

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re: CHAPTER 11
Sky-Skan Incorporated Case Number 17-11540-BAH
Debtor

**ORDER ON DEBTOR’S MOTION FOR
CONTINUED USE OF CASH COLLATERAL**

This Court has before it the Debtor’s Motion for Continued Use of Cash Collateral dated September 11, 2018 (the “Cash Collateral Motion”) filed by the debtor-in-possession, Sky-Skan Incorporated (the “Debtor”) pursuant to sections 363(c)(2)(B), 105(a), 361, and 362 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rule 4001-2.

The Cash Collateral Motion requests the following relief:

- a. Authorizing the Debtor to use Cash Collateral on a continuing basis during the period between the week ending October 12, 2018 through the week ending January 4, 2019 (the “Use Period”) or until the date on which the Court enters an order revoking the Debtor’s right to use Cash Collateral; and
- b. Ordering the Debtor to provide the Internal Revenue Service (the “IRS”) and Coastal Capital, LLC (“Coastal”) with adequate protection and other protections described in the Cash Collateral Motion.

Being fully apprised of the premises of and reasons for the Cash Collateral Motion and having determined and found that the record of the proceedings itself establishes good, sufficient, and just cause for granting the Cash Collateral Motion,

THE COURT HEREBY FINDS as follows:

A. Petition. On November 1, 2017 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of New Hampshire;

B. The Debtor is continuing to manage its business as debtor in possession pursuant to Section 1107(a) of the Bankruptcy Code;

C. No trustee or examiner has been appointed in the Debtor's case. An official statutory committee was appointed by the U.S. Trustee;

D. On December 13, 2017 this Court issued the Order [Doc. #122] on Debtor's Motion for Continued Use of Cash Collateral authorizing use through February 2, 2018. That order was modified by an Order Granting Debtor's Emergency Motion Requesting Modification of the Cash Collateral Budget and Order on January 22, 2018 [Doc.#170]. Debtor filed its second Motion to Use Cash Collateral on January 17, 2018 [Doc.#164], which motion was granted, authorizing Debtor's use of Cash Collateral through April 6, 2018 unless extended by an order entered on before such date [Doc.#181]; Debtor filed its third Motion to Use Cash Collateral on March 16, 2018 [Doc.#204], which motion was granted, authorizing Debtor's use of Cash Collateral through July 6, 2018 unless extended by an order entered on before such date [Doc.#218]; Debtor filed its fourth Motion to Use Cash Collateral on June 13, 2018 [Doc.#265], which motion was granted, authorizing Debtor's use of Cash Collateral through October 12, 2018 unless extended by an order entered on before such date [Doc.#279];

E. The inability to use the relevant Cash Collateral would force the Debtor to immediately cease business operations thereby causing the termination of its employees and cessation of its business activities and a dramatic reduction in the value of the estate;

F. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). Venue of the case and Cash Collateral Motion in this Court is proper pursuant to 28 U.S.C §§ 1408 and 1409;

G. Under the circumstances, the notice given by the Debtor of the Cash Collateral Motion constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and LBR 4001-2 (c) and (d);

H. The Debtor alleges that as of the Petition Date its assets were subject to the IRS's federal tax liens in the amount and to the extent as set forth in the proof of claim filed by the IRS.

I. Coastal has alleged it has a perfected lien against all assets of the Debtor in the amount of \$932,152.33, which allegation the Debtor disputes.

J. Debtor has prepared and delivered a copy of the budget, attached as **Exhibit A** hereto (the "Budget") to the IRS and to Coastal (via ECF). The Budget has been thoroughly reviewed by the Debtor and its management and sets forth: (1) projected weekly cash receipts for each week; (2) projected weekly cash disbursements for each week; (3) projected weekly expenses; (4) projected total professional fees, including, without limitation, all the Debtor's professionals; and (5) projected weekly values of Cash Collateral;

K. The Debtor may use and expend up to \$1,482,833 in Cash Collateral to pay the costs and expenses incurred by the Debtor in the ordinary course of business to the extent provided in the Budget, attached as **Exhibit A**, during Use Period;

L. The relief requested in the Cash Collateral Motion is necessary, essential, and appropriate and is in the best interest of and will benefit the Debtor, its creditors, and its estate as its implementation will provide the Debtor with the necessary liquidity (i) to minimize disruption to the Debtor's business and on-going operations, (ii) preserve and maximize the value of

Debtor's estate for the benefit of the Debtor's creditors, and (iii) avoid immediate and irreparable harm to the Debtor, its creditors, its businesses, and its employees; and

M. Sufficient cause exists for entry of this Order pursuant to Bankruptcy Rules 4001(b)(2).

Based on the foregoing and after consideration and good cause:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

Section 1. Authorization and Conditions

1.1 Motion Granted. The Motion is granted in accordance with Bankruptcy Rule 4001(b) and to the extent provided in this Order. This Order shall authorize continued use of Cash Collateral through the week ending January 4, 2019.

