

This document was signed electronically on September 1, 2017, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: September 1, 2017



ALAN M. KOSCHIK  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re:	)	Chapter 11 (AMK)
	)	
Wall St. Recycling L.L.C.	)	Case No. 17-51701
	)	
Debtors.	)	
	)	Judge Alan M. Koschik

**FINAL ORDER AUTHORIZING  
USE OF CASH COLLATERAL**

This matter came before the Court for hearing on August 15, 2017 (the "Hearing") on the Motion of the Debtor and Debtor in Possession (the "Debtor") for the entry of an order authorizing Debtor to use cash collateral as that term is defined in § 363(a) of the Bankruptcy Code, on a preliminary and interim basis and setting a hearing for continued use of such Cash Collateral and providing the Debtor's secured creditor Wexford Investments, LLC ("Wexford") with adequate protection pursuant to § 363(e) of the Bankruptcy Code (the "Motion"). In the Motion, the Debtor seeks authority to use certain funds, which are cash collateral within the meaning of 11 U.S.C. § 363(a) ("Cash Collateral"), in order to pay operating expenses, including payroll and payroll-related expenses, subject to the terms and provisions of this Order. The

preliminary hearing on the Motion was held on July 24, 2017. The Court entered an Interim Order dated July 25, 2017, governing the Debtor's use of cash collateral during the period that expires on August 19, 2017 (the "Interim Order");

Pursuant to the Interim Order, a final hearing on the Motion was scheduled for (and was held on) August 15, 2017. Notice of the Motion was given to Wexford, the Office of the United States Trustee, the holders of the twenty largest unsecured claims of the Debtor as set forth on the list filed pursuant to Rule 1007(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and all parties requesting notice under Rule 2002 of the Bankruptcy Rules. An official committee of unsecured creditors has not yet been appointed in this chapter 11 case. The Court, having considered the Motion and based on the statements of counsel at the Hearing, finds as follows:

A. A voluntary petition for relief under chapter 11 of the Bankruptcy Code was filed by Debtor on July 19, 2017 (the "Petition Date"), and thereafter the Debtor has continued in the management and possession of its business and properties as debtor-in-possession.

B. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334 and 157. Venue of this chapter 11 case in this district and division is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a "core" proceeding, for purposes of 28 U.S.C. § 157(b), as to which this Court may enter a final order.

C. Notice of the hearing on the Motion is adequate and sufficient under the particular circumstances, for purposes of sections 102(1), 105, 361, and 363 of the Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, 9007, 9013, and 9014 of the Bankruptcy Rules and other applicable law and rules of Court.

D. Several years prior to the Petition Date, the Debtor and FirstMerit Bank, N.A. ("FirstMerit") entered into the following loan transactions (collectively, the "Loans");

- (a) \$380,000 loan evidenced by a promissory note dated January 4, 2013. This loan is secured by a mortgage on the Debtor's real property located at 6751 Wall Street, Ravenna, Ohio 44266.
- (b) \$4,500,000 loan evidenced by a business loan agreement and a promissory note, each dated September 23, 2014. This loan is secured by a lien on substantially all assets of the Debtor as well as the commercial guaranties of Joseph, Murray and Ambrose.
- (c) \$341,000 loan evidenced by a promissory note dated December 23, 2014. This loan is secured by a lien on substantially all assets of the Debtor.

E. On February 29, 2016, FirstMerit assigned each of the Loans, as well as its interests in the collateral securing the Loans, to Ionia, LLC ("Ionia"). Ionia subsequently assigned its interest in the Loans to Wexford Investments, LLC ("Wexford"). Wexford is a wholly owned subsidiary of Ionia. As of the Petition Date, the amount outstanding under the Loans was \$1,026,759.60.

F. The Debtor owns 1.9379% of the shares of Ionia and Barbara Joseph, wife of John Joseph, owns 2.23646% of the shares.

G. In addition, John Joseph and Robert Murphy each invested \$250,000 with Ionia, in exchange for Depository Receipts which are convertible at the option of the holders into 25,000 shares of common membership interests in Wexford. If converted, the 25,000 shares of common membership interests would represent a 20% stake in Wexford. As of this date, none of the holders of Depository Receipts have exercised their conversion options.

