



**SO ORDERED.**

**SIGNED this 2nd day of November, 2017.**

  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

**IN RE:  
WALL GROUP INDUSTRIES, INC.  
DEBTOR**

**CHAPTER 11  
CASE NO. 17-80873**

**INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL AND  
PROVIDING NOTICE OF FURTHER HEARING**

THIS CAUSE came before the Court on October 27, 2017 upon the Debtor's Motion for Authority to Use Cash Collateral ("Motion"). James C. White appeared for the Debtor, Matthew P. Weiner appeared for creditor FFD, LLC and Robert E. Price, Jr. Assistant Bankruptcy Administrator appeared.

FFD, LLC ("FFD") contends that it has a security interest in substantially all of the Debtor's assets, including accounts receivable, which constitutes cash collateral as defined in Section 363 of the Bankruptcy Code. Michael Olander, Jr., the minority shareholder in the Debtor, either individually or through various entities, is 100% owner of FFD. The Debtor has brought an adversary proceeding seeking recharacterization or equitable subordination of FFD's debt. FFD and Mr. Olander dispute that grounds exist for either recharacterization or equitable subordination. FFD and Mr. Olander further dispute the

Debtor's assertion in the Motion and adversary proceeding that their conduct was improper or inequitable.

Insulation Distributors, Inc. ("Insulation") also has a security interest in substantially all of the Debtor's assets, including accounts receivable which constitutes cash collateral as defined in Section 363 of the Bankruptcy Code.

It appears to the Court that the terms and conditions set forth below are reasonable and appropriate, are in the best interest of the bankruptcy estate and all creditors and should be approved. It further appears to the Court that (a) the notice of the Motion which the Debtor provided to creditors and parties in interest is adequate and proper, and (b) the requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor's use of cash collateral and for the grant of adequate protection to the Secured Creditors upon the terms set forth in this Order.

THEREFORE based upon the Debtor's Motion for Authorization of Cash Collateral, the arguments of counsel and the record in this case, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on October 20, 2017 (the "Petition Date") and operates as debtor-in-possession. A Committee of Unsecured Creditors has not been appointed.
3. On or about September 11, 2015, the Debtor executed a Promissory Note in favor of Capital Bank N.A. in the principal amount of \$800,000.00.

4. Capital Bank secured its debt with, among other collateral, a lien on substantially all of WGI's assets, including accounts receivable.

5. In or about July of 2017 FFD, LLC ("FFD") was formed.

6. On or about July 31, 2017, FFD, purchased the Capital Bank Note and Capital Bank assigned its security interests to FFD.

7. For the purposes of this Order only, the Debtor acknowledges and does not dispute the validity, priority and extent of the security interest asserted by FFD.

8. Insulation Distributors, Inc. ("Insulation") is a trade creditor of WGI. WGI has an outstanding balance of \$7,435.51 with Insulation.

9. On March 31, 2014, Insulation filed a UCC Financing Statement with the North Carolina Secretary of State.

10. For the purposes of this Order only, the Debtor acknowledges and does not dispute the validity, priority and extent of the security interest asserted by Insulation. FFD disputes that the Insulation security interest is valid, and reserves its right to challenge the validity of such interest.

11. It appears that FFD and Insulation (the "Secured Creditors") are the only creditors to assert a security interest against "cash collateral" as that term is defined in the Bankruptcy Code. FFD has consented to the Debtor's use of cash collateral on an interim basis subject to the terms and conditions set forth in this Order.

12. The Debtor asserts that the terms and condition of this Order appear to provide adequate protection of the interests of the Secured Creditors in the Debtor's use of cash collateral. The Secured Creditors reserve all rights with respect to adequate protection,

including a right to seek further relief under 11 U.S.C. §§ 361, 362, and 363 and any other remedies available under applicable law.

