

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|----------------------------------|---|------------------------|
| IN RE: | : | |
| | : | CHAPTER 11 |
| TRI STATE TRUCKING COMPANY | : | |
| Debtor | : | CASE NO. 4:15-BK-04444 |
| | : | |
| TRI STATE TRUCKING COMPANY | : | |
| Movant | : | 11 U.S.C. Section 363 |
| v. | : | |
| | : | |
| CITIZENS & NORTHERN BANK; | : | |
| PEOPLES UNITED EQUIPMENT FINANCE | : | |
| CORP.; and MANSFIELD CRANE | : | |
| SERVICES CORP. | : | |
| Respondents | : | |

THIRD INTERIM ORDER AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING ADEQUATE PROTECTION

Upon consideration of the First and Second Expedited Motions of Tri State Trucking Company (the "Debtor") for Authority to Use Cash Collateral and Granting Adequate Protection (the "Motion"), the Court having entered an Interim Order on October 15, 2015 [Dkt. No. 20], and a Second Interim Order on December 11, 2015 [Dkt. No. 88], and having found that (i) the Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A); (iii) notice of the Motion was sufficient under the circumstances and that no other or further notice is required; (iv) Citizens & Northern Bank ("C&N"); Mansfield Crane Services Corp. ("Mansfield Crane"); and People's United Equipment Finance Corp. ("People's") have each asserted a valid and perfected lien and security interest in certain assets of the Debtor, including cash collateral; (v) the Debtor has an immediate need for the use of the cash collateral to preserve its assets, fund its business operations, purchase inventory, etc.; and (vi) based upon the Debtor's affirmation of the terms set forth herein, it is hereby

ORDERED that the Debtor is permitted to use Cash Collateral subject to the terms and conditions of this Interim Order, and to the limitations set forth in 11 USC §§361 363, and 552; and it is further

ORDERED that, except for the Debtor's pre-petition checking account with C&N Bank ending with 7670 (the "Depository Account"), the Debtor may use Cash Collateral during the Cash Collateral Period (as that term is defined in the Motion) to make payment of ordinary and necessary operating expenses and capital expenses, and administrative expenses as set forth on the budget attached hereto as **Exhibit "A"**, and within a 5% overage expense variance of said budgeted items; and it is further

ORDERED that the Debtor is not authorized to use any funds in the Depository Account that are subject to the Writ of Execution served by Mansfield upon C&N Bank on or about September 25, 2015, which amount is believed to be \$105,626.44, and that such funds shall be preserved by C&N Bank during the term of this Third Interim Order, subject only to further Order of this Court; and it is further

ORDERED that in consideration of the Debtor's use of Cash Collateral, the Debtor will make a monthly payment to C&N in the amount of \$11,308.82 ("Monthly Payment"), representing a full interest and principle payment in connection with C&N Term Loans (as defined in the Motion), as adequate protection for C&N's interest in the Cash Collateral (as defined in the Motion); and it is further

ORDERED that in consideration of the Debtor's use of Cash Collateral, the Debtor acknowledges and agrees, without prejudice to the rights of third parties, that as of the petition date, the Debtor (i) was indebted to PUEFC in the amount of \$540,100.19 under the Contracts (as defined in the proposed Stipulation re Adequate Protection and Use of Cash Collateral

submitted to counsel for debtor by PUEFC on 10-22-15), without offset, counterclaim or defense, (ii) that such indebtedness and obligations of the Debtor under the Contracts are a fully secured claim within the meaning of 11 U.S.C. § 506(b), and (iii) that Debtor will make a monthly payment to PUEFC, each in the amount of \$7,000.00 and to be received by PUEFC on or before January 15, 2016, February 15, 2016 and March 15, 2016, respectively, as adequate protection for PUEFC's interest in the Cash Collateral (as defined in the Motion) for the term of this Third Interim Order; and it is further

