

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	
	§	
SCOTIA DEVELOPMENT, LLC,	§	Case No. 07-20027
	§	
THE PACIFIC LUMBER COMPANY,	§	Case No. 07-20028
	§	
BRITT LUMBER CO., INC.,	§	Case No. 07-20029
	§	
SALMON CREEK, LLC	§	Case No. 07-20030
	§	
SCOTIA INN, INC.	§	Case No. 07-20031
	§	
SCOTIA PACIFIC COMPANY, LLC,	§	Case No. 07-20032
	§	
Debtors.	§	Chapter 11

**SCOPAC’S EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTOR’S USE OF CASH COLLATERAL**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

Scotia Pacific Company LLC, the debtor and debtor in possession in the above-captioned Chapter 11 case (“Scopac”), files this Emergency Motion for Interim and Final Order Authorizing Scopac’s Use of Cash Collateral (the “Motion”), pursuant to sections 361 and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules

of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, Scopac relies on the Declaration of Gary L. Clark in Support of First Day Motions. In further support of this Motion, Scopac respectfully states as follows:

I. JURISDICTION AND VENUE

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

II. BACKGROUND

2. On January 18, 2007 (the “Petition Date”), Scopac filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

3. Scopac continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner, or creditors committee has been appointed in Scopac’s case.

5. Scopac is a special purpose Delaware limited liability company wholly owned by The Pacific Lumber Company (“Palco”), and was organized by Palco in May 1998 to facilitate the sale of the certain collateralized notes described below (the “Timber Notes”). Scopac also has secured revolving credit debt outstanding under a related liquidity facility (the “Scopac Line of Credit”). Palco has owned and managed private commercial timberlands in Humboldt County, California for more than 130 years. Scopac owns about 200,000 acres of timberland and has the exclusive rights to harvest timber on about 12,000 additional acres of timberland owned by Palco and its affiliates. Scopac’s timberlands and timber harvest rights are asserted to be collateral for the Timber Notes. Scopac's business is the harvesting of timber from these private timberlands and the selling of its timber to Palco pursuant to certain agreements described below.

Palco performs the actual harvesting, directly or through subcontractors, and converts the logs into marketable lumber in sawmills owned by Palco and a subsidiary. Scopac primarily pays the obligations owing under the Timber Notes with proceeds of timber sales from the harvesting of its timber.

6. Although Scopac maintains extensive business relations with Palco and certain other affiliates, Scopac continues to maintain its corporate separateness, submits any conflicts with affiliates to a special committee composed of its two independent managers (the equivalent of a corporation's directors), and is solely responsible for payment of any and all amounts owing on the Timber Notes and the Scopac Line of Credit.

7. As of the Petition Date, there are approximately \$714 million of Timber Notes outstanding, as well as approximately \$36 million of additional secured revolving credit debt outstanding under the Scopac Line of Credit. As a result of regulatory limitations on its timber harvests that have been imposed since this debt was created in 1998, Scopac's revenues have been significantly reduced. As a result, even though Scopac has reduced its outstanding Timber Notes from \$867 million in 1998 to \$714 million today, Scopac has become a highly leveraged company, sensitive to a variety of factors that negatively impact and significantly limit its ability to use operating cash flow in other areas of its business because it must dedicate the substantial portion of its revenue to service of the Timber Notes and the related secured Scopac Line of Credit.

8. Scopac's annual interest payments on the Timber Notes alone are approximately \$54 million. The timber industry in general and Scopac's operations specifically have become increasingly unpredictable and negatively impacted by substantial and expanding regulatory

constraints, ongoing litigation challenges, additional legislative impacts, negative judicial decisions, weather patterns, and low lumber or log prices.

9. Scopac has also been negatively impacted by: (i) litigation relating to Scopac timber harvesting practices and the approval of Scopac's timber harvest plans ("THPs"), which must be approved before Scopac can harvest its timber and (ii) regulatory and legislative burdens and limitations imposed by the California North Coast Regional Water Quality Control Board (the "North Coast Water Board") and State Water Board that are different from and in addition to the Environmental Plans approved as part of the Headwaters Agreement (discussed below), which have increasingly limited Scopac's harvest of timber (significantly reducing its revenue), and increased Scopac's costs to harvest timber.