13. The Debtor's only significant source of income is through continued business operations and the resulting accounts receivable generated by them. The Debtor has no other readily available cash with which to operate its business. As a result, the Debtor will require access to the cash collateral generated by its business operations to continue operations. If the Debtor does not have use of its cash collateral, the Estate will suffer immediate and irreparable harm because it will not be able to pay its expenses from funds generated by business operations.

14. The Debtor asserts that the terms, conditions, and limitations of this Order are reasonably tailored to protect the interests of all creditors of the bankruptcy estate.

15. The requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor's use of cash collateral and for the grant of adequate protection to the Secured Creditors upon the terms set forth in this Order.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law the Court hereby ORDERS:

1. The Secured Creditors shall have a continuing post-petition lien and security interest in all property and categories of property of the Debtor in which and of the same priority as each respectively held a similar, unavoidable security interest as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the "Post-petition Collateral"), equivalent to a lien granted under §§ 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of cash collateral used for purposes other than adequate protection

payments. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.

2. The Debtor shall not use cash collateral except to pay its ordinary, necessary and reasonable post-petition operating expenses and administrative expenses necessary for the administration of this estate, including the Debtor's reasonable attorneys' fees as approved by this Court and quarterly fees, as set forth in the budget attached as Exhibit "A." The Debtor may not exceed the total budgeted expenses or any category of budgeted expense set forth by more than 10% in the time before November 20, 2017.

3. The Debtor shall maintain Debtor-in-Possession bank accounts ("DIP Accounts") into which it shall deposit all post-petition receipts and revenues of any kind.

4. Upon reasonable prior notice, the Debtor shall provide to the Bankruptcy Administrator and representatives and/or employees of the Secured Creditors all such information as they may reasonably request for the purpose of appraising or evaluating the cash collateral of the Debtor, the Debtor's use of cash collateral and the Debtor's financial performance.

5. The Debtor shall pay as additional adequate protection to Insulation pursuant to 11 U.S.C. §§ 361, 362 and 363 the sum of one hundred dollars ("100.00") to be paid before November 20, 2017.

6. As additional adequate protection to FFD pursuant to 11 U.S.C. §§ 361, 362 and 363, the Debtor shall pay the sum of \$6,000 into a segregated debtor-in-possession account (the "Segregated Account") within ten (10) days of the entry of this Order. The Segregated Account shall be a restricted-access account, and only Debtor's counsel may withdraw funds from the

Segregated Account. No funds may be withdrawn from the Segregated Account without an order from this Court.

7. The terms and conditions of this Order do not necessarily constitute adequate protection of the interests of the Secured Creditors in its cash collateral. Nothing in this Order shall waive any of the Secured Creditors' rights unless expressly provided for herein, including but not limited to the right to assert any claim pursuant to Section 507(b) of the Bankruptcy Code with priority over all other expenses of administration in this case and any ensuing Chapter 7 case. The Secured Creditors reserve the right to contend that the terms and conditions of this Order do not constitute adequate protection of their interests and reserve their right to seek further relief under 11 U.S.C. §§ 361, 362 and 363.

8. The Debtor expressly reserves its right to seek the use of cash collateral beyond the stated terms of this Order. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues by filing a request with the Court; provided however that a hearing of such request shall not occur on less than five (5) business days' notice to the Bankruptcy Administrator, the Debtor, and all creditors.

9. This Order shall remain in full force and effect until the earlier of (i) entry of an Order by the Court modifying the terms of the use of cash collateral or the adequate protection provided to the Secured Creditors; (ii) entry of an order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; (iii) upon filing of a notice of default as provided in this Order; or (iv) November 20, 2017.

10. The following shall constitute events of default:

- a. If the Debtor fails to make the adequate protection payments as set forth in this Order;

- b. If any post-petition lender to the Debtor or any other creditor of the Debtor shall acquire a post-petition security interest in or lien upon the Post-petition Collateral having priority over the security interests and liens in such property held by the Secured Creditors unless the Secured Creditors expressly consent to such subordination in writing.
- c. If the Debtor falls to comply with any of the other terms and conditions of this Order;
- d. If the Debtor uses cash collateral in a manner other than as agreed in this Order;
- e. Conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code; or
- f. Appointment of a trustee or examiner.