ORDERED that none of the Debtor's acknowledgments contained herein shall be binding on any parties other than the Debtor. The rights of the Official Committee of Unsecured Creditors (the "Committee") to challenge the extent, validity and priority of C&N; Mansfield Crane; and PUEFC's prepetition liens and claims are expressly preserved; and it is further

ORDERED that in consideration of Debtor's use of Cash Collateral, the Debtor will continue to perform under, and remain in compliance with, the terms of the C&N Factoring Loan (as defined in the Motion) as more fully set forth in Debtor's DIP Motion (as defined in the Motion), as adequate protection for C&N's interest in the Cash Collateral; and it is further

ORDERED that in consideration of the Debtor's use of Cash Collateral, as adequate protection, C&N; Mansfield Crane; and PUEFC are each granted a valid and perfected lien and security interest in all cash collateral to the same nature, extent and priority as the pre-petition liens existing as of the petition date, ("Replacement Liens"), provided, however, that such Replacement Liens shall not extend to: (i) any claims pursuant to Sections 502(d), 510, 544, 547, 548, 549, 550 or 553 of the Bankruptcy Code ("Avoidance Claims"); (ii) any proceeds or property recovered in connection with the successful prosecution or settlement of any Avoidance Claim ("Avoidance Proceeds"); or (iii) any commercial tort claims of the Debtor arising from

events or transactions occurring on or after the Petition Date, or proceeds thereof, as defined in the Uniform Commercial Code (“Commercial Tort Claims”); and it is further

ORDERED that subject to the other provisions of this Order, the liens and/or security interests granted hereby shall be valid and fully perfected without any further action by the Debtor or C&N; Mansfield Crane; or PUEFC and without the execution or the recordation of any financing statements, security agreements, mortgages or other documents; and it is further

ORDERED that to the extent adequate protection granted herein shall fail to protect C&N; Mansfield Crane; or PUEFC to the extent of the value of their respective secured claim as of the Petition Date (if any), then C&N; Mansfield Crane; and PUEFC shall each be entitled to a super priority claim pursuant to Section 507(b) of the Bankruptcy Code in the amount equal to the diminution in value of its respective interest suffered as a result of the Debtor's use of Cash Collateral in the same nature, extent and priority as the pre-petition claim. A superpriority claim under Section 507(b) shall not attach to Avoidance Claims, Avoidance Proceeds or Commercial Tort Claims; and it is further

ORDERED that the provisions of this Interim Order, as well as the liens and security interests granted hereunder shall continue in this and any subsequent case under the Bankruptcy Code, as provided herein, and such liens and security interests shall maintain their priority as provided for in this Interim Order until the secured claims of C&N; Mansfield Crane; and PUEFC have been completely paid and satisfied or until otherwise ordered by this Court or a court of competent jurisdiction; and it is further

ORDERED that in the event of the Debtor’s failure to comply with any of the terms of this order, PUEFC and C&N shall give notice to the Debtor and to Debtor’s counsel, and to counsel the Committee, and the Debtor shall have five (5) business days to cure said default or, if

such default is disputed, to commence such a proceeding before the Bankruptcy Court within said five (5) business day period. After any failure of the Debtor to cure such a default or to commence such a proceeding before the Bankruptcy Court within the five (5) business day period, the Debtor's right to use Cash Collateral will be terminated without any further order of this Court upon the filing of a certification of default;

ORDERED that C&N; Mansfield Crane; and PUEFC's liens shall at no time be greater than the value of their pre-petition liens, plus accruals and advances thereafter, less any payments made to C&N; Mansfield Crane; or PUEFC, respectively; and it is further

ORDERED that Mansfield Crane's lien, as referenced and provided for herein, shall be dissolved and of no further effect upon entry on an Order by this Court finding that the transaction, occurrence or transfer giving rise to the Mansfield Crane lien is avoided as a Preference pursuant to 11 U.S.C. §547, as asserted and alleged in the Complaint filed by the Debtor against Mansfield Crane at Docket Number 15-ap-00181; and it is further