1.2 The Debtor is authorized to use Cash Collateral solely in accordance with the terms, provisions, and conditions of this Order and the Budget during the Use Period. All of the following terms and conditions of this Order, including without limitation the Debtor's covenants memorialized herein, shall constitute adequate protection of the IRS's and Coastal's interests in Cash Collateral, whether or not such terms, conditions, and covenants are specifically denominated in the discrete paragraphs of this Order as being granted as adequate protection of such interests, and all such adequate protection granted by this Order shall be without prejudice to the IRS's or Coastal's right to seek additional adequate protection from this Court and shall be without prejudice to the Debtor's right to seek to decrease or otherwise modify the adequate protection afforded by the this Order.

Section 2. Adequate Protection

2.1 Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for any diminution occurring subsequent to the Petition Date in the value of the IRS's

and Coastal's interests in Cash Collateral, and to the extent of such diminution (the "Diminution in Value"), including without limitation such diminution as may be caused by the imposition of the automatic stay under section 362(a) of the Bankruptcy Code or the Debtor's use of Cash Collateral, IRS and Coastal were granted by this Court valid, binding, enforceable and automatically perfected liens (the "Adequate Protection Lien"), which liens continue to be valid and enforceable, on the Debtor's property acquired post-petition, excluding so-called Chapter 5 Claims, which liens shall attach only to the same types of property and with the same validity, extent and priority as to which their respective liens existed prior to the Petition Date, notwithstanding the provisions of section 552 of the Bankruptcy Code.

2.2 The IRS and Coastal shall not be required to file UCC financing statements or other instruments with any filing authority to perfect the Adequate Protection Liens or take any other action to perfect the Adequate Protection Liens, which shall be deemed automatically perfected as of the date of the entry of this Order on the docket of this chapter 11 case by the Clerk of this Court.

2.3 As further adequate protection:

a. As set forth and subject to section 2.1, the IRS was granted a continuing post-petition security interest in all assets the Debtor.

b. The Internal Revenue Service, by and through its agents or representatives, shall have access to and the right to inspect the Debtor's assets and properties during normal business hours, with at least 24 hours' notice being given and with a right of the Debtor to propose an alternative, if required for business reasons.

c. Upon reasonable notice, the Debtor will permit the Internal Revenue Service to inspect, review and copy any financial records of the Debtor. These records will be made available at the Debtor's place of business.

d. Since February 2018 the Debtor has been paying into escrow at the Tamposi Law Group the monthly sum of \$14,053.84. Payments have been made and will continue to be made on the 15th day of each month. Payments shall continue each month thereafter until confirmation of the Debtor's Chapter 11 Plan or until further order of the Court. The funds will be applied to the secured debt of the IRS and/or Coastal and/or the Debtor's administrative creditors as their interests may ultimately be adjudicated and/or by agreement of the parties.

e. The Debtor shall timely file all post-petition tax returns on the due date with the appropriate IRS office. A copy of all tax returns shall be provided to the IRS within two business days of submission by either (a) mailing the same to Gail Irving, Bankruptcy Specialist, Internal Revenue Service, Insolvency Unit, P.O. Box 9502, Portsmouth, NH 03802-9502, or by facsimile transmission to the attention of Gail Irving at 855-876-3986.

f. The Debtor shall timely pay each federal tax deposit as it accrues (when payroll is made) by electronic transfer or through a federal depository payable to the Debtor's depository institution.

g. The Debtor shall maintain all insurance policies including workers compensation, general liability, fire, and casualty.

h. The Debtor shall provide to Coastal, the Official Committee of Unsecured Creditors and the IRS a weekly report of its current accounts receivable and cash

positions as of Friday of every week. The Debtor shall provide such reports electronically on each Wednesday for the previous week.

Section 3. Default; Rights and Remedies.

3.1 Events of Default. The occurrence and continuance of any of the following events shall constitute an Event of Default under this Order:

(a) Reversal, vacation, or material modification (without the prior consent of the IRS and Coastal) of this Order;

(b) Dismissal of this chapter 11 case, conversion to a case under Chapter 7 of the Bankruptcy Code, or the appointment of Chapter 11 trustee;

(c) Cessation of the Debtor's normal business operations or the sale of the Debtor's business; or

(d) The failure of the Debtor to abide by any provisions of this Order.

