327 or 1103(a) of the Bankruptcy Code (the "Case Professionals") not to exceed the amounts set forth in the attached Budget in respect of which the Carve-Out is invoked, and in no event shall the amount of the Carve-Out exceed \$5,000.00 for Debtor's counsel, the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP ("MDMC");<sup>2</sup> and (iii) all amounts previously carved out

---

<sup>2</sup> The Carve-Outs provided herein for the Case Professionals shall be exclusive of any retainers held by such Case Professionals in connection with the Case, which retainers shall be looked to first before the Debtor may use Cash Collateral to fund the Carve-Out payments.

and set aside for payment in the Final DIP Order (the “DIP Carve Outs”)<sup>3</sup> and/or the First Cash Collateral Order, the Second Cash Collateral Order and/or the Third Cash Collateral Order. The Carve-Outs provided for herein are to be treated in the aggregate with all prior Carve-Outs provided in the Case, either under the Final DIP Order or under the First Cash Collateral Order, the Second Cash Collateral Order and/or the Third Cash Collateral Order. The designation of professional fee amounts in particular weeks in the Budget is for budgeting purposes only, and the actual payment of the Carve-Out fees may occur at any time, subject to allowance and authorization of payment by the Court. All Carve-Outs provided herein, or in the Final DIP Order or in the First Cash Collateral Order, the Second Cash Collateral Order and/or the Third Cash Collateral Order, shall survive dismissal or conversion of the Debtor’s chapter 11 Case, or the confirmation date or effective date of any confirmed plan. Payment of any obligations within the Carve-Out shall not and shall not be deemed to reduce the Loans and/or Prepetition Liens and/or the Adequate Protection Obligations and shall not and shall not be deemed to subordinate the Adequate Protection Liens or the Adequate Protection Superpriority Claims to any junior prepetition or postpetition lien, interest, or claim in favor of any other party. Nothing in this Paragraph 5 shall alter the requirements for Court approval and allowance of professional fees or the rights of the Debtor, the Bank or any other party-in-interest to object to the award of Professional Fees in accordance with any applicable Bankruptcy Rule or, if applicable, order of the Court relating to the approval of professional fees and objections thereto.

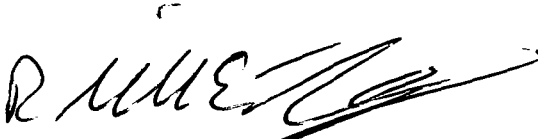
6. To the extent not expressly amended or modified by the terms of this Order, all other provisions of the First Cash Collateral Order [Docket No. 171], the Second Cash Collateral

---

<sup>3</sup> To the extent any amounts carved-out for the Debtor’s professionals in the Final DIP Order were not exhausted, the Debtor’s professionals may further utilize any such remaining funds on account of allowed compensation and reimbursement of professional fees, to the extent the Carve-Out herein is otherwise insufficient to pay in full all such allowed fees and expenses.

Order [Docket No. 445] and the Third Cash Collateral Order [Docket No. 505] shall remain in full force and effect.

Dated: July 26, 2013  
Reading, Pennsylvania

  
\_\_\_\_\_  
The Honorable Richard E. Fehling  
United States Bankruptcy Judge