

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
CONTINENTAL SALES & ENGINEERING, COR.) CAUSE NO. 10-02648-JKC-11
)
DEBTOR.)
)
_____)

**FIRST DAY MOTION FOR AUTHORITY
TO USE CASH COLLATERAL AND APPROVE
§364(A) UNSECURED CREDIT**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

In support of the above-entitled motion (this “Motion”), the debtor and debtor-in-possession (the “Debtor”), by counsel, state:

1. The Debtor filed its petition for relief under Title 11, Chapter 11 of the United States Code on March 04, 2010 (the “Petition Date”).
2. Since the Petition Date, the Debtor has continued in the possession of its property pursuant to §§ 1107 and 1108 of the Bankruptcy Code, codified at 11 U.S.C. §101, *et seq.* (the “Code”), and is the debtor-in-possession. No trustee or examiner has been appointed in this case. No committees have been appointed or designated.
3. This Court has jurisdiction over this Motion and this matter pursuant to 28 U.S.C. §157(b).
4. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. The statutory predicates for relief are §§103, 105(a), 361, 363(a), 363(c)(2), 364(a), 1106, 1107(a), 1108 and 1129(a)(9) of the Code.

7. The Debtor was founded in 1952 by Douglas M. Miles, Sr. The Debtor is in the business of distributing parts to primarily automotive manufacturers and designing and selling integrating service. Parts the Debtor commonly sells includes: masking, safety supplies, abrasives, cutting tools, gear cutting durable items, specialty tooling, coolants, hand tools, OEM Spares and parts or work holdings, vending machines, machinery and MRO supplies for a variety end users. The Debtor also provides the following services: engineering, cost reduction and process improvements, training, education, benchmarking, repair programs, minority programs, crib management, integrated supply and inventory control. The Debtor fills a rare niche in the engineering industry.

8. The Debtor provides for customers elimination of machine down time, increase manufacturing productivity, reduce cost per piece produced where applicable, reduce/eliminate in-plant tooling inventory, reduce obsolete tooling, minimize/eliminate “Emergency/Rush Deliveries”.

9. The Debtor operates from corporate headquarters located at 10201 N. Hague Road, Indianapolis, Indiana, 46256 and at four other locations: Rocky Mountain, North Carolina, Charleston, South Carolina, McDonna, Georgia, and Columbus, Indiana.

10. The Debtor intends to reorganize in this proceeding, and this case was filed as an emergency because it’s banks accounts were garnished by a judgment creditor.

11. With respect of the Debtor’s cash collateral, and the subject of this Motion, Busey Bank may possibly assert a security interest in certain of the Debtor’s accounts, deposit accounts, general intangibles, and cash proceeds thereof (the “Cash Collateral”), among other things, to secure

indebtedness to them. Searches of the records of the Indiana Secretary of State and Marion County, Indiana Recorder's Office did not reveal any other filing asserting a security interest in the Cash Collateral; however, a judgment creditor did obtain a bank account garnishment recently. That creditor, XL Screw Corporation, may assert an interest based upon the garnishment. The Debtor's position is that interest is avoidable under §547 as a preference, and as such does not require adequate protection.

12. The Debtor does not have sufficient unencumbered cash or other property from which to obtain cash to use in the continued operation of their business in this proceeding. The Debtor has no alternative source from which to borrow or otherwise obtain cash with which to continue the operation of their business in this proceeding. The Debtor is entitled to, and must have, immediate 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 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. The Debtor needed access to funds immediately prior to the filing of the Petition and was forced to borrow from its vice-president, Doug M. Miles, Jr. Mr. Miles used his personal American Express Card within the last few days to buy materials for the Debtor in the approximate amount of \$46,000.00. This quick action saved the Debtor from losing very important customers who required materials. Obviously on such short notice, there was no time to execute proper loan

documents, or even anticipate how this would square with the emergency bankruptcy filing. The Debtor must use the Cash Collateral to repay this loan and the Debtor must be authorized to continue borrowing from Mr. Miles if funds are required. For one thing, many suppliers only take credit cards; moreover, as a result of a very recent pre-petition bank account garnishment, the Debtor had no access to its own money. This has caused an understandable disruption in normal operations, payment of suppliers and purchase of inventory to complete work for clients. Until the account is released, new DIP authorized bank accounts opened and some stability returns to the Debtor's operations, the loans from Mr. Miles are a lifeline to the Debtor. Mr. Miles must be repaid to free up availability on his personal American Express card. The terms of the "DIP loan" from Mr. Miles are basic and highly favorable to the Debtor, and consistent with what might be expected of a loan from an officer to his corporation: unsecured, \$100,000 revolving line of credit and no interest on outstanding balance. Additionally, Mr. Miles needs the pre-Petition approximately \$46,000.00 paid off to free up available credit on his American Express card so that he may continue extending additional credit to the Debtor. While §364(a) authorizes such unsecured borrowing, it is silent on "bootstrapping" pre-Petition debt. Thus, Debtor specifically requests authority to pay the pre-Petition debt to Mr. Miles of \$46,000 and out of an abundance of caution (and since Mr. Miles is obviously an officer and insider) authority is being sought to continue borrowing, even though such authority is already provided in §364(a).

14. If the Debtor is not authorized to use the Cash Collateral, it will be forced to cease operation of its business immediately and it will not be able to pay expenses that it has currently incurred, including payroll expenses related to its employees. Ceasing operations of the Debtor will result in immediate and irreparable harm to the estate, its creditors, employees of the Debtor, and customers of the Debtor and the owner of the Debtor. Use by the Debtor of the Cash Collateral in

accordance with the terms and conditions set out in this Motion is in the best interest of the creditors of the estate.

15. The Debtor proposes to provide adequate protection to Busey Bank in exchange for use of the Cash Collateral by granting to them a security interest in certain accounts, deposit accounts, general intangibles, and cash proceeds thereof owned and/or developed by the Debtor in the operation of its business during this proceeding up to the amount of the utilized Cash Collateral.

16. **Statement pursuant to L.R. B-9013-3(b).** On March 8, and prior to filing this Motion, below signed counsel discussed its general contents with counsel for the United States Trustee, Laura DuVall, in the form of voicemail left for counsel, who was out of the office that day. Although below signed counsel was unable at that time to provide detailed specifics regarding the Motion, an offer was made to confer prior to a hearing regarding any questions counsel for the U.S. Trustee may have regarding the Motion.

REQUEST FOR RELIEF

The Debtor respectfully requests that this Court grant it all just and proper relief in the premises on this Motion, including entry, after an expedited hearing on this Motion, of an interim order authorizing use of Cash Collateral and granting DIP loan by the Debtor and setting a final hearing for determination of the Debtor's rights to use Cash Collateral in this case.

Respectfully submitted,

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