10. As stated above, Scopac is wholly owned by Palco. Palco also wholly owns Scotia Development LLC, a Texas limited liability company ("Scotia Development"), Salmon Creek LLC ("Salmon Creek"), Britt Lumber Co., Inc. ("Britt"), and Scotia Inn Inc. ("Scotia Inn"). Palco is a wholly owned subsidiary of MAXXAM Group Inc. ("MGI"). MGI is an indirect wholly owned subsidiary of MAXXAM Inc., a publicly traded corporation ("MAXXAM"). MGI, Palco, Scotia Development, Britt, Salmon Creek, and Scopac make up MAXXAM's forest products group, which operates in several principal aspects of the forest products industry — the growing and harvesting of redwood and Douglas-fir timber, the milling of logs into lumber and the manufacture of lumber into a variety of finished products. Housing, construction and remodeling are the principal markets for Palco's lumber products.

11. Although Scopac and its affiliate debtors are members of the same corporate family, pursuant to its Agreement of Limited Liability Company (the "Scopac LLC Agreement") and the indenture governing the Timber Notes, Scopac carefully maintains its separateness from

Palco and other affiliates at all times until the Timber Notes and the Scopac Line of Credit are no longer outstanding. In addition, beyond the protections required by the Scopac LLC Agreement and the indenture governing the Timber Notes, the Scopac Board of Managers has created a special committee consisting solely of the Scopac Independent Managers with full authority and power, among other things, to take all actions and exercise all powers of the Board with respect to transactions or actions of Scopac that involve a conflict of interest, whether actual or apparent, between Palco and Scopac (the “Special Committee”).

12. Scopac maintains extensive business relationships with Palco. These business relationships have been formalized through several written agreements pursuant to which Scopac sells logs to Palco, Palco renders certain services to Scopac, and Scopac renders certain services to Palco. The various written agreements that govern the business relationships and dealings between Scopac and Palco include, but are not limited to: (i) the New Master Purchase Agreement between Scopac and Palco (governing the sale to Palco by Scopac of logs harvested from the Scopac Timber); (ii) the New Services Agreement and the New Additional Services Agreement between Palco and Scopac (pursuant to which Palco provides certain operational, management and related services to Scopac with respect to the Scopac Timberlands, and Scopac provides certain services to Palco); (iii) the New Environmental Indemnification Agreement between Palco and Scopac (providing for the indemnification of Scopac by Palco for certain environmental liabilities incurred in connection with the Scopac Timberlands); and (iv) the New Reciprocal Rights Agreement among Palco, Scopac and Salmon Creek (providing for reciprocal rights of ingress and egress through the parties’ respective properties). The failure of Palco to perform under the Master Purchase Agreement or the Services Agreement may, as provided in

the Indenture, cause all principal and interest on the Timber Notes to become immediately due and payable.

A. SCOPAC’S PREPETITION DEBT AND LIENS

13. In July 1998, Scopac issued \$867.2 million aggregate principal amount of secured notes, in three classes: (i) 6.55% Series B Class A-1 Timber Collateralized Notes due 2028, aggregating \$160.7 million (the “Class A-1 Notes”); (ii) 7.11% Series B Class A-2 Timber Collateralized Notes due 2028 aggregating \$243.2 million (the “Class A-2 Notes”); and (iii) 7.71% Series B Class A-3 Timber Collateralized Notes due 2028 aggregating \$463.3 million (the “Class A-3 Notes,” together with the Class A-1 Timber Notes and the Class A-2 Timber Notes, the “Timber Notes”). The Timber Notes are due at various times through July 20, 2028.¹ The Timber Notes are senior secured obligations of Scopac and do not constitute obligations of, and are not guaranteed by, Palco or any other entity.

