

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

East End Bus Lines, Inc.,

Case No. 818-76176-845

Case No. 818-76179-845

Debtors.

Case No. 818-76177-845

Jointly Administered

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**APPLICATION IN SUPPORT OF ORDER TO SHOW CAUSE UNDER  
§§ 105, 361 AND 363 OF TITLE 11 OF THE UNITED STATES CODE  
SEEKING AUTHORIZATION FOR THE DEBTORS-IN-POSSESSION  
TO UTILIZE CASH COLLATERAL OF TCJI, LLC SET FORTH IN THIS  
APPLICATION**

The application of East End Bus Lines, Inc., Montauk Transit Service LLC and Montauk Student Transport LLC, the Debtors and Debtors-in-Possession (“Debtors”), by their attorneys, Weinberg, Gross & Pergament LLP, seeking an Interim Order Authorizing the Debtors to utilize Cash Collateral pursuant to Sections 105, 361 and 363 of Title 11 of the United States Code (“the Bankruptcy Code”) respectfully represents and states as follows:

**BACKGROUND INFORMATION**

1. On September 13, 2018, (the “Petition Date”) the Debtors filed voluntary Petitions seeking relief from their creditors pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. Sec. 101 *et. seq.* The Debtors have continued to remain in possession, custody and control of their business and their properties pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. No trustee, examiner or official committee of unsecured creditors has been appointed herein.

3. East End Bus Lines, Inc., Montauk Transit Service LLC and Montauk Student Transport LLC are corporations organized and existing under the laws of the State of New York.

4. The Debtors operate school transportation businesses.

5. The Debtors' principal assets consist of their contracts with school districts, accounts receivable and school buses. TCJ is owed approximately \$4,100,000.00 and its principal collateral is the accounts receivable and the contracts with the school districts.

6. Prior to the bankruptcy filing, the Debtors entered into a loan agreement with TCJ pursuant to a note and security agreement (the "Agreement"). TCJ was granted a lien on all of the Debtors' assets, including its accounts, accounts receivable and contracts.

7. The Debtors' counsel has negotiated a cash collateral consent arrangement with TCJ. The Stipulation between the Debtors and TCJ is annexed hereto as Exhibit "A."

8. Consideration of this Application constitutes a "core proceeding" as defined in 28 U.S.C. Section 157(b)(2)(A), (K), (M), and (O).

9. This Court has jurisdiction over this proceeding, the parties and property affected hereby pursuant to 28 U.S.C. Sections 157 and 1334.

**THE DEBTORS' NEED FOR CASH COLLATERAL**

10. The Debtors need permission to collect the contract proceeds and disburse funds to operate their business. The Debtors will not be able to service and maintain their relationships with the school districts without authorization of TCJ. Without the ability to use cash collateral, the Debtors will be unable to meet their payroll and other expenses.

11. Under the circumstances, and consistent with the need to use cash collateral, the Debtors assert that good cause is shown which provides the basis to authorize the

use of cash collateral. The Debtors' use of cash collateral will (i) minimize disruption of the Debtors' business and operations; (ii) permit the Debtors to meet operating costs and expenses and otherwise maintain the collateral; and (iii) be in the best interest of the Debtors, their creditors and other parties in interest; and (iv) aid efforts towards reorganization.

12. Section 363(c) authorizes the Court to allow the Debtors to use cash collateral. The Debtors are requesting permission to utilize cash collateral to meet their payroll, utilities, repair costs and the other costs associated with the business.

13. The Debtors are without the necessary cash to operate, thus without the necessary cash to pay for the daily business operations; pay their employees, rents, insurance and utility payments, the Debtors would close. As a result, the Debtors would not be able to transport the school children.

