

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re:)	
)	
ATLANTIC FABRICATION & DESIGN)	Case No. 17-14891-JDL
LLC,)	Chapter 11
)	
Debtor.)	
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**DEBTOR’S EXPEDITED MOTION FOR AUTHORITY TO USE CASH COLLATERAL
AND RELATED OPERATING PROCEDURES, AND BRIEF IN SUPPORT
AND NOTICE AND OPPORTUNITY FOR HEARING**

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave., Oklahoma City, OK 73102 no later than Tuesday, December 5th, 2017 at 2:00PM. You should also serve a file-stamped copy of your response or objection to the undersigned movant’s attorney and all others required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

A hearing will be held on this Pleading on Wednesday, December 6th, 2017 at 9:00AM before The Honorable Chief Judge Janice Loyd, 215 Dean A. McGee Ave, 2nd Floor Courtroom, Oklahoma City, OK 73102.

If necessary, the Final Hearing on any interim orders entered regarding this Pleading will be held on Wednesday, January 3rd, 2018, at 9:00AM before The Honorable Chief Judge Janice Loyd, 215 Dean A. McGee Ave, 2nd Floor Courtroom, Oklahoma City, OK 73102

Atlantic Fabrication & Design LLC, debtor in the above-captioned case (“Debtor”), files this Motion for Authority to Use Cash Collateral and Related Operating Procedures, and Brief in Support (the “Motion”), pursuant to the provisions of 28 U.S.C. § 363(c)(2)(B) and Fed. R.

Bankr. P. 4001(b). In support of this Motion, the Debtor relies on and incorporates the Declaration of Paul D. Stitt (the “Declaration”). In further support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION, VENUE, AND BACKGROUND

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. On December 4th, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”).

3. The Debtor continues to operate the business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. The United States Trustee has not yet appointed any official committees in this case, and no request has been made for the appointment of a trustee or examiner.

4. Debtor provides mechanical and welding fabrication services with an emphasis on the repair and manufacture of pressure vessels, boilers, and steam piping systems. Debtor has identified over \$1,500,000.00 in personal property, \$250,000.00 in real estate, and over \$200,000.00 in Accounts Receivables. However, Debtor has two secured creditors with claims exceeding \$1,000,000.00 and three major unsecured creditors with claims greater than \$700,000.00.

5. Bank of Kremlin has a first priority, all business asset security interest of \$887,735.68. The Internal Revenue Service has a second priority, all business asset statutory

lien of \$138,758.62. Debtor has no other known secured creditors with perfected liens.

6. Debtor only has three employees, the two principals and an office manager. All other labor is provided to Debtor by various professional staffing companies. In addition, Debtor has certain raw material and consumable supply needs in order to manufacturer their finished goods. Without the ability to continue receiving labor from their professional staffing vendors and necessary raw materials the Debtor will not be able to operate.

7. Further, Debtor must have adequate cash to fund their staffing and labor requirements. The average time from when Debtor receives an order or contract until the finished product is shipped is one month. During that month time Debtor will have already needed to purchase materials and pay for labor. Unfortunately, it is industry custom for a customer to not pay until 30 to 45 days after receipt of the finished goods. Thus, Debtor may experience up to a 60 day gap between paying for costs of goods sold and receipt of revenue.

8. Debtor now seeks the relief contained herein permitting Debtor to use cash collateral in order to facilitate Debtor's operational requirements in bankruptcy.

RELIEF REQUESTED

9. As set forth in the Debtor's Budget, incorporated herein and attached hereto, the Debtor requires the use of cash collateral to fund all necessary operating expenses of the Debtor's business. The Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to fund the expenses set forth in the Budget.

10. Section 363(a) of the Bankruptcy Code defines "Cash Collateral" to mean cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents whenever acquired, in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property subject to a security

interest as provided in Section 552(b) of the Bankruptcy Code, whether arising before or after the commencement of a case under the Bankruptcy Code.

11. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell, or lease cash collateral unless: (i) Each entity that has an interest in such cash collateral consents; or (ii) the Court, after notice and hearing, authorizes the use of the cash collateral.

12. As described in the Declaration and herein, the Debtor expects to collect pre-petition accounts receivables and generate post-petition revenue which the Debtor believes will be necessary to pay ordinary operating expenses.

13. The Debtor's ability to (i) maintain operations, (ii) successfully reorganize, and (iii) eventually repay its secured and unsecured creditors, depends upon the Debtor's ability to immediately use the cash collateral.

14. Debtor proposes to use the cash collateral in accordance with the terms of the Budget and grant a replacement lien on the Debtor's receivables as adequate protection. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. 11 U.S.C. § 361(2). *See e.g. Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987).

Wherefore, the Debtor prays that the Court enter its Order (i) authorizing the Debtor's use of the Cash Collateral, (ii) granting the adequate protection as outlined herein to the extent the Debtor uses the cash collateral as requested in this Motion, and (iii) granting the Debtor such other relief as is proper.

Respectfully Submitted,
SANSONE HOWELL PLLC

/s/ Jason A. Sansone

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PROPOSED COUNSEL FOR DEBTOR

Dated: December 4th, 2017