14. The Timber Notes are governed by the Indenture dated July 20, 1998 (as amended, the “Indenture”) by and between Scopac and U.S. Bank & Trust, as Trustee. U.S. Bank & Trust has since been replaced by Bank of New York Trust Company, NA (“BoNY” and its capacity as indenture trustee, the “Trustee”). Interest and certain principal payments are due to be paid to the holders of the Timber Notes (the “Noteholders”) semiannually on January 20 and July 20 of each year (each, a “Note Payment Date”). As of the Petition Date, approximately

¹ The Timber Notes were structured to link, to the extent of cash available, the deemed depletion of the Scopac Timber (through the harvest and sale of logs) to the required amortization of the Timber Notes. The required amount of amortization on any Note Payment Date is determined by various mathematical formulas set forth in the Indenture. “Scheduled Amortization” of the Timber Notes represents the amount of principal which Scopac must pay through each Note Payment Date in order to avoid payment of prepayment or deficiency premiums. The Scheduled Maturity Dates for the Class A-1 and Class A-2 Timber Notes, which are January 20, 2007 and January 20, 2014, respectively, represent the Note Payment Dates on which Scopac will pay the final installment of principal if all payments of principal are made in accordance with Scheduled Amortization. The Scheduled Maturity Date for the Class A-3 Timber Notes is also January 20, 2014. The Scheduled Amortization for the Class A-3 Timber Notes does not include any principal amortization prior to their Scheduled Maturity Date.

\$713,800,000 in principal was outstanding on the Timber Notes as follows: (i) \$7,300,000 of Class A-1 Notes; (ii) \$243,200,000 of Class A-2 Notes; and (iii) \$463,300,000 of Class A-3 Notes (the “Timber Notes Claim”).

15. Additionally, Scopac is the borrower under a one-year, renewable line of credit pursuant to a Credit Agreement dated as of July 20, 1998 (as amended, the “Scopac Line of Credit”) by and between Scopac and Bank of America National Trust and Savings Association (“BofA”), as lender and as agent for itself and any other lender parties thereto. Advances under the Scopac Line of Credit are used to finance up to one year’s interest payments due on the Timber Notes. The maximum amount Scopac may borrow is equal to one year’s interest on the aggregate outstanding principal balance of the Timber Notes (the “Required Liquidity Amount”). On May 18, 2006, the Scopac Line of Credit was extended to July 6, 2007. As of the Petition Date, the maximum amount available under the Scopac Line of Credit is approximately \$17,279,085 and there were \$36,214,344 in borrowings outstanding (the “Prepetition BofA Claim” and together with the Timber Notes Claim, the “Prepetition Claims”).

16. BofA and the Trustee assert that Scopac’s obligations under the Indenture and the Scopac Line of Credit are secured by perfected, jointly-held senior liens and security interests in substantially all of Scopac’s assets pursuant to the Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Proceeds dated as of July 20, 1998 (as amended, the “Deed of Trust”), from Scopac to Fidelity National Title Insurance Company for the Benefit of the Trustee including: (i) the Scopac Timber Property; (ii) the Scopac Timber Rights; (iii) certain computer hardware and software, including a geographic information system containing information on numerous aspects of the Scopac Timber Property (subject to certain rights of

concurrent use by Palco); (iv) the SAR Account (as described below) and (v) certain other assets (the “Prepetition Collateral”).²

17. The Prepetition Collateral also includes funds in the Scheduled Amortization Reserve Account, which is a reserve account used to support principal payments on the Timber Notes (the “SAR Account”). The SAR Account was originally established in November 1999 with \$169,000,000 realized from the sale of 5,600 acres of timberlands (the “Headwaters Timberlands”) which were contributed to Scopac.³ Funds held in the SAR Account include interests in several limited partnerships which invest in diversified portfolios of common stocks and equity securities, in addition to exchange traded options, futures, forward foreign currency contracts, and other arbitrage opportunities. Amounts in the SAR Account are used to make principal payments to the extent that cash flows from operations are insufficient to pay Scheduled Amortization on the Timber Notes. As of the Petition Date, there were approximately \$42,500,000 in funds on deposit in the SAR Account.