ORDERED that the Replacement Liens shall be subject to disgorgement if C&N; Mansfield Crane; and/or PUEFC's pre-petition liens are subsequently and successfully challenged; and it is further

ORDERED that all cash collateral will be deposited in the Debtor's debtor-in-possession account; and it is further

ORDERED that the Debtor shall maintain adequate insurance coverage in an amount acceptable to C&N and PUEFC on all of the property subject to C&N and/or PUEFC's security interest, and shall list C&N and/or PUEFC as loss payees to the extent of their respective security interest; and it is further

ORDERED that the Debtor shall provide C&N; Mansfield Crane; and PUEFC and their respective counsel, and Committee Counsel, with notice, and copies of, all substantive motions, applications or other pleadings filed in connection with this Chapter 11 case; and it is further

ORDERED that during the term of this Order, the Debtor shall provide the Committee, upon request, with one periodic cash flow and balance sheet report, showing cash receipts and disbursements made by the Debtor during the applicable period, as well as variances from the Budget; and it is further

ORDERED that the provisions of this Interim Order shall be binding upon and inure to the benefit of the Debtor, C&N; Mansfield Crane; PUEFC as well as their respective successors and assigns; and it is further

ORDERED that this Interim Order is without prejudice to the rights of the parties to seek any further or different relief, or modification of this Interim Order, including but not limited to relief from automatic stay; and it is further

ORDERED that this Interim Order is submitted and agreed to by the parties with full reservation of all rights regarding their respective interests or claims relative to the Cash Collateral, and without waiver of any argument or defense regarding same, and it is further

ORDERED that the Debtor may file a Motion with this Court requesting the modification and/or extension of this Interim Cash Collateral Order with or without the consent of the Respondents herein; and it is further

ORDERED that this Court shall retain jurisdiction to hear and decide issues with respect to this Interim Order; and it is further

ORDERED that a final hearing on the Debtor's use of Cash Collateral will be held on April 1, 2016 at 10:00 a.m. in the Bankruptcy Courtroom, 240 West Third Street, Williamsport, PA 17701.

Dated: January 12, 2016

By the Court,

A handwritten signature in black ink, appearing to read "John J. Thomas", written over a horizontal line.

John J. Thomas, Bankruptcy Judge
(CMS)

EXHIBIT A
MIDDLE DISTRICT OF PENNSYLVANIA

Tri State Trucking Company
Debtor

Case No. 4:15-04444-JJT

INITIAL REPORT

File report and attachments with Court and submit copy to United States Trustee within 15 days after order for relief

Certificates of insurance must name United States Trustee as a party to be notified in the event of policy cancellation. Bank accounts and checks must bear the name of the debtor, the case number, and the designation "Debtor in Possession." Examples of acceptable evidence of Debtor in Possession Bank accounts include voided checks, copy of bank deposit agreement/certificate of authority, signature card, and/or corporate checking resolution.

| REQUIRED DOCUMENTS | Document Attached | Explanation Attached |
|--|--------------------------|-----------------------------|
| 12-Month Cash Flow Projection (Form IR-1) | | |
| Certificates of Insurance: | | |
| Workers Compensation | | |
| Property | | |
| General Liability | | |
| Vehicle | | |
| Other: _____ | | |
| List of Related Entities | | |
| Federal Income Tax Returns | | |
| Financial Statements | | |
| Evidence of Debtor in Possession Bank Accounts | | |
| Tax Escrow Account | | |
| General Operating Account | | |
| Other: _____ | | |
| Other: _____ | | |
| | | |

I declare under penalty of perjury (28 U.S.C. Section 1746) that this report and the documents attached are true and correct to the best of my knowledge and belief.

Signature of Authorized Individual*

Date

Printed Name of Authorized Individual

Title of Authorized Individual

*Authorized individual must be an officer, director or shareholder if debtor is a corporation; a partner if debtor is a partnership; a manager or member if debtor is a limited liability company.

