

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

In re: PLYMOUTH OIL COMPANY, L.L.C.,

Debtor.

Case No. 12-01403
Chapter 11

**MOTION FOR AN ORDER PURSUANT TO SECTIONS 105(a), 361 AND 363 OF THE
BANKRUPTCY CODE AND FED. R. BANKR. P. 2002, 4001 AND 9014 AUTHORIZING
DEBTOR'S CONTINUED USE OF CASH COLLATERAL OF SECURED CREDITORS**

COMES NOW the debtor, Plymouth Oil Company, L.L.C. (the "Debtor" or "Plymouth Oil"), by and through its undersigned counsel, and submits its Motion for an Order Authorizing the Debtor's Continued Use of Cash Collateral pursuant to the terms of the proposed order attached hereto as Exhibit A (the "Proposed Order").

I. PRELIMINARY STATEMENT

1. The Debtor makes this Motion for an order, pursuant to sections 105(a), 361, and 363 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor to continue to use the cash collateral of Ryan Lake, Steve Vande Brake, Arlon Sandbulte, Dirk Dorn and Iowa Corn Opportunities, LLC (the "Bridge Lenders"), together with Iowa Prairie Bank, Iowa Corn Processors, L.C., and FWS Industrial Projects, USA Inc. (collectively, the "Secured Creditors") in order to provide funding for, among other things: (a) the maintenance and preservation of its assets; (b) the continued operation of its business, including employee expenses, current tax obligations and insurance expenses; and (c) professional fees and the United States Trustee fees.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105(a), 361 and 363 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

III. BACKGROUND

3. The Debtor operates a corn oil extraction plant located near Merrill, Iowa (the “Plant”) that produces edible corn oil, defatted corn germ meal, and food grade corn flour. The Debtor also operates a feed mill located in Merrill, Iowa (the “Feed Mill”) that produces livestock feed. (The Plant and the Mill are collectively referred to herein as the “Business”).

4. The process used in the Plant produces a high protein corn germ meal that is sold as livestock feed. The Debtor is also currently utilizing a patent pending process to develop food-grade corn flour known as Golden Essence Flour (trademark pending) for marketing to consumers as a food product. The Debtor believes the potential market for its Golden Essence Flour is very promising, as the product is a higher protein, lower cost alternative to gluten-free products.

5. The Debtor started operations in February of 2010, and currently employs 21 employees. The Debtor’s business operation consists of purchasing raw corn germ and refining it into de-oiled germ meal for use in kosher food-grade cooking oil. The Plant produces approximately 80 tons of food-grade corn oil daily and approximately 300 tons of de-fatted corn germ meal sold daily which is used as livestock feed.

6. On July 23, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and has since been operating its business and

managing its assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

7. The Debtor has financed its business operations through, among other things, loans and financial accommodations from the Secured Creditors. Upon information and belief, the Secured Creditors may claim and interest in the Debtor's cash, accounts receivable, accounts and other items constituting cash collateral (the "Cash Collateral").

8. Upon information and belief, the Secured Creditors allege that they have properly perfected their liens and security interests in the Cash Collateral by the filing of appropriate financing statements in the office of the Secretary of State of Iowa.

IV. THE DEBTOR'S CURRENT AUTHORITY TO USE CASH COLLATERAL

9. Pursuant to the Cash Collateral Order entered December 3, 2012 [Docket No. 88], the Debtor is authorized to use the Cash Collateral of the Secured Creditors through and including March 1, 2013.

10. At the time the Cash Collateral Order was entered into, it was contemplated and understood by the parties that the Debtor would have ongoing cash collateral needs beyond the March 1, 2013 expiration date of the Cash Collateral Order in order to carry the Debtor through the plan confirmation process. The parties also understood that it was likely, as a result, that the Debtor would need to request additional authority past March 1, 2013, to use the Cash Collateral.

V. THE DEBTOR REQUIRES CONTINUED USE OF CASH COLLATERAL

11. Without the continued use of the Cash Collateral of the Secured Creditors as proposed herein the Debtor will be unable to fund critical operating functions.