H. Including the assertions recited above, Wexford asserts and Debtor irrevocably agrees, which agreement shall not bind any other creditor or party in interest in the bankruptcy case except as hereafter provided, that the Debtor's indebtedness to Wexford under the Loan Documents constitutes a valid, legal obligation of the Debtor which is owed without defense or set-off, is not subject to subordination, recharacterization or avoidance under the Bankruptcy Code or other applicable law, and is secured by, *inter alia*, valid, perfected and enforceable first

priority liens in and to substantially all business assets of the Debtor, including but not limited to, Debtor's real property located at 6751 Wall St., Ravenna, Ohio accounts, accounts receivable, contract rights, chattel paper, inventory, general intangibles, machinery, equipment, furniture and fixtures, including proceeds of the foregoing (collectively, the "Prepetition Collateral"). The indebtedness owed by Debtor to Wexford under the Loan Documents is agreed by the Debtor to be an allowed secured claim to the extent permitted by section 506(a) of the Bankruptcy Code and an allowed unsecured claim to the extent that it is not an allowed secured claim, in an amount not less than the sum set forth in paragraph D(2) above.

I. The Debtor asserts that it has been unable and lacks the ability to obtain unsecured credit.

J. Wexford asserts and Debtor agrees, which agreement shall not bind any other creditor or party in interest in this bankruptcy case (except as hereafter provided), that all of the Debtor's cash, including cash in its deposit accounts, wherever located, and whether as original collateral or proceeds or products of other Prepetition Collateral constitutes Cash Collateral of Wexford. Without the use of Cash Collateral in accordance with this Order, the Debtor asserts that it will not have the funds necessary to pay expenses needed to manage and preserve its assets during the initial stages of these bankruptcy proceedings.

K. The Debtor asserts that it is in the best interests of its estate and creditors for the Debtor to maintain operations using the Cash Collateral, pursuant to the terms of this Order.

L. The terms of this Order are fair, equitable, and reasonable.

M. Good, adequate and sufficient cause has been shown to justify entering this Order, and such entry is necessary to prevent irreparable harm to the Debtor's estate.

N. The Debtor submits that Wexford has a significant equity cushion in the Prepetition Collateral. Further, to ensure that Wexford is adequately protected against diminution

in the value of the Prepetition Collateral as a result of Debtor's use of Cash Collateral, the Debtor will provide Wexford with replacement liens, monthly debt service payments and other protections as detailed in this Order.

O. Attached to this Order as Exhibit A is a budget which covers the period August 20, 2017 to September 30, 2017 (the "Initial Budget"). The Court finds and determines that the expenses that Debtor proposes to pay under the Initial Budget are necessary to avoid immediate and irreparable harm to the Debtor's estate. It therefore is appropriate to authorize Debtor to expend Cash Collateral until the Termination Date (as defined below), and subject to the other terms and provisions of this Order, solely to pay the expenses enumerated in the Initial Budget, as amended from time to time by agreement of the Debtor and Wexford pursuant to **paragraph 3 of this Order** (the Initial Budget, as so amended is referred to as the "Budget").

P. Wexford is willing to consent to the use of Cash Collateral, only upon the terms and conditions contained in this Order.

Q. The Court may authorize the terms of this Order pursuant to sections 363 and 1108 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Accordingly, based on the foregoing, it is hereby **ORDERED** that:

1. The Motion shall be and hereby is granted solely to the extent provided in this Order.

2. Subject to the terms of this Order, Debtor shall be and hereby is authorized to use Cash Collateral until the Termination Date solely to pay those expenses that are enumerated in the Budget (or such additional amounts as Wexford may in its reasonable discretion agree), but only to the extent that collected funds are available. The Initial Budget extends through September 30, 2017. By no later than the tenth day of each month, beginning on September, 2017 the Debtor shall provide Wexford with a proposed Budget for the calendar month after the

expiration of the current Budget. Following the submission of a proposed Budget, the Debtor and Wexford shall attempt to reach an agreement on such Budget within ten (10) business days. Upon reaching an agreement, the Debtor shall file with the Bankruptcy Court the agreed Budget which shall become the Budget for purposes of this Order. In the event that the parties are unable to reach an agreement as to the proposed Budget for any calendar month, the parties shall seek a hearing on an expedited basis for resolution by the Bankruptcy Court of the Budget prior to the commencement of the next Budget period.

