



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: March 20, 2017.

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re:

**ALVIN WASHINGTON TRUCKING,
INC.,**

Debtor in Possession.

§
§
§
§
§

Case No. 17-10224-HCM

(Chapter 11)

**AGREED FINAL ORDER AUTHORIZING
THE DEBTOR TO USE CASH COLLATERAL**

On March 20, 2017, came on for final hearing the Motion, filed on behalf of ALVIN WASHINGTON TRUCKING, INC., the debtor in possession in the above entitled and numbered Chapter 11 case (the “Debtor”), seeking the authority of the Court pursuant to 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 4001(b) to use cash collateral (the “Motion”) [ECF Document No. 2]. The Debtor appeared through its counsel, as did Sovereign Bank (“Sovereign Bank”) and Maxim Commercial Capital, LLC (“Maxim”), which filed a written objection to the Motion (the “Objection”) [ECF Document No. 14]. Counsel for the Debtor, counsel for Sovereign Bank and counsel for Maxim announced that their respective clients have agreed to the terms of this Order, as indicated by the signatures of their respective counsel at the end of this Order.

After considering the Motion, the Objection, the record in this case and the agreement of the

parties, the Court finds that notice is proper in that copies of the Motion were duly served on parties in interest on February 27, 2017, and copies of the Court's Interim Order Authorizing Debtor to Use Cash Collateral, signed March 2, 2017 (ECF Document No. 18), which contained notice of the date, time and place of the final hearing on the Motion, were duly served on parties in interest on March 6, 2017. The Court further finds that no objections to the Motion have been filed, other than the written objection filed by Maxim, and finds that the entry of this Order on a final basis is therefore appropriate under the provisions of 11 U.S.C. §363(c) and Rule 4001(b), Federal Rules of Bankruptcy Procedure.

The Court further finds that certain assets of the Debtor [to wit: the Debtor's cash on hand, amounts on deposit in bank accounts, receivables and contract payments] are or may be the "cash collateral" (as that term is defined in 11 U.S.C. § 363) of Maxim, Gulf Coast Bank and Trust Company ("Gulf Coast"), BMO Harris Bank, NA ("Harris Bank"), Sovereign Bank, and Rapid Capital Finance, LLC ("Rapid Capital," together with Gulf Coast, Harris Bank, Maxim and Sovereign Bank, the "Lenders").

IT IS, THEREFORE, ORDERED that, conditioned as provided below, pending confirmation of a plan of reorganization in this case, or until further order of the Court, the Debtor is hereby authorized to use its cash on hand, amounts on deposit in its bank accounts (specifically excluding the Money Market Account at Sovereign Bank, more fully described below in this Order), the Debtor's receivables and contract payments, and the proceeds and products of any of the foregoing ("Cash Collateral") for the purposes described in the attached budget.

IT IS FURTHER ORDERED that Cash Collateral may be expended in an amount per month not to exceed 5% more than the total amount set forth on the attached budget. Subject to such 5% total budget limit and except for payments of insurance as described below, Cash Collateral may be expended on any single line item on such budget in an amount not to exceed 10% more than the line

item amount listed, but no more absent consent of Maxim or further order of the Court.

IT IS FURTHER ORDERED that the Debtor may use Cash Collateral in any amount to pay insurance premiums, or payments to reimburse its insurance agent for premiums paid by such agent post-petition on the Debtor's behalf, it being understood that the figure for insurance in the attached budget is an estimate only.

IT IS FURTHER ORDERED that, as adequate protection of Maxim's interest in Cash Collateral, it is hereby granted a security interest in the Debtor's post-petition property of the same nature in which Maxim had a pre-petition security interest, such interest to be of the same priority, validity and extent as its pre-petition interest in the Debtor's property.

IT IS FURTHER ORDERED that, as additional adequate protection of Maxim's interest in Cash Collateral, the Debtor shall pay to Maxim the sum of Two Thousand and No/100 Dollars (\$2,000.00) per month during the pendency of this case, such \$2,000 per month payment being one and the same as the monthly payment to Maxim provided for in the Agreed Order Modifying the Automatic Stay, signed by the Court contemporaneously with the signing of this Agreed Order, and such monthly payments shall be made by the Debtor to Maxim on the schedule and in the manner more fully described in such Agreed Order Modifying the Automatic Stay.