11. Upon the occurrence of any one of the Events of Default enumerated above and thereafter upon the giving of notice of such Event of Default by a Secured Creditor to the Debtor and the Debtor's failure to effect a cure thereafter within five (5) days from the giving of such notice, then (i) the Debtor shall immediately cease using cash collateral, and (ii) the Secured Creditors may seek relief from the automatic stay provided by Section 362(a) to enforce its rights and remedies with respect to the Post-petition Collateral upon not fewer than five (5) business days prior written notice to the Debtor, the Debtor's counsel, and to counsel for any committee (or if no committee has been appointed, the 20 largest unsecured creditors of the Debtor as reflected in the Debtor's Schedules), with a copy to the Office of the Bankruptcy Administrator.

12. Upon filing of a written notice of default with the Court by a Secured Creditor (which shall be served upon counsel for the Debtor by email and overnight courier and served upon the Bankruptcy Administrator by U.S. Mail) the Debtor may request a hearing to challenge the declaration of default. The parties shall have the right to seek an expedited hearing on any challenge by the Debtor, provided, however, that such hearing shall not occur on less than three (3) business days' notice to the other parties.

13. Nothing in this Order shall be deemed to authorize or direct the Debtor to pay any pre-petition debt.

14. The Debtor shall pay all state, federal and ad valorem taxes as they become due and will make all tax deposits and file all state and federal returns on a timely basis.

15. The Debtor shall not dispose of any assets except pursuant to Orders of this Court obtained after due notice and hearing.

16. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the validity or enforceability of any lien or priority authorized or created hereby prior to the effective date of such modification, stay, vacation or final order to the extent that said lien or priority is valid, perfected, enforceable and otherwise non-avoidable as of the Petition Date. The validity and enforceability of all liens and priorities authorized or created in this Order shall survive the conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code or the dismissal of this proceeding.

17. The terms of this Order shall be binding upon any Committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code; provided however,



the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a final decision on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

18. A further hearing (which may be a final hearing) on this Motion will be held at 10:30 a.m. on November 20, 2017 at the Courtroom, U.S. Bankruptcy Court, Venable Center, Dibrell Building, 302 East Pettigrew Street, Durham, North Carolina at which time the Court will further consider the Motion for Authority to Use Cash Collateral.

19. The Debtor shall serve a copy of this Order upon the Bankruptcy Administrator, creditors that assert or may assert a lien on any property of the estate or an interest in cash collateral, priority creditors, and the creditors holding the 20 largest unsecured claims within 24 hours of the entry of this Order, and shall file a certificate of such service with the Clerk.

**END OF DOCUMENT**

**EXHIBIT "A"****10/27 - 11/20****Income**

<i>Initial Cash on Hand</i>	\$ 1,243.37
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*Current Jobs*

Nasher	\$ 24,000.00
NCMA	\$ 69,696.00
Dept of Commerce	\$ 57,751.00

*Projected Jobs*

<i>Hotel 21C</i>	
<i>Dept of Commerce</i>	
<i>Nasher</i>	

<b>Total</b>	<b>\$ 152,690.37</b>
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**Expenses**

Officer	
Payroll	\$ 27,539.70
Overhead	\$ 315.00
Utilities	\$ 1,888.00
Vehicle	\$ 3,110.00

Adequate Protection	\$ 6,100.00
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<b>Total</b>	<b>\$ 38,952.70</b>
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*Job Expenses*

<i>Hotel 21C</i>	<i>\$ 25,000.00</i>
<i>Dept of Commerce</i>	
<i>Nasher</i>	

<b>Projected Cash on Hand</b>	<b>\$ 88,737.67</b>
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