14. Under the circumstances, and consistent with the need to use cash collateral, the Debtors assert that good cause is shown which provides the basis to authorize the use of cash collateral. The Debtors' use of cash collateral will (i) minimize disruption of the Debtors' business and operations; (ii) permit the Debtors to meet payroll and other operating costs and expenses and otherwise maintain the collateral; (iii) be in the best interest of the Debtors, their creditors and other parties in interest; and (iv) aid efforts towards reorganization. In order to avoid immediate and irreparable harm to the Debtors pending a Final Hearing, and the concomitant harm to the Debtors' employees, their creditors and the estates in general, the Debtors request the use of cash collateral on the terms and conditions set forth in this application and in accordance with the proposed budget attached to the Interim Order (the "Budget") and annexed hereto as Exhibit "B". The Debtors' continued operations, which shall be made

possible by the use of the cash collateral requested, will also preserve the value of the cash collateral itself.

15. Section 363(c) authorizes the Court to allow the Debtors to use cash collateral. The Debtors are requesting permission to utilize cash collateral to meet their payroll expenses, pay suppliers, utilities, insurance and the other costs associated with the daily operations of the Debtors.

16. It is respectfully requested that the preliminary hearing on this matter be held as soon as is practicable. A copy of the proposed Budget is annexed hereto as Exhibit "B."

**THE TERMS OF THE PROPOSED USE OF CASH COLLATERAL**

17. The Debtors seek authorization pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, to provide adequate protection in the value of TCJ's interest in the pre-petition collateral, including without limitation such diminution as may be caused by the imposition of the automatic stay of the Bankruptcy Code and section 362(a) and by the Debtors' use of the pre-petition collateral and/or cash collateral.

18. The Debtors seek authorization pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, to provide adequate protection for any diminution occurring subsequent to September 13, 2018, in the value of TCJ's interest in the pre-petition collateral, including without limitation such diminution as may be caused by the imposition of the automatic stay of the Bankruptcy Code and section 362(a) and by the Debtors' use of the pre-petition collateral and/or cash collateral.

19. The Debtors seek authorization to grant TCJ a post-petition super priority claim (the "Adequate Protection Claim") together with the pre-petition obligations (the "Obligations") jointly and severally against the Debtors' estates.

20. The Debtors seek authorization pursuant to sections 361 and 363(e) of the Bankruptcy Code, as security for the Adequate Protection Claim, to grant to TCJ valid, binding, enforceable and automatically perfected liens and security interests (collectively, the “Replacement Liens”) in all of the Debtors’ presently owned or hereafter acquired property and assets, whether such property and assets were acquired by the Debtors before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof (collectively, to the extent acquired after the Petition Date, the “Post-Petition Collateral” and together with the Pre-Petition Collateral and the Cash Collateral, the “Collateral”) to the extent that TCJ’s Pre-Petition Collateral is used by the Debtors.

21. The Debtors seek authorization to provide that the Replacement Liens shall be subject to liens and other interests in the property of the Debtors’ estates existing as of the Petition Date that are (i) valid, enforceable and not subject to avoidance by any trustee under the Bankruptcy Code; and (ii) senior under applicable non-bankruptcy law to, encumber assets not encumbered by TCJ’s lien in the Pre-Petition Collateral as of the Petition Date.

22. The Debtors propose that in the event that an official committee of unsecured creditors (the “Committee”) is appointed under section 1102 of the Bankruptcy Code, the Committee shall have a minimum of sixty (60) days from the date of entry of a final order authorizing the use of Cash Collateral to investigate the facts and bring any appropriate proceeding with regard to the Debtors’ Stipulations contained in the Interim Order (if any, and at all) to the validity, perfection, enforceability, priority and non-avoidability of TCJ’s claim and liens, and the lack of any defense thereto. The Debtors do not believe that there is any basis to challenge TCJ’s Pre-Petition Liens.

23. The Debtors propose that in the event that no Committee is appointed in this case, then any party in interest shall have seventy-five (75) days from the entry of any Final Order approving the Debtors' use of cash collateral, to investigate and file a motion seeking authority to bring any appropriate proceedings as representative of the estate.

24. The Debtors seek a determination that in the event that no adversary proceeding or motion seeking authority to bring any appropriate proceedings as representatives of the estates challenging the perfection, extent or validity of TCJ's pre-filing date liens are timely commenced as set forth herein and in the Interim Order, then such TCJ's pre-filing date liens and/or mortgages shall be deemed valid and perfected liens.