12. The Debtor does not have sufficient unencumbered cash or other property from which to obtain cash to use in the continued operation of its business in this proceeding. The

Debtor is entitled to, and must have, continued authority to use the Cash Collateral in order to continue the operation of its business without interruption during the Debtor's efforts to develop a plan of reorganization for the benefit of all its creditors. The Cash Collateral will be used by the Debtor for the purpose of paying:

- a. its actual operating expenses, which are the same or similar to those experienced by it in the past operation of the Business and which are necessary to the continued operation of the business;
- b. maintenance, repair and preservation of property of the estate;
- c. current taxes incurred in the operation of the business; and
- d. payment of expenses associated with this Chapter 11 case, including United States Trustee's fees and professional fees and expenses.

13. If the Debtor is not authorized to continue to use the Cash Collateral, it will be forced to cease operation of the Business immediately and will not be able to pay expenses that it has currently incurred.

14. Ceasing operations of the Debtor will result in immediate and irreparable harm to the estate and its creditors. Continued use by the Debtor of the Cash Collateral in accordance with the same or similar terms and conditions set out in the existing Cash Collateral Order is in the best interest of the creditors of the estate.

15. In short, without authorization to use the Cash Collateral, the Debtor's prospects for a successful reorganization will be substantially undermined and the value of its assets will be placed in serious jeopardy. Therefore, it is imperative that the Debtor be authorized to continue to use Cash Collateral in order to preserve its assets.

VI. THE BRIDGE LENDERS ARE ADEQUATELY PROTECTED

16. Pursuant to the existing Cash Collateral Order and the Proposed Order continuing the authorization the Debtor's use of cash collateral, the Bridge Lenders have been granted replacement liens and administrative priority claims. The Bridge Lenders' interest in cash collateral has been adequately protected since the filing of this bankruptcy case and will continue to be protected under the Proposed Order.

A. The Bridge Lenders' Cash Collateral Assets Have Increased Since the Petition Date.

17. Jeff Kistner, the Debtor's acting CFO, testified at the Hearing that the Debtor's cash collateral assets (inventory, accounts receivable and cash) at the time of the Hearing are above the aggregate "threshold" amount for those assets as of the petition date even when factoring in payables. (See Hearing Exhibit 1.) Mr. Kistner also testified the Debtor is in a better financial condition now than it was at the time of its bankruptcy filing. Indeed, as demonstrated by Exhibit 1, the Debtor has consistently kept its cash collateral assets significantly higher than the aggregate value of those items at the time of the bankruptcy filing.

18. This is despite the fact that the Debtor has made \$90,000 of post-petition adequate protection payments to the Bridge Lenders and has spent approximately \$100,000 on repair and maintenance issues inherited from the Bridge Lenders tenure operating the Plant.

B. The Debtor Has an Equity Cushion with Respect to the Collateral at Issue.

19. The value of the Bridge Lenders' collateral exceeds the Bridge Lenders' claims such that the Debtor has equity in the collateral. The Debtor's equity in the collateral is sufficient such that the Debtor's equity interest in the collateral constitutes adequate protection. Many courts have held tat the existence of an "equity cushion" alone constitutes adequate

protection. See *In re Elmira Litho, Inc.*, 174 B.R. 892, 904 (Bankr. S.D.N.Y. 1994). See also *In re Schuessler*, 386 B.R. 458 (Bankr. S.D.N.Y. 2008); *In re Zeoli*, 249 B.R. 61 (Bankr. S.D.N.Y. 2000) (where the value of collateral that secured creditor's claim substantially exceeds amount of claim, debtor's breach of his payment obligation to creditor may not alone constitute cause for relief from stay, because the equity cushion in collateral may provide secured creditor with adequate protection); *In re Colonial Center, Inc.*, 156 B.R. 452 (Bankr. E.D. Pa. 1993) (creditor's interest is adequately protected where the value of creditor's collateral is significantly in excess of its lien and the equity cushion is not eroding too rapidly); *In re Antell*, 155 B.R. 921 (Bankr. E.D. Pa. 1992) (adequate protection of secured creditor's interest may be established by, among other things, the existence of an equity cushion).

20. As set forth on the balance sheet attached hereto as Exhibit B (the "Balance Sheet"), the Secured Creditors have a substantial "equity cushion" given the amount of their loans compared with the value of the assets securing such loans.