3. Cash Collateral must be used strictly in accordance with the terms of the Budget. The Debtor shall not, without the prior written consent of Wexford, use Cash Collateral with respect to any one line item in the Budget in excess of 110% of the amount originally identified in the Budget for that line item (the "Line Item Cap"); provided however, that in no event shall the aggregate expenditures in any given budget period exceed 100% of the amount originally identified in the Budget for such period. No amount of the Cash Collateral or the Pre- or Post-Petition Collateral shall be used to file or prosecute a contested matter or an adversary proceeding in this case challenging the amount, validity, or priority of the Prepetition Debt, Wexford's prepetition security interests or the Wexford Replacement Liens.

4. To adequately protect Wexford for the diminution of its interest in the Prepetition Collateral, the Debtor shall pay monthly installment payments owed to Wexford as and when due under the Loan Documents. Further, and only to the extent of any diminution in Wexford's interests in the Prepetition Collateral, Wexford shall be and hereby is granted (effective retroactive to, as of, and from the Petition Date) replacement security interests and liens (to the same extent, validity, enforceability, perfection and priority as the security interests and liens that Wexford had immediately preceding the Petition Date) in and to the following property of the Debtor and its bankruptcy estate, whether acquired prior to, on, or subsequent to the Petition

Date (the "Replacement Liens"): the Debtor's real property located at 6751 Wall St., Ravenna, Ohio, accounts, accounts receivable, contract rights, chattel paper, inventory, general intangibles, machinery, equipment, furniture and fixtures, including proceeds of the foregoing (collectively, the "Post Petition Collateral"). The Replacement Liens shall be in addition to Wexford's security interests and liens in the Prepetition Collateral, but only to the extent of any diminution in value. The Replacement Liens shall remain in full force and effect during the term of this Order and after the expiration or termination of this Order. The Replacement Liens shall be deemed created and perfected without the necessity of the execution, filing and recordation by the Debtor or Wexford of any mortgages, deeds of trust, security agreements, control agreements, pledge agreements, financing statements or any other documents required under the Bankruptcy Code or other applicable law for the creation, attachment and perfection of security interests and liens. Notwithstanding the foregoing, the Debtor shall, upon request made by Wexford, execute and deliver to Wexford such documents as may be required by Wexford to perfect its security interests and liens described herein under applicable non-bankruptcy law. The Replacement Liens shall be subject to the Carve-Out (defined below). Notwithstanding anything to the contrary herein or otherwise, the Post Petition Collateral specifically excludes causes of action (and proceeds thereof) arising under sections 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code (the "Avoidance Actions").

5. The automatic stay provisions of Bankruptcy Code section 362 are hereby modified to permit the Debtor (a) to grant the Replacement Liens as protection (but not necessarily adequate protection) to Wexford, and (b) to create, and Wexford to perfect, any and all liens, mortgages and security interests granted to Wexford hereunder; *provided, however*, that Wexford shall not be required to (i) file UCC financing statements or other instruments with any other filing entity to perfect any lien, mortgage or security interest granted by this Order or (ii)

take any other action to perfect such liens, mortgages and security interests, and (iii) such liens, mortgages and security interests are hereby deemed perfected; *provided however*, that if Wexford shall, in its sole discretion, elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens and security interests, the Debtor shall execute the same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made on the Petition Date.

6. From and after this Order, proceeds from the Prepetition Collateral and the Post Petition Collateral shall not, directly or indirectly, be used to pay expenses of Debtor or otherwise be disbursed except for those expenses or disbursements that are permitted to be paid in accordance with the terms of this Order.

7. Notwithstanding the liens and security interests recognized or granted to Wexford, Wexford stipulates and agrees that the Cash Collateral may be used by Debtor to pay the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930(a).

8. Notwithstanding any contrary provision of this Order, the Replacement Liens, shall be subject and subordinate to the following professional fee carve outs (the “Carve-Outs”): (i) up to \$50,000 in the aggregate for the allowed fees and expenses, whether incurred before or after the occurrence of a Termination Event, of Brouse McDowell, counsel to the Debtor; (ii) up to \$25,000 in the aggregate for the allowed fees and expenses of any professionals retained by the Debtors or the Committee (as defined below), provided that all such professionals are retained in the Debtor’s chapter 11 case pursuant to an order of the Bankruptcy Court; and fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court.