3.2 Rights and Remedies Upon Event of Default. Upon the occurrence of and during the continuance of an Event of Default, the IRS and/or Coastal shall be entitled to take any act or exercise any right or remedy provided in this Order.

Section 4. Other Rights and Obligations.

4.1 The terms and provisions of this Order, the Adequate Protection Liens, and all other rights and claims granted by the Order shall (a) continue in this or any superseding case under the Bankruptcy Code, (b) be valid and binding on all parties in interest, and (c) continue notwithstanding any dismissal of the Debtor's chapter 11 case, and such liens, rights, and claims shall maintain their priority as provided by this Order until IRS's claims are satisfied in full.

4.2 Reservation of Rights. Except as otherwise provided in this Order, the respective rights of all parties in interest with respect to the relief requested in the Cash Collateral Motion are hereby preserved.

4.3 The terms and provisions of this Order shall be (a) effective and immediately enforceable upon its entry by the Clerk of this Court.

Section 5. Continued Hearing and Response Dates.

5.1 The Debtor shall file a further application for ongoing usage of Cash Collateral on or before November 28, 2018.

5.2 Any objection to the application for ongoing use of Cash Collateral shall be filed on or before December 12, 2018

5.3 The Court will hold a hearing on the application for ongoing use of Cash Collateral on December 19, 2018 at 2 p.m.

5.4 The provisions of this Order are subject to a winding down proviso under which the Court reserves the right to enter such further orders as may be necessary regarding the use of Cash Collateral to provide for payment of administrative claims for wages and trade creditors who have supplied goods or services to the Debtor during the period of operation under the Order which remain unpaid at the time of termination of authorized Cash Collateral usage, and which such good and services have created additional collateral for the Lenders since the Petition Date.

Dated: 9/28/18 Concord, New Hampshire

/s/ Bruce A. Harwood

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Sky-Skan, Inc														
Cash Collateral Budget														
Summary														
Week Number	49	50	51	52	53	54	55	56	57	58	59	60	61	13 WEEK
Ending	10/12/18	10/19/18	10/26/18	11/2/18	11/9/18	11/16/18	11/23/18	11/30/18	12/7/18	12/14/18	12/21/18	12/28/18	1/4/19	TOTAL
Beginning Balance	\$ 32,092	\$ 336,345	\$ 250,872	\$ 378,100	\$ 449,974	\$ 423,798	\$ 327,125	\$ 300,146	\$ 252,438	\$ 216,627	\$ 493,453	\$ 467,224	\$ 380,117	
Cash receipts														
Collection of A/R	26,266	4,976	86,616	75,551	13,592	-	-	4,665	88	12,241	-	-	-	223,993
Work in Progress	602,584	37,500	270,338	89,958	41,584	65,000	34,750	39,778	15,000	47,759	15,000	15,000	36,839	1,311,089
Pipeline										287,772				287,772
Total Receipts	628,850	42,476	356,954	165,509	55,176	65,000	34,750	44,443	15,088	347,772	15,000	15,000	36,839	1,822,854
Cash Outflows														
Payroll & Related														
Net Payroll	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	20,923	271,999
Payroll taxes (federal)	7,000	7,000	7,000	7,044	7,044	7,044	7,044	7,044	7,044	7,044	7,044	7,044	7,044	91,435
Payroll taxes (state)	500	500	500	500	500	500	500	500	500	500	500	500	500	6,500
Owner's Draw				4,500				4,500				4,500		13,500
HSA EE	320	320	320	320	320	320	320	320	320	320	320	320	320	4,160
401k EE Portion	800	800	800	800	800	800	800	800	800	800	800	800	800	10,400
Harvard Pilgrim				12,770				12,770				12,770		38,310
Delta Dental/Vision				563				563				563		1,689
Dearborn National - Life				222				222				222		666
Insurance, Utilities, Office														
Subscriptions	195	195	195	195	195	195	195	195	195	195	195	195	195	2,535
Bank Fees (Merchant & Analysis)	35	35	35	35	35	35	35	35	35	35	35	35	35	455
IRS Payment Per Settlement Agreement				14,054				14,054				14,054		42,162
Sales & Other Tax	500	500	500	500	500	500	500	500	500	500	500	500	500	6,500
Insurance - General (11th & 21st) 6 policies										1,281	4,338			5,619
Insurance - Officer Life (qtrly)						144								144
Insurance - Worker's Comp (Qtrly)	2,315													2,315
Eversource				3,450										3,450
Liberty Utilities				1,233										1,233
Internet - Comcast	185					185				185				555
Internet - Dreamhost & Servint				236									236	472
Verizon cell phones			1,100						1,100			1,100		3,300
First Light - Telephone		225				225					225			675
Waste Management			525						525			525		1,575
Legal	1,700		5,000					5,000				7,500		19,200
Accounting			6,000				12,000			5,000		12,000		35,000
Marketing	5,000				5,000				5,000				5,000	20,000
Contract Overseas employees			4,082	4,200					4,082	4,200		4,082	4,200	24,846
Outside Sales	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	13,000
Rent - Savage	3,500					3,500				3,500				10,500
Rent - DMS	3,413					3,413				3,413				10,239
Lake Street condo fee			662											662
Miscellaneous Office	250	250	250	465	250	250	250	250	250	250	250	250	465	3,680
Shipping - UPS	100	100	100	100	100	100	100	100	100	100	100	100	100	1,300
Copier lease & maintenance			125	525			125	125	525			125	525	2,075
US Trustee Fee/Court Costs	12,000													12,000
MATERIALS AND COGS	261,861	93,100	177,610	17,000	41,500	119,725	14,938	20,250	5,000	18,700	2,000	10,000	-	781,683
Travel	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	39,000
Total Uses of Cash	324,597	127,948	229,727	93,634	81,352	161,674	61,729	92,150	50,899	70,946	41,229	102,107	44,843	1,482,833
Ending Balance	\$ 336,345	\$ 250,872	\$ 378,100	\$ 449,974	\$ 423,798	\$ 327,125	\$ 300,146	\$ 252,438	\$ 216,627	\$ 493,453	\$ 467,224	\$ 380,117	\$ 372,113	

