

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**IN RE:**

**THISTLE FOUNDRY & MACHINE :  
CO., INC. :  
Debtor :**

**Chapter 11 Case No.  
18-71371**

**THISTLE FOUNDRY & MACHINE :  
CO., INC. :  
Movant :**

**v. :**

**FIRST SENTINEL BANK :  
Serve: John Thompson, President :  
& CEO, P.O. Box 1050, Richlands, :  
VA 24641 :**

**Serve: Randall L. Deel, Registered :  
Agent, 315 Railroad Avenue, :  
Richlands, VA 24641 :**

**INTERNAL REVENUE SERVICE :  
Serve: Charles P. Rettig, :  
Commissioner, 77 K Street, NE, :  
Washington, DC 20002 :**

**Serve: Thomas Cullen, United :  
States Attorney, Western District :  
of Virginia, P.O. Box 1709, :  
Roanoke, VA 24008 :**

**Serve: Jeff Sessions, U. S. Attorney: :  
General, 950 Pennsylvania Avenue :  
NW, Suite 7141, Washington, D.C. :  
20530 :**

**Respondents :**

**MOTION TO USE CASH COLLATERAL**

NOW COMES your Debtor, by Counsel, and for its motion to use cash collateral states as follows:

1. Debtor filed a petition seeking relief under Chapter 11 of the United States Bankruptcy Code on October 12, 2018. The Debtor is in the foundry business, manufacturing parts primarily for the coal industry.

2. Jurisdiction is vested in this Court pursuant to 28 U.S.C. 157. This is a core proceeding.

3. The Respondents, Internal Revenue Service and First Sentinel Bank, each have a lien upon the cash collateral being the accounts receivable of the Debtor. First Sentinel Bank has a UCC lien filed February 28, 2014 as file number 14022839242; and the United States has filed several notices of tax liens in Tazewell County, Virginia, and one in the State Corporation Commission dated September 1, 2015, file number 1509013970. Since more than forty five days have passed since the filing of the tax liens, it is believed that the United States of America has the first and senior lien.

4. In accordance with §363(c)(2)(B) of the United States Bankruptcy Code, the Debtor requests that this Court authorize and approve the Debtor's use of cash collateral with a value of approximately \$22, 750.00 for the payment of its operating expenses as set forth in the budget attached hereto as Exhibit "A."

5. In order to remain in possession of its property and continue its business activity in an effort to achieve successful reorganization, the Debtor must be permitted to use cash collateral in its ordinary business operations. The Debtor currently has no present alternative borrowing source from which the Debtor could secure additional funding to operate its business.

6. Specifically, the Debtor requires the use of cash collateral for the payment of certain operating expenses as set forth on the Budget attached hereto as Exhibit "A."

The Debtor believes the expenses listed on the Budget are reasonable and necessary business expenses which must be paid in order to continue the Debtor's business.

7. In an effort to adequately protect the interests of the secured creditors, First Sentinel Bank and the United States of America - Internal Revenue Service (the "secured creditors"), and the pre-petition collateral for the Debtor's use of cash collateral as requested in this Motion, the debtor is offering to provide the secured creditors with replacement liens pursuant to and in accordance with 11 U.S.C. § 361(2), in and to all property of the estate of the kind presently securing the indebtedness owing to the secured creditors ("post-petition collateral") purchased or acquired with the cash collateral of the secured creditors, up to the amount of the pre petition cash collateral, which is believed to be \$22,750.00.

8. In the event this Court does not authorize the Debtor's use of cash collateral, the Debtor believes it will be unable to maintain its current business operations and propose a plan of reorganization as contemplated by the Bankruptcy Code. Without the use of cash collateral, the Debtor will be seriously and irreparably harmed, resulting in significant losses to the Debtor's estate and its creditors. Given the age of the business premises, and the type of manufacturing process the Debtor engages in, a liquidation would not bring sufficient funds to even pay the secured creditors in full. The Debtor has new outstanding orders and it has an improving business, due to a number of economic factors, it believes a reorganization is in prospect rather than a liquidation.

9. In filing this Motion, the Debtor does not admit that the secured creditors hold valid, perfected or enforceable pre-petition liens and security interests in and to any of the pre-petition collateral and the Debtor does not waive the right to contest the validity,

perfection, or enforceability of the secured creditors' alleged pre-petition liens and security interests in and to any such property.

10. A proposed cash collateral order is attached as "Exhibit B."

### **REQUEST FOR EMERGENCY HEARING**

Without the ability to use cash collateral on an interim basis, the Debtor is without enough funds to be able to operate for fifteen (15) or more days until a final hearing on this Motion can be held. Debtor requires funds to meet its payroll at the end of this week and pay operating expenses. The total amount required for this use of cash collateral is not less than \$22,750.00.

WHEREFORE, your Debtor prays for an order, pursuant to Rule 4001(b)(1), and Rule 4001(b)(2), allowing it to use the cash collateral for a term of twenty two (22) days as outlined above, until a full hearing can be held on November 8, 2018 at 10:30 a.m. in this Court in Abingdon, Virginia.

### **NOTICE OF INTERIM HEARING**

PLEASE TAKE NOTICE that on the 17<sup>th</sup> day of October, 2018, at 1:30 p.m., the undersigned will move the United States Bankruptcy Court, 180 West Main Street, Abingdon, Virginia, for entry of an order in accordance with the foregoing Emergency Motion to Use Cash Collateral.

**THISTLE FOUNDRY & MACHINE  
COMPANY, INC.  
By Counsel**

/s/Robert T. Copeland

Robert T. Copeland, VSB #14575  
**COPELAND LAW FIRM, P.C.**  
P.O. Box 1296  
Abingdon, VA 24212  
(276) 628-9525  
(276) 628-4711 (fax)  
Counsel for Debtor

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing has this date been filed with the United States Bankruptcy Court via the ECF system, and that true copies have been served via electronic mail and/or by the Court through its ECF system, upon all known counsel of record for the respondents, and all others having requested electronic noticing, and true copies have been mailed via first class mail, postage prepaid, to the twenty largest unsecured creditors in this case, and via certified mail, return receipt requested to the named respondents herein.

Dated: October 12, 2018

/s/Robert T. Copeland

