

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

In re:

Bk. Nos. 18-10091-BAH  
18-10092-BAH

Ragged Mountain Equipment, Inc., and  
Hurricane Mountain Equipment, LLC

Chapter 11  
Jointly Administered

Debtors.

**Hearing Date: 02/12/18**  
**Hearing Time: 10:00 a.m.**  
**Objection Deadline: 02/05/18**

\* Check the box that applies to this Order [pleading]:

\_\_\_\_\_ This pleading concerns both jointly administered cases listed above.

XXX This pleading concerns *In Re Ragged Mountain Equipment, Inc.*,  
Case No. 18-10091-BAH

\_\_\_\_\_ This pleading concerns *In Hurricane Mountain Equipment, LLC*,  
Case No. 18-10092-BAH

**MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(a) and 552(b), FEDERAL  
BANKRUPTCY RULE 4001(b) AND LOCAL BANKRUPTCY RULE  
4001 FOR AN ORDER AUTHORIZING THE USE OF CASH COLLATERAL AND  
GRANTING REPLACEMENT LIENS AND OTHER ADEQUATE PROTECTION FOR  
THE FIRST INTERIM PERIOD**

Ragged Mountain Equipment, Inc. (“Debtor”), pursuant to 11 U.S.C. §§ 105, 363(a) and 552(b), Federal Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 1-4001 moves for an order authorizing the use of cash collateral, providing replacement liens and other adequate protection for the first interim period, February 12, 2018 through April 30, 2018 (the “First Interim Period”):

**BRIEF STATEMENT**

1. The Debtor seeks an order allowing it to use cash collateral for the First Interim Period to avoid immediate and irreparable harm to its business. The business, a retail and

manufacturing outdoor store selling mostly clothing, would be forced to shut down if the business is not permitted use of cash during the First Interim Period.

### **BACKGROUND**

2. Debtor owns and operates a clothing and outdoor store from its sole location in Intervale, New Hampshire. Debtor's affiliated company, Hurricane Mountain Equipment, LLC, owns the real estate and is an affiliated Debtor. Debtor has been in business since 1978. Debtor employs 20 people. In addition to a retail store and on-line store, Debtor manufactures products under its own label and also for LLBean through its manufacturing division. In recent years due to competition from Amazon and others, Debtor's retail business has suffered. The manufacturing division, however, is fairly robust and there are approximately \$500,000.00 in orders from LLBean at this time.

3. Debtor's retail sales have been down due to several warm winters and a dramatic shift to online sales from consumers shopping for price. Debtor does not expect store sales to rebound. Going forward in retail, Debtor will put more effort into internet sales of its own made in USA products. In manufacturing, Debtor's sales dropped by over 50% in the last 15 years due to offshore price competition. The last 5 years Debtor's manufacturing sales have increased because of LLBean and others wanting "made in USA" sewn products. Debtor's record spring 2017 orders from LLBean have been disrupted by delivery and quality problems with Polartec, its fabric supplier. Polartec moved production from Lawrence MA to Cleveland TN. They are 12 to 14 weeks behind on deliveries and Debtor has only been able to make partial deliveries on its orders, totally disrupting its cash flow. As a result, Debtor has not able to service the debt built up over the years.

4. Debtor believes the LLBean orders can sustain it in the short term. Debtor manufactures a fleece blanket for LLBean which has been very successful. Debtor also manufactures other items under its own label, and other labels, with “Made in the USA” tags on them.

5. Debtor has accumulated a significant amount of debt over the past several years which it needs to be compromised in the bankruptcy case. Most of the debt is unsecured debt.

6. Debtor does have several pre-petition secured creditors with liens on its assets. Some of these lenders claim they are actually factors<sup>1</sup>, but they are junior in priority to senior secured lenders. Debtor’s first lien holder is Eastern Bank (“Eastern”), is owed approximately \$330,000.00. Debtor’s inventory at retail totals \$397,597.77 (with an estimated value of 20% on the dollar or \$79,519.54) and receivables total \$40,470.20, and cash at \$34,655.84, a total “cash collateral” value of \$154,645.58. Debtor’s second all asset lien holder is Northway Bank, who is owed approximately \$100,000 on a line of credit. Debtor’s third all asset lien holder is Mount Washington Valley Economic Council, who is owed \$88,869.28. Debtor believes these are the only secured creditors whose liens could possibly attach to any assets since their claims total in the aggregate \$518,869.28 against a maximum value of \$154,645.58 to \$472,723.81 (100% value for inventory) of collateral value. The filed lienholders on Debtor’s assets are as follows:

Eastern Bank—all business assets

Northway Bank—inventory, accounts, equipment, general intangibles

North Face a division of VF Outdoor, Inc.— items manufactured by secured party

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<sup>1</sup> Factor’s rights are cut off in future receivables under §552(b) and 506(b).