IT IS FURTHER ORDERED that this Order expressly does not authorize the Debtor to use, absent further order of the Court, after notice and a hearing, any funds in the Sovereign Bank Money Market Account, account number ending in 4137, which account is subject to an Assignment of Deposit Account dated October 1, 2016, by which the Debtor granted Sovereign Bank a security interest in such Money Market Account to secure a Commercial Guaranty of even date therewith, executed by the Debtor in favor of Sovereign Bank. Such account is specifically excluded from the cash collateral use authorized by this Order.

IT IS FURTHER ORDERED that this Order is not to be construed as a determination of the extent, validity, priority or perfection of any lien or security interest claimed by any one or more of the Lenders in any item of personal property comprising the collateral. The agreement of the Debtor, Sovereign Bank and Maxim to the terms of this Order does not constitute an admission and does not waive any factual or legal argument in any subsequent proceeding to determine the extent, validity, priority or perfection of any such lien or security interest.

IT IS FURTHER ORDERED that this Order is excepted from the provisions of Fed.R.Bankr.P. 4001(a)(3) and shall be effective immediately upon its entry, with no stay of its enforcement.

###

AGREED AS TO BOTH SUBSTANCE AND FORM:

PADFIELD & STOUT, LLP

421 W. Third Street, Suite 910
Fort Worth, Texas 76102
Phone: 817-338-1616 / Fax: 817-338-1610

/s/ Christopher V. Arisco

Mark W. Stout
State Bar I.D. # 24008096
ms@livepad.com
Christopher V. Arisco
State Bar I.D. #24064830
carisco@livepad.com

Attorneys for Maxim Commercial Capital, LLC

/s/ Weldon Ponder

B. Weldon Ponder, Jr., Attorney at Law
4408 Spicewood Springs Road
Austin, TX 78759
Phone: 512-342-8222 / Fax: 512-342-8444
email address: welpon@austin.rr.com

/s/ Catherine A. Lenox

CATHERINE A. LENOX, Attorney at Law
State Bar of Texas No. 12204350
P.O. Box 9904
Austin, Texas 78766
Phone (512) 689-7273
email address: clenox.law@gmail.com

**Attorneys for the Debtor in Possession,
Alvin Washington Trucking, Inc.**

/s/ Thomas C. Scannell

Thomas C. Scannell (TX 24070559)
Gardere Wynne Sewell LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Phone (214) 999-4289
Fax (214) 999-3289
email address: tscannell@gardere.com

Attorneys for Sovereign Bank

This Order was prepared and submitted by:

B. Weldon Ponder, Jr.

Attorney at Law

4408 Spicewood Springs Road

Austin, Texas 78759

Telephone: (512) 342-8222

Facsimile: (512) 342-8444

e-mail address: welpon@austin.rr.com

Alvin Washington Trucking, Inc.

Case No. 17-10224

One-Month Cash Collateral Budget

INCOME

Projected Gross Income \$ 24,250.00

EXPENSES

Wages	\$ 5,771.88
Payroll Taxes	\$ 956.25
Owner's Compensation/Draw	\$ 2,166.67
Fuel	\$ 5,600.00
Oil & Grease	\$ 650.00
Equip. and Vehicle Repairs (incl. Parts)	\$ 500.00
Tires & Tire Repairs	\$ 500.00
Water for Truckyard	\$ 50.00
Licenses & Fees	\$ 200.00
Utilities	\$ 350.00
Telephone/Cellphone/Internet	\$ 525.00
Insurance [1]	\$ 3,750.00
Office Supplies	\$ 50.00
Postage	\$ 50.00
Bank Charges	\$ 10.00
Maxim - Adequate Protection Payment	\$ 2,000.00
Accounting/Bookkeeping [2]	\$ 700.00
United States Trustee's Fees [3]	\$ 325.00
Attorneys Fees [4]	\$ -
Total Projected Expenses:	\$ 24,154.79

NET INCOME: \$ 95.21

[1] Estimated monthly premium of \$x 3, plus payment to agent to reimburse its advance of down payment of \$7,800.00 on 2/28/17

[2] Payment of professional fees; Debtor to request court approval of employment of accountant, and his fees.

[3] Monthly accrual of est. \$975/quarter.

[4] Accrual/payments into attorney's trust account to fund and replenish retainer, as approved by court.