25. The Debtors seek a modification of the automatic stay provisions of section 362 to the extent necessary to permit (a) the Debtors to implement and perform the terms of any Interim Order; and (b) the Debtors to create, and TCJ to perfect, the Replacement Liens and other Liens granted in the Interim Order. The Debtors seek authorization to provide that TCJ shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Liens granted under any Interim Order or to take any other actions to perfect such Liens, which Liens shall be automatically perfected. However, should TCJ elect for any reason to file, record or serve any such financing statements or other documents with respect to such Liens, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of the chapter 11 cases on the Petition Date.

26. The Debtors seek authorization to allow that the Replacement Liens shall not be subject to any Lien which is avoided and which would otherwise be preserved for the benefit of the Debtors' estates under section 521 and the Replacement Liens shall encumber and

constitute a prior Lien which is avoided and which would otherwise be so preserved for the benefit of the Debtors' estates. The Debtors will also make interest payments to TCJ in the amount of \$16,000 per week for the period starting with the week ending October 5, 2018 and through the week ending November 2, 2018. TCJ shall not be subject to the equitable doctrine of "marshalling" or any similar doctrine with respect to any of the Collateral

27. The Debtors shall not seek the entry of any further orders in this chapter 11 case which would authorize the Debtors under section 363, to use the Cash Collateral in which TCJ has an interest, or the sale, use or lease, other than in the ordinary course of business, of property of the Debtors in which TCJ has an interest unless such proceeds from any such Order shall be used to repay the obligations to the extent they are determined to be secured in full, or in part, the extent of said lien, or any other grant of rights against the Debtors and/or their estates.

28. The Debtors shall be in default of any Interim Order based upon the following which shall be considered an "Event of Default:"

- a. The Debtors shall fail to make any payment to or for the benefit of TCJ as when and required by the Interim Order or the Debtors shall otherwise fail to comply in any material respect with the terms hereof, including by failing to deliver the reports required pursuant to the Interim Order;
- b. The variance between actual and budgeted amounts set forth in any line item in the Budget for any rolling 2 week-period shall be equal to or greater than fifteen percent;
- c. One or more of the Debtors' Chapter 11 Cases shall be dismissed or converted to a case under chapter 7 of the Bankruptcy Code;
- d. An order of the Court or any other court of competent jurisdiction shall be entered reversing, amending, supplementing, staying, vacating or otherwise modifying the Interim Order or any provision thereof; and
- e. The appointment of a trustee under Chapter 11 of the Bankruptcy Code or an examiner having enlarged powers (beyond those set forth in Section 1106(a)(3))

and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, other than upon a motion of TCJ.

29. The Debtors shall undertake to continue to keep TCJ's Collateral fully insured against all loss, peril and hazard and make TCJ the additional insured in any such insurance policy maintained by the Debtors as to the Collateral. The Debtors shall timely pay any and all undisputed post-petition taxes, assessments and governmental charges with respect to the Collateral as provided for under the loan documents and in accordance with the Budget.

30. The Debtors shall provide TCJ, upon reasonable written notice, at any time during the Debtors' normal business hours, the right to inspect, audit, examine, check, make copies of or extract from the books and records of the Debtors, and monitor the Collateral, and the Debtors shall make all of the same reasonably available to the TCJ and its representatives, for such purposes.

31. The Debtors agree that for the purposes of an Interim Order, the term "Proceeds" shall mean any and all payments, proceeds or other consideration realized upon the sale, or liquidation of the Collateral, whether in the ordinary course of the Debtors' business or other than in the ordinary course of the Debtors' business.

32. The Debtors agree that from the entry of any Interim Order and pending a Final Hearing and/or entry of any subsequent orders, TCJ's Collateral, shall not, directly or indirectly, be used to pay administrative expenses of the Debtors and their estate except for those operating expenses (including the statutorily required fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930) that are set forth in the Budget or with the written consent of TCJ. However, TCJ has agreed to a "Carveout" under the conditions contained in the Interim Order.