Mount Washington Valley Economic Council—all business assets

North Country Council, Inc.—all business assets

Black Diamond Equipment, LTD—goods of secured party

Bank of Lake Mills—all business assets

Cisco Systems-- phone

CHTD Company—Knight Capital—all assets

CT- Swift—all assets and all future receivables sold to Swift.

Swift may be a factor that purchased receivables and claims to have purchased future receivables. The problem is that Swift purchased receivables that have already been pledged to secured creditors. The Debtor believes this means Swift does not have any equity in any receivables and therefore is an unsecured creditor. Swift's rights in future receivables would be cut off on the Petition Date under §552(b), which limits Swift's claim to receivables that existed on the Petition Date. The Court may have to determine this issue at a future date.

7. Debtor has a good relationship with Eastern and believes an agreement will be reached on consensual use of cash collateral. Eastern wants the Debtor to file Chapter 11.

### **JURISDICTION**

8. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b). This matter is a core proceeding under 28 U.S.C. §157(b). The Debtor consents to the entry of a final order.

**LIENS**

9. The Debtor's assets are subject to the UCC liens listed above.

**APPROVAL OF THE USE OF CASH COLLATERAL**

10. Section 363(a) of the Bankruptcy Code provides that cash, inventory and receivables constitute "cash collateral". As a result, pursuant to section 363(c)(2), a debtor may use such monies only with the consent of the secured creditor or with Court authorization. Section 363(e) conditions use upon court approval "as necessary to provide adequate protection of such interest." The Debtor only proposes to use cash collateral for direct benefit of preserving the business during the First Interim Period. No payment requested herein is for anything other than the direct operation and preservation of the business. The inventory and receivables will be replaced dollar for dollar with new inventory and receivables so that the value of "cash collateral" will remain stable or increase during the First Interim Period.

11. Debtor has an investor and a cooperative first lender and liquidation would result in almost no recovery for creditors. Inventory, Debtor's main asset is worth near zero in liquidation.

12. If Debtor is not permitted use of cash, Debtor will have to shut down. This will not only destroy Debtor's value, and terminate employees, but leave creditors with a business that has no real liquidation value. There is every reason to allow the Debtor use of cash collateral under the circumstances described in this motion as they demonstrate irreparable harm. There is no harm to the lenders if Debtor has use of cash during the First Interim Period, which will be used to preserve their collateral.

**PROPOSED USAGE OF CASH COLLATERAL AND ADEQUATE PROTECTION**

13. Debtor has attached a budget as Exhibit A, which provides for the use of cash collateral during the First Interim Period. The budget provides only for direct payments to preserve operations.

14. As further adequate protection, Debtor shall provide Eastern and all junior lienholders in the same order of priority and to the extent their claims attach to any equity under 11 U.S.C. §506(b), replacement liens in its assets consistent with each lender's pre-petition lien. As further adequate protection, Debtor will provide monthly reports that are provided to the U.S. Trustee's Office and other reports required by the Court.

15. Counsel has no retainer and requests the Court authorize a retainer post-petition of \$5,000.00 per month to be held by counsel until approval of fees. This is reflected in the budget.

**NOTICE AND RESERVATION OF RIGHTS**

16. Notice has been provided to the US Trustee and Eastern's counsel, Daniel Sklar by e mail and first class mail, to all UCC record parties and to the 20 largest creditors by first class mail. All parties reserve all rights against each other, and nothing in this Motion shall be construed as a waiver of any rights.

WHEREFORE, Ragged Mountain Equipment, Inc., respectfully requests this Court:

- A. Grant this motion for the First Interim Period; and
- B. Grant adequate protection;
- C. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,  
Ragged Mountain Equipment, Inc.  
Chapter 11 Debtor-In-Possession  
By its attorneys,  
Notinger Law, PLLC

Dated: 1/30/18

By: /s/ Steven M. Notinger  
Steven M. Notinger (BNH 03229)  
7A Taggart Drive  
Nashua, NH 03060  
(603) 417-2158  
[steve@notingerlaw.com](mailto:steve@notingerlaw.com)

**CERTIFICATE OF SERVICE**

I, Steven M. Notinger, certify that I have as of this date forwarded the foregoing Motion in the manner described below:

Via CM/ECF to the following parties:

Office of the U.S. Trustee  
[USTPRegion01.MR.ECF@usdoj.gov](mailto:USTPRegion01.MR.ECF@usdoj.gov)

Via email and first class mail on the following parties:

Daniel Sklar, Esquire  
Nixon Peabody LLP  
900 Elm Street # 1400  
Manchester, NH 03101  
[dsklar@nixonpeabody.com](mailto:dsklar@nixonpeabody.com)

Dated: January 30, 2018

By: /s/ Steven M. Notinger  
Steven M. Notinger (#03229)