B. SCOPAC’S HARVEST ISSUES

18. Due to its highly leveraged condition, Scopac is more sensitive than less leveraged companies to factors affecting its operations. In particular, regulatory and environmental matters as well as certain pending legal matters play a significant role in Scopac’s operations. For instance, the ability to harvest Scopac Timber will depend in large part upon the

² Notwithstanding the fact that both the Noteholders and BofA hold the same lien on a joint basis, the Indenture provides that BofA’s right of payment is senior in certain circumstances.

³ In March 1999, Palco, Scopac and Salmon Creek (collectively, the “Palco Companies”) consummated the Headwaters Agreement (the “Headwaters Agreement”) with the United States and California. Pursuant to the agreement, approximately 5,600 acres of timberlands owned by the Palco Companies (the “Headwaters Timberlands”) were transferred to the United States government in exchange for: (i) an aggregate of \$300.0 million; (ii) approximately 7,700 acres of timberlands; and (iii) approval by the federal and state governments of habitat conservation and sustained yield plans (the “Environmental Plans”) in respect of substantially all of the Scopac Timber Property. California also agreed to offer to purchase other timberlands owned by Scopac and Palco (which purchases were subsequently consummated and funded the SAR Account described above).

ability to obtain regulatory approval of timber harvesting plan (“THP”) prepared by Scopac’s foresters. Prior to harvesting timber in California, companies are obligated to obtain the California Department of Forestry’s (“CDF”) approval of a detailed THP for the area to be harvested. A THP must be submitted by a Registered Professional Forester and is required to include information regarding the method of proposed timber operations for a specified area, whether the operations will have any adverse impact on the environment and, if so, the mitigation measures to be used to reduce any such impact. The CDF’s evaluation of THPs incorporates review and analysis of such THPs by several California and federal agencies and public comments received with respect to such THPs. The number of Scopac’s approved THPs and the amount of timber covered by such THPs varies significantly from time to time, depending upon the timing of agency review and other factors. Timber covered by an approved THP is typically harvested within a one year period from the date that harvesting first begins. However, the California North Coast Regional Water Quality Control Board has failed to release for harvest a number of THPs already approved by the other government agencies which review Scopac’s THPs. The failure of the North Coast Water Board to release these THPs for harvest has adversely impacted Scopac’s cash flows.

C. SCOPAC’S CASH FLOW PROBLEMS

19. Scopac’s cash flows from operations are significantly impacted by harvest volumes and log prices. Logging operations on the Scopac Timber Property are highly seasonal and have historically been significantly higher in the months of April through November than in the months of December through March. Scopac’s revenues and cash flows will continue to be markedly seasonal because of the harvesting, road use, wet weather and other restrictions imposed by the comprehensive multi-species habitat conservation plan (“HCP”) and other regulations. As a result, a substantial majority of the future harvesting on the Scopac Timber

Property can be expected to be concentrated during the period from June through October of each year.

D. SCOPAC'S REASON FOR FILING

20. Without significant regulatory relief and accommodations, Scopac's future timber harvest levels over at least the next several years and cash flows from operations will be substantially below the minimum levels necessary to meet its obligations on account of the Timber Notes. Scopac projects that cash flows from operations, together with funds available under the Scopac Line of Credit, will be insufficient by a substantial amount to pay the interest on the Timber Notes in 2007, and these shortfalls are expected to continue for at least the next several years.

21. Beginning in or around June 2005 through September 2005, Scopac expended considerable effort in an unsuccessful attempt to restructure the Timber Notes through negotiations with a group of holders of Timber Notes represented by professionals paid for by Scopac. Scopac has also engaged in continuous, but unsuccessful, efforts to obtain relief and accommodation from various regulatory actions that have substantially reduced its timber harvest and increased its costs. Scopac has also engaged in a systematic process of reducing expenditures by laying off employees and shutting down operations. However, because Scopac is obligated under the Timber Notes, it is limited in its ability to further reduce operating costs.

22. Scopac has also initiated a land sale program to sell certain timberland properties, as well as various non-timberland properties, such as ranch lands and recreational areas (the "Land Sale Program"). Although the aggregate estimated market value of the remaining properties included in the Land Sale Program should cover the expected future interest payment shortfalls without materially reducing estimated harvest levels, the Land Sale Program has not produced sufficient funds to make the next interest payment under the Timber Notes.