JOB NUMBER	CUSTOMER	SALES BACKLOG	49	50	51
Cash receipts		Total Receipts	10/12/18	10/19/18	10/26/18
292-010	Redacted	360,000	150,000.00		160,000.00
302-101	Redacted	51,442			
302-101	Redacted	5,198			
316-006	Redacted	19,750			
318-026	Redacted	91,500			
228-006	Redacted	132,920	39,876.00		
110-011	Redacted	77,353	19,338.25		19,338.25
110-011	Redacted	14,000			
343-048	Redacted	22,500		22,500.00	
330-038	Redacted	192,890			
306-018	Redacted	74,958			
140-006	Redacted	76,000			76,000
302-011	Redacted	109,195	54,598		
140-008	Redacted	323,772	323,772		
265-005	Redacted	24,778			
	Service, Shows, Parts, etc (net of associated costs)		15,000	15,000	15,000
	New business				
TOTALS		1,846,256	602,584	37,500	270,338
TOTALS NOT IN AR COLLECTIONS					
JOB NUMBER	CUSTOMER				
COGS		Total COGS			
134-003	Redacted	10,575			
292-010	Redacted	400,820	156,886		142,935
302-101	Redacted	86,584			
302-101	Redacted	-			
316-006	Redacted	14,013			
318-026	Redacted	225,000			
228-006	Redacted	59,297	45,625	600	
110-011	Redacted	43,475	28,350	2,500	3,000
110-011	Redacted	8,800			
343-048	Redacted	50			
330-038	Redacted	112,520			
306-018	Redacted	2,800			
140-006	Redacted	-			
302-011	Redacted	96,225	31,000		31,675
140-008	Redacted	132,000		80,000	
	Purchase of Materials Needed to Support Manufacturing (items with long production cycle)	90,000		10,000	
	New business				
TOTALS		1,282,158	261,861	93,100	177,610
			340,723	(55,600)	92,729

SALES PIPELINE
 COGS AS A % OF SALES (MATERIALS AND TRAVEL ONLY, PERSONNEL EXPENSE CAPTURED ELSEWHERE IN CASH COLLATERAL BUDGET)

2018 Projects through Dec 31st

JOB NUMBER	CUSTOMER	Projected Contract Amount	Projected Cost	Projected Gross Profit	%	FACTORED GROSS SALES	FACTORED COGS	Comments
227-003	Redacted	\$ 178,951.00	117,749.76	61,201.24	90%	161,056	105,975	customer would like to make 50% deposit in 2018 and project would be completed in 2019
265-006	Redacted	\$ 552,650.00	363,643.70	189,006.30	75%	414,488	272,733	Deposit to be received in 2018 and project would be completed in 2019
						<u>575,544.00</u>	<u>378,708.00</u>	

Beginning Cash projection

Cash on Hand 9/7/18	68,035
66% of A/R at 9/7/18	167,291
Less Operating Expenses projected in Cash Collateral budget 9/8-10/5/18	(199,325)
Plus cash collections projected by Ginger from 9/8-10/5/18	245,567
Less COGS projected by Ginger from 9/8-10/5/18	<u>(249,476)</u>
	<u><u>32,092</u></u>