9. Debtor’s right to use Cash Collateral under this Order shall immediately cease and terminate (the “Termination Date”) without further notice, hearing, or order of the Court, upon an Event of Default (as defined below), after expiration of the Cure Period, as defined below (each a



“Termination Event”). Upon the occurrence of any of the Events of Default, other than a payment default with respect to the Adequate Protection Payment which shall require only a two (2) business day grace period, Wexford shall provide Debtors, the Office of the United States Trustee and any committee (if one is appointed) with written notice thereof (a “Default Notice”). Debtors shall have five (5) business days from the date of service of a Default Notice by Wexford (the “Cure Period”) within which either to cure any Event of Default for which the Cure Period is applicable or file a motion with the Court requesting an emergency hearing to determine whether such Event of Default has occurred and, if applicable, has not been cured; provided however, upon the occurrence of a Termination Event, Debtor shall be permitted to use Cash Collateral solely to pay the actual expenses (including but not limited to, payroll and related payroll expenses) that are accrued and unpaid through the Termination Date in an aggregate amount not to exceed the amount permitted in the Budget for such expenses.

10. Debtor’s right to use Cash Collateral under this Order shall immediately cease and terminate (the “Termination Date”) without further notice, hearing, or order of the Court, upon an Event of Default (as defined below), after expiration of the Cure Period, as defined below (each a “Termination Event”). Upon the occurrence of any of the Events of Default (as defined below), Wexford shall provide the Debtor, the Office of the United States Trustee and any committee (if one is appointed) with written notice thereof (a “Default Notice”). The Debtor shall have three (3) business days from the date of service of a Default Notice by Wexford (the “Cure Period”) within which either to cure any Event of Default for which the Cure Period is applicable or file a motion with the Court requesting an emergency hearing to determine whether such Event of Default has occurred and, if applicable, has not been cured; provided however, upon the occurrence of a Termination Event, Debtor shall be permitted to use Cash Collateral solely to pay the actual expenses (including but not limited to, payroll and related payroll expenses) that

are accrued and unpaid through the Termination Date in an aggregate amount not to exceed the amount permitted in the Budget for such expenses.

11. Any of the following events shall constitute an event of default (an “Event of Default”) under this Order:

(A) The Debtor’s failure to strictly comply with each and every term and provision of this Order;

(B) The Debtor’s use of the Cash Collateral to pay any obligation other than those specified in this Order or in the Budget (or with the reasonable consent of Wexford), or the Debtor’s use of the Cash Collateral to pay any obligation in excess of the applicable amount specified in this Order or in the Budget (subject to the provisions of Paragraph 3 of this Order);

(C) The entry of an order dismissing this bankruptcy case, converting this bankruptcy case to a case under chapter 7 of the Bankruptcy Code, appointing a trustee or examiner (whether under chapter 11 or chapter 7), or terminating the authority of Debtor’s to conduct or operate its businesses (no Cure Period shall apply to this Event of Default);

(D) The Debtor materially violates any other court order, or any rules or guidelines promulgated by the United States Trustee.

(E) This Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which adversely affects the rights of Wexford hereunder or adversely affects the priority of any or all of Wexford’s claims, liens or security interests; or

(F) Any sale of the Prepetition Collateral or Post Petition Collateral (other than in the ordinary course of business) is made without the consent of Wexford or an order of this Court.

12. Upon the occurrence of the Termination Date, or upon the occurrence of an Event of Default and the expiration of any applicable Cure Period, the Debtor's right to use Cash Collateral shall immediately terminate.

13. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Debtor's chapter 11 case to a chapter 7 case or any order which may be entered confirming or consummating any chapter 11 plan, *provided, further*, that the terms and provisions of this Order, as well as the liens, mortgages and security interests granted hereunder, shall continue in this case or any successor case and such liens, mortgages and security interests shall maintain their priority as provided by this Order until the Debtor's obligations to Wexford are satisfied in full.

14. Nothing in this Order shall be deemed to waive any rights of the Debtor or its bankruptcy estate under section 506(c) of the Bankruptcy Code.