23. Scopac currently has insufficient cash on hand and insufficient availability under the Scopac Line of Credit to make the payment on the Timber Notes due on January 20, 2007. The failure to make the scheduled payments on the Note Payment Date constitutes an event of default under the Indenture.

III. RELIEF REQUESTED

24. By this Motion, Scopac respectfully requests, pursuant to Section 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and 9014, the entry of interim and final orders (the “Interim Order” and “Final Order,” respectively), *inter alia*, authorizing Scopac (i) to use cash collateral (as that term is defined in the Bankruptcy Code) in which BofA and the Trustee each possess an interest, including funds in the SAR Account (the “Cash Collateral”), (ii) to provide adequate protection to BofA and the Trustee to the extent of any diminution in the value of their respective interests in the Prepetition Collateral and (iii) scheduling a final hearing on the Motion pursuant to Bankruptcy Rule 4001(b)(2).

25. Section 363(c) of the Bankruptcy Code provides that a debtor may use cash collateral if all interested entities consent or the court, after notice and a hearing, authorizes such use. 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code requires that the use of cash collateral be prohibited or conditioned as is necessary to provide *adequate protection* to persons that have an interest in cash collateral. 11 U.S.C. § 363(e) (emphasis added); *In re DeSardi*, 340 B.R. 790, 797-98 (Bankr. S.D. Tex. 2006) (“Adequate protection is . . . grounded in the belief that secured creditors should not be deprived of the benefit of their bargain.”). Read together, sections 363(c) and (e) of the Bankruptcy Code authorize a debtor to use the cash collateral of a secured creditor if such creditor’s collateral is adequately protected. *See In re Harrington & Richardson, Inc.*, 48 B.R. 431, 433 (Bankr. D. Mass. 1985) (finding that the court may authorize the use of cash collateral upon a showing that those with an interest in the cash collateral are

adequately protected); *In re Certified Corp.*, 51 B.R. 768, 770 (Bankr. D. Haw. 1985) (“It is well established that a debtor is entitled to use cash collateral upon proof of adequate protection.”).

26. Although the term “adequate protection” is not precisely defined in the Bankruptcy Code, section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent of an entity’s interest in the property. *In re Timbers of Inwood Forest Associates, Ltd.*, 793 F.2d 1380, 1388 (5th Cir. 1986); *In re Curtis*, 9 B.R. 110, 111-12 (Bankr. E.D. Pa. 1981). “[T]he debtor-in-possession has the burden of proof on the issue of adequate protection.” *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 406 (Bankr. N.D. Tex. 2003).

27. Scopac submits that the following constitutes adequate protection under section 361 of the Bankruptcy Code sufficient to justify Scopac’s use of the Cash Collateral.

28. First, Scopac will provide BofA and the Trustee with replacement liens in the Prepetition Collateral and the Cash Collateral (the “Replacement Liens”). The amount secured by such Replacement Liens will be equal to any diminution of the secured creditors’ interest in the Cash Collateral existing as of the Petition Date due to Scopac’s actual use thereof. Moreover, the Replacement Liens will be perfected by operation of law upon entry of an order approving this Motion by the Court, and the secured creditors will not be required to: (i) file or record any financing statements, mortgages or other documents regarding the Replacement Liens in any jurisdiction; (ii) give any notices regarding the such liens; (iii) receive any acknowledgments or consents regarding such liens; (iv) or take any other action to validate or perfect the Replacement Liens.

29. The Replacement Liens will have the same validity and priority as the secured creditors' respective interests in the Cash Collateral prepetition. Accordingly, Scopac asserts that the Replacement Liens constitutes adequate protection of BofA's and the Trustee's interests in the Cash Collateral pursuant to section 361(2) of the Bankruptcy Code. *See* 11 U.S.C. § 361(2) ("adequate protection may be provided by...providing to such entity an additional or replacement lien to the extent that such...use results in a decrease in the value of such entity's interest in such property"); *In re Cafeteria Operators, L.P.*, 299 B.R. at 410 (granting as adequate protection replacement liens encumbering increasing amounts of debtor's postpetition assets commensurate with decreasing levels of inventory/collateral "as [is] needed to restore and maintain the [creditors'] secured position in inventory as of the Petition Date.").