21. As demonstrated by the Balance Sheet, the Debtor's total assets are valued at \$16,636,740.09. This valuation of the Debtor's assets is conservative, as it is based upon cost basis less accumulated depreciation. Given the current balance of approximately \$9,000,000 on the Bridge Lenders' secured loans and their first position status, the Bridge Lenders, in particular, are very over-secured creditors and are especially adequately protected.

22. The Bridge Lenders provided an appraisal of Plymouth Oil Company, LLC prepared by Wayne W. Kubert ("Kubert") which was introduced into evidence at the January 4 hearing as Bridge Lenders' Exhibit N (the "Appraisal"). According to the Appraisal, the value of Plymouth Oil's assets, combined of real estate and equipment, is in the aggregate \$8 million. At this level

alone, the value of the collateral is very close to the value of the Bridge Lenders' claims which are based on an initial aggregate loan amount of \$7.5 million. The Bridge Lenders now claim the aggregate amount of their loan with penalty interest, fees, etc., to be in excess of \$9 million.

23. As set forth more fully in the Debtor's Hearing Brief [Docket No. 105], the aggregate value presented in the Appraisal is significantly lower than the true value of the collateral at issue in a number of respects. First, the Appraisal does not include the value of the feed mill in its valuation, which is \$2 million as listed on the Debtor's schedules. Even taking into account other liens claimed to have priority over that of the Bridge Lenders with respect to the Mill, this adds approximately \$1,000,000 to the value of the plant.

24. Additionally, the Appraisal does not take into consideration Plymouth Oil's claim against Plymouth Energy for the payment made by Plymouth Oil to Plymouth Energy in the amount of \$1.9 million related to the proposed installation of fractionation equipment at Plymouth Energy.

25. The Appraisal's valuation has also been inappropriately and inaccurately reduced by \$2.3 million for various items listed in the Appraisal labeled "Cost of Changes at the Subject Property."

26. Lastly, the net income to the real estate and equipment listed in the Appraisal as \$2,185,600 appears to be substantially lower than the actual numbers generated by the plant. Mr. Kubert testified in his evidence deposition that if the net income of Plymouth Oil were to increase, the value of the Appraisal would also increase. Specifically, Mr. Kubert testified that if the net income to the real estate and equipment were to be increased by \$1 million, that would result in an increase in the overall valuation to \$11.5 to \$12 million.

27. Compensating for the deficiencies contained in the Appraisal and adding them to the valuation of the plant results in the following increases to the valuation contained in the Appraisal:

Increase due to correct net income calculation	\$2,500,000 (conservative)
Increase due to Plymouth Energy claim	\$1,900,000
Increase due to omission of Mill	\$1,000,000
Increase due to cost of change calculation	\$2,300,000
Original amount of Appraisal	\$8,000,000
Total	\$15,700,000

28. Thus, even according to the Bridge Lenders' own Appraisal and to the testimony of their expert witness, the Debtor has an equity cushion with respect to the collateral and the Bridge Lenders, therefore, are adequately protected.

C. The Debtor's Plant Is in Better Condition at Present than It Was Prior to the Petition Date.

29. As indicated in the testimony of Bernie Punt at the January 4 hearing, since the filing of the bankruptcy petition, the Debtor has spent approximately \$100,000 on repairs and maintenance to the plant with respect to items that were in need of repair or maintenance during the Bridge Lenders' tenure managing and operating the plant. These items were necessary and essential to the proper functioning of the plant and include repairs to the blower, cleaning and repairing bins, repairs to the conveyor including new chain shafts and bearings, repairing the gear box and coupler assembly, repairing the spent germ cooler, electrical issues with the pump, repairing the expander, repairing numerous steam leaks and repairs to feed trucks, among other items.

30. The repair of these items is significant in two respects. First, it demonstrates that the Debtor is maintaining the Bridge Lenders' collateral. Second, the fact that the Debtor inherited a number of repair and maintenance items that should have been performed during the

Bridge Lenders' tenure operating the plant and was forced to spend a significant amount of money in that regard, significantly mitigates against the Bridge Lenders' objection to the Debtor's continued use of cash collateral, given that said objection is based primarily on the performance of the plant and purported allegations of decline in cash collateral assets.