15. Nothing in this Order shall limit the Debtor's or Wexford's rights to seek modification of this Order. The stipulations and admissions contained in this Order, including, without limitation, the stipulations and admissions relating to the amount, validity, and priority of the Debtor's indebtedness to Wexford and Wexford's prepetition security interests in the Prepetition Collateral contained in paragraph E of this Order, shall be binding upon the Debtor and any other party in interest under all circumstances. Notwithstanding the foregoing, nothing contained in this Order shall prohibit any party in interest or a duly appointed creditors' committee ("Committee") appointed in this case from objecting to or challenging the amount, validity, or priority of the Prepetition Debt or Wexford's prepetition security interests in the

Prepetition Collateral (a “Committee Challenge”). Unless a Committee Challenge is asserted by the commencement of a contested matter or an adversary proceeding in this case within seventy-five (75) days of the Committee’s appointment, the Committee's right to assert a Committee Challenge shall forever be barred.

###

PREPARED BY:

/s/ Kate M. Bradley  
Marc B. Merklin (0018195)  
Kate M. Bradley (0074206)  
Bridget A. Franklin (0083987)  
Brouse McDowell, LPA  
388 S. Main Street, Suite 500  
Akron, Ohio 44311  
Telephone: 330.535.5711  
Facsimile: 330.253.8601

*Counsel for the Debtor  
and Debtor in Possession*

APPROVED BY:

/s/ David M. Santoli  
David M. Santoli  
8251 Mayfield Rd, Suite 210  
Chesterland, OH 44026-2567  
Telephone: 440-729-0503

*Attorneys for Wexford Investment, LLC*

/s/ No Objection  
Maria D. Giannirakis  
Office of United States Trustee  
Howard M. Metzenbaum U.S. Courthouse  
201 Superior Ave., East - Suite 441  
Cleveland, Ohio 44114  
Telephone: 216.522.7800  
maria.d.giannirakis@usdoj.gov

1000622

**Week 1**      \$258,060.41      **Week 2**      \$170,103.02      **Week 3**      \$179,431.69      **Week 4**      \$143,235.00

FRT	\$18,000.00	FRT	\$11,000.00	FRT	\$13,000.00	FRT	\$15,200.00
Fuel	\$4,000.00	Fuel	\$7,200.00	Fuel	\$7,200.00	Fuel	\$3,900.00
Office Supplies	\$161.00	Scrap	\$75,000.00	Scrap	\$100,000.00	Scrap	\$100,000.00
Utilities	\$1,500.00	Equipment Repairs	\$2,235.00	Yard Supplies	\$600.00	Utilities	\$2,635.00
Scrap	\$80,400.00	Equipment Rental	\$5,500.00	Computer Monitor	\$755.00	Payroll	\$21,500.00
Equipment Repairs	\$2,500.00	Aflac	\$350.84	Insurance	\$18,231.00	UST Fees	\$21,500.00
Payroll	\$21,500.00	C Dax	\$1,172.10	Office Supplies	\$200.00		
Insurance	\$9,118.50	Toyota (2 Trucks)	\$888.48	Payroll	\$21,500.00		
		Utilities	\$1,800.00				
		Westford	\$15,500.00				
		Payroll	\$21,500.00				
<b>Total</b>	<b>\$140,291.34</b>	<b>Total</b>	<b>\$142,146.42</b>	<b>Total</b>	<b>\$154,686.00</b>	<b>Total</b>	<b>\$143,235.00</b>

Budget

Critical catch up payments

FRT							
Fuel							
Scrap							
Utilities							
Payroll							
UST Fees							
<b>Total</b>							

scrap		Universal	\$8,969.16
scrap		ASW	\$15,776.53
<b>Total</b>			<b>\$24,745.69</b>

Scrap	Universal	\$15,799.68
Scrap	Arconic	\$2,452.80
Scrap	ASW	\$6,864.19
Fuel	Arc Gas	\$1,160.06
Septic Cleaning	Downs Septic	\$390.00
Scrap	Portage Co Engineers	\$42.90
Scrap	Rogers Industrial	\$1,149.73
Scrap	Smithers Oasis	\$97.24
<b>Total</b>		<b>\$27,956.60</b>

FRT	Ron Campbell	\$4,500.00
Scrap	Total Scrap	\$102,047.36
FRT	Bulk Trucking	\$6,454.26
FRT	Buckeye	\$243.75
FRT	J Ross	\$525.00
FRT	Leek	\$339.13
Fuel	Ullman Oil	\$1,047.69
Scrap	FPT	\$2,611.88
<b>Total</b>		<b>\$117,769.07</b>