The Carveout

33. As used in the Interim Order, “Carveout” means (i) all unpaid fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (the “Statutory Fees”), (ii) the aggregate allowed unpaid fees and reasonable expenses payable under Sections 330 and 331 of the Bankruptcy Code to professional persons retained pursuant to an order of the Court by the Debtors in these Chapter 11 Cases subject to the limitations set forth in the Interim Order and in the aggregate not to exceed, after application of any and all retainers, \$50,000.00, (iii) the aggregate allowed unpaid fees and reasonable expenses payable under Sections 330 and 331 of the Bankruptcy Code to professional persons retained pursuant to an order of the Court by any statutory committee appointed in these Chapter 11 Cases and the reasonable expenses of any and all members of a statutory committee appointed in these Chapter 11 Cases subject to the limitations set forth in the Interim Order and in the aggregate not to exceed \$10,000.00, (iv) in the event of conversion of Debtors’ Chapter 11 Cases, the reasonable fees and expenses of a chapter 7 trustee under Section 726(b) of the Bankruptcy Code in an amount not to exceed an additional \$10,000.00; provided, however, under no circumstances shall the Carveout be used to pay professional fees and/or disbursements incurred in connection with the prosecution of any Challenges (as defined in the Interim Order) against TCJ, its predecessor, affiliates, subsidiaries, directors, officers, members, representatives, attorneys or advisors in connection with matters related to the Loan Documents, the Commercial Security Agreement, the Prepetition Secured Indebtedness (each as defined in the Interim Order), or the Prepetition Collateral.

**GENERAL PROVISIONS OF THE PROPOSED CASH COLLATERAL ORDER**

34. The Debtors propose that the Interim Order would be binding upon and inure to the benefit of TCJ, the Debtors and their respective successors and assigns, including,

without any limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case under any Order for the benefit of any creditor of the Debtors, any other party in interest in the Debtors' bankruptcy cases, or any other person or entities, or any direct, indirect or incidental beneficiaries thereof.

35. The Debtors propose that notwithstanding any potential application of Rules 6004(g), 7062, 9014 or otherwise of the Federal Rules of Bankruptcy Procedure, that the entry of any Interim Order be effective and immediately enforceable. Any Interim Order may not be stayed absent (a) an application by a party in interest for such stay in conformance with Rule 8005 and (b) a hearing upon notice to the Office of the United States Trustee and TCJ.

36. The Debtors propose that the provisions of any Interim Order and any actions taken pursuant to the Interim Order shall survive entry of any orders which may be entered converting the chapter 11 cases to a case under chapter 7 of the Bankruptcy Code. The terms and provisions of any Interim Order, as well as the Adequate Protection Claim, the Replacement Liens and all other claims and Liens granted by any Interim Order, shall (a) continue in their chapter 11 cases or any superseding case under the Bankruptcy Code; (b) be valid and binding on all parties in interest, including, without limitation, any Committee, chapter 11 trustee, examiner or chapter 7 trustee; and (c) continue, notwithstanding any dismissal of the Debtors' bankruptcy cases, and such claims and Replacement Liens shall maintain their priority as provided for in the Interim Order until the obligations are satisfied in full.

37. To the extent that any of the provisions of any Interim Order shall conflict with any Order of the Court authorizing the Debtors to continue the use of pre-petition bank accounts, cash management systems and/or business forms, or any similar orders, then the

Interim Order shall be deemed to control and supersedes the conflicting provisions in the said orders.

38. The Debtors propose to provide notice of any hearing to consider the entry of an Interim Order on the Office of the United States Trustee, the twenty largest unsecured creditors, TCJ's counsel and all parties filing a notice of appearance in the Debtors' chapter 11 case (collectively, the "Notice Parties") by regular mail.

39. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is respectfully requested that the annexed Order to show cause be entered, together with other and further relief as to this Court seems just and proper.

Dated: Garden City, New York  
September 28, 2018

Weinberg, Gross & Pergament LLP  
Attorneys for Debtors and Debtors-in-Possession

By: \_\_\_\_\_

  
Marc A. Pergament  
400 Garden City Plaza, Suite 403  
Garden City, New York 11530  
(516) 877-2424