D. The Debtor's Plant Is Operating More Efficiently Since the Petition Date.

31. Mr. Punt also testified at the January 4 Hearing that as a result of the Debtor's management of the plant, the plant has been operating more efficiently post-petition than it was prior to the bankruptcy filing. Mr. Punt indicated that the plant is operating at a much higher output of oil per ton of raw germ used than it was prior to the bankruptcy filing. Currently the plant is producing much lower oil residuals (1% or below) than it was prior to the bankruptcy filing. Specifically the Debtor is currently obtaining 102% of the Chicago Board of Trade corn price for the price of its spent germ. Prior to the bankruptcy petition, that price was approximately 72% of the CBOT corn price. This represents a 30% post-petition increase in the price of the Debtor's spent germ.

**VII. LEGAL STANDARDS SUPPORTING THE DEBTOR'S
USE OF CASH COLLATERAL**

32. Section 363 of the Bankruptcy Code governs a debtor's ability to use, sell or lease property of the estate, Section 363(c)(2) of the Bankruptcy Code restricts a debtor's ability to use cash collateral. That section provides, in pertinent part:

The trustee [or debtor in possession] may not use, sell or lease cash collateral under paragraph (1) of this subsection unless —

- (A) Each entity has an interest in such cash collateral consents; or
- (B) The court, after notice and a hearing, authorized such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

33. Section 363(a) of the Bankruptcy Code defines “cash collateral” as including cash and cash equivalents “whenever acquired,” in which the estate and any entity other than the estate have an interest, and the “proceeds, products, offspring, rents or profits of property subject to a security interest as provided in Section 552(b) of this title whether existing before or after the commencement of a case under this title.” 11 U.S.C. § 363(a).

34. Pursuant to Section 363(c)(2)(B) of the Bankruptcy Code, a debtor-in-possession may not use cash collateral without the consent of the secured party or court approval. In the absence of consent, section 363(c)(2)(B) permits the court, after notice and hearing, to authorize a debtor to use cash collateral.

35. Bankruptcy Code section 363(e) provides that, upon request of an entity that has an interest in property to be used by a debtor, the Court shall “prohibit or condition such use ... as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). What constitutes adequate protection is determined on a case-by-case basis. See In re Swedeland Development Group, Inc., 16 F.3d 552, 564 (3rd Cir. 1994); In re O'Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987).

36. “Adequate protection” is not defined in the Bankruptcy Code, although section 361 of the Bankruptcy Code sets forth three non-exclusive methods of how an interest in property may be adequately protected. In re Shriver, 33 B.R. 176, 181 (Bankr. N.D. Ohio 1983). Pursuant to section 361 of the Bankruptcy Code, adequate protection can be provided by, among other things, the making of periodic cash payments, the granting of replacement liens or the granting of such other relief as will provide the indubitable equivalent in such property.

37. Furthermore, the preservation of the Debtor's operations on a going-concern basis

is designed to maintain the value of the Collateral. See In re Aqua Associates, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

CONCLUSION

The Debtor respectfully submits that, under the circumstances, the combination of the equity cushion, replacement liens and the adequate protection claims, as set forth in the Debtor's previous Motions for Authority to Use of Cash Collateral [Docket Nos. 11 and 69] and in the Proposed Order, adequately protects the Secured Creditors for the continued use of Cash Collateral and non-cash collateral pursuant to Section 361 of the Bankruptcy Code. Accordingly, the Debtor should be authorized to continue to use the Secured Creditors' Cash Collateral.

WHEREFORE, the Debtor, Plymouth Oil Company, L.L.C., respectfully prays for a) entry of the Proposed Order continuing the Debtor's authority to use Cash Collateral or under such terms the parties may agree upon; and (b) granting the Debtor such other and further relief as is equitable and just.

/s/ Bradley K. Kruse

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CERTIFICATE OF SERVICE

On the February 15, 2013, this document was served on: (a) the Office of the United States Trustee for the Northern District of Iowa; (b) the Bridge Lenders, Iowa Prairie Bank, Iowa Corn Processors, L.C., and FWS Industrial Projects, USA Inc.; (c) the twenty largest unsecured creditors; (d) the Committee of Unsecured Creditors; and (e) parties who receive electronic notice through CM/ECF and those persons filing notices of appearance or requests for notice under Bankruptcy Rule 2002 in this Chapter 11 case.

/s/ Bradley R. Kruse

Bradley R. Kruse