30. Second, Scopac will grant to BofA and the Trustee a super-priority claim as provided by section 507(b) of the Bankruptcy Code (the "Super-Priority Claim"), to the extent of any diminution of their respective interests in the Cash Collateral resulting from Scopac's actual use thereof. *See In re DeSardi*, 340 B.R. at 802 (stating that section 507(b) "is an attempt to codify a statutory fail-safe system in recognition of the ultimate reality that protection previously determined the 'indubitable equivalent' . . . may later prove inadequate.") (citations omitted). Scopac asserts that the granting of the Super-Priority Claim for any unreplenished diminution of the Cash Collateral constitutes "fail-safe" adequate protection pursuant to section 361(3) of the Bankruptcy Code. *See* 11 U.S.C. § 361(3) ("adequate protection may be provided by...granting such other relief...as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property"); *In re Timbers of Inwood Forest Associates, Ltd.*, 793 F.2d at 1388 ("Section 361(3) expressly states . . . that providing a creditor with an administrative priority claim as a form of adequate protection is precluded, although an

administrative priority is automatically provided by § 507(b) in the event that the form of adequate protection actually provided by the court ultimately proves to be insufficient.”)

31. Third, BofA’s and the Trustee’s security interests are adequately protected because the Cash Collateral will be used to pay for the ordinary and necessary expenses of maintaining and operating Scopac’s business, thereby preserving the value of the Scopac Timber and protecting BofA’s and the Trustee’s interests (as well as the interests of other creditors) as set forth in the budget attached to the proposed Interim Order as Exhibit “A” (the “Budget”). Such ordinary and necessary expenses include, among other things: (i) employee wages; (ii) administrative and other operating expenses; and (iii) payments to Palco for the necessary services provided to Scopac under the Services Agreement (which includes road construction and reconstruction, road maintenance, and reforestation). These expenditures will result in a stable and continuous stream of cash flow from Scopac’s timber sales, thereby enhancing and preserving the value of Scopac’s operations and providing adequate protection to the Trustee and BofA. *See In re McCombs Properties VI, Ltd.*, 88 B.R. 261, 267 (Bankr. C.D. Cal. 1988) (finding that by committing cash collateral to pay operating expenses and to improve and maintain the property, the debtor has substantially eliminated the risk of diminution of the secured creditor’s interest in the cash collateral).

32. Last, if the Court does not authorize the use of Cash Collateral to meet Scopac’s ordinary expenses, Scopac will be unable to pay its postpetition operating expenses. As a result, Scopac would face the real possibility of losing valuable employees and a shutdown of its operations. Because the success of Scopac’s business requires a continuously employed workforce, the value of Scopac’s operations would be threatened if Scopac is not authorized to use the Cash Collateral.

33. Based on the foregoing, Scopac's use of the Cash Collateral will not adversely impact the secured positions of BofA and the Trustee. Accordingly, this Court should grant Scopac's Motion.

34. Bankruptcy Rule 4001(b) permits a court to approve the use of cash collateral during the 15-day period following the filing of a motion, "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bank. P. 4001(b)(2). Here, Scopac requires immediate access to Cash Collateral for, among other things, the funding of payroll obligations and payment of necessary operating expenses. Thus, if interim relief is not obtained, Scopac's efforts to administer its estate for the benefit of all creditors and parties in interest will be immediately and irreparably jeopardized. Accordingly, Scopac requests that, pending the final hearing on this Motion, the Court authorize Scopac to immediately use the Cash Collateral in the amounts set forth in the Budget.

WHEREFORE, Scopac respectfully requests that the Court: (i) authorize Scopac to use Cash Collateral; (ii) enter the Interim Order; (iii) enter the Final Order; and (iv) grant Scopac such other and further relief as may be just and proper.

Respectfully submitted this 19th day of January, 2007.

/s/ John F. Higgins

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