FORM IR
(9/99)

CASH FLOW PROJECTIONS FOR THE 12 MONTH PERIOD: January 2016 through October 2016

This schedule must be filed with the Court and a copy submitted to the United States Trustee within 15 days after the order for relief. Amended cash flow projections should be submitted as necessary.

| Cash Beginning of Month | Jan 2016 | Feb 2016 | Mar 2016 | Apr 2016 | May 2016 | Jun 2016 | Jul 2016 | Aug 2016 | Sep 2016 | Oct 2016 | Total |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------|
| | 41,098 | 89,861 | 149,124 | 188,387 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 | 41,098 |

| RECEIPTS | | | | | | | | | | | |
|---------------------|-----------|-----------|-----------|-----------|-----|-----|-----|-----|-----|-----|-----------|
| ACCOUNTS RECEIVABLE | | 750000 | 750000 | 775000 | 0 | 0 | 0 | 0 | 0 | 0 | 3,075,000 |
| CASH SALES | | | | | | | | | | | |
| LOANS AND ADVANCES | | | | | | | | | | | |
| SALE OF ASSETS | | | | | | | | | | | |
| OTHER (ATTACH LIST) | | | | | | | | | | | |
| TOTAL RECEIPTS | \$800,000 | \$750,000 | \$750,000 | \$775,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | 3,075,000 |

| DISBURSEMENTS | | | | | | | | | | | |
|-----------------------------|---------|---------|---------|---------|---|---|---|---|---|---|-----------|
| NET PAYROLL | 360,000 | 337,500 | 337,500 | 348,750 | - | - | - | - | - | - | 1,383,750 |
| PAYROLL TAXES | 36,000 | 33,750 | 33,750 | 34,875 | - | - | - | - | - | - | 138,375 |
| SALES, USE, AND OTHER TAXES | - | - | 16,000 | - | - | - | - | - | - | - | 16,000 |
| COST OF GOODS SOLD | 60,000 | 30,000 | 30,000 | 40,000 | - | - | - | - | - | - | 160,000 |
| SECURED RENTAL/ LEASES | 8,009 | 8,009 | 8,009 | 8,009 | - | - | - | - | - | - | 32,036 |
| INSURANCE | 75,269 | 75,269 | 75,269 | 75,269 | - | - | - | - | - | - | 301,076 |
| ADMINISTRATIVE & SELLING | 3,200 | 3,200 | 3,500 | 3,500 | - | - | - | - | - | - | 13,400 |
| OTHER (ATTACH LIST) | 164,000 | 158,250 | 161,950 | 164,325 | - | - | - | - | - | - | 648,525 |
| LOANS/SECURED LEASES | 23,134 | 23,134 | 23,134 | 23,134 | - | - | - | - | - | - | 92,536 |
| PROFESSIONAL FEES | 20,000 | 20,000 | 20,000 | 20,000 | - | - | - | - | - | - | 80,000 |
| U.S. TRUSTEE FEES | 1,625 | 1,625 | 1,625 | 1,625 | - | - | - | - | - | - | 6,500 |
| COURT COSTS | | | | | - | - | - | - | - | - | |
| TOTAL DISBURSEMENTS | 751,237 | 690,737 | 710,737 | 719,487 | - | - | - | - | - | - | 2872198 |

| NET CASH FLOW (RECEIPTS LESS DISBURSEMENTS) | | | | | | | | | | | |
|--|--------|--------|--------|--------|---|---|---|---|---|---|--------|
| | 48,763 | 59,263 | 39,263 | 55,513 | - | - | - | - | - | - | 202802 |

| Cash End of Month | 89,861 | 149,124 | 188,387 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 | 243,900 |
|-------------------|--------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
|-------------------|--------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|

FORM IR-1
(9/99)

| | | | | | | | | | | | |
|------------------------|--------|--------|--------|--------|---|---|---|---|---|---|---------|
| Rent | 1000 | 1000 | 1000 | 1000 | 0 | 0 | 0 | 0 | 0 | 0 | 4,000 |
| Fuel | 70000 | 65625 | 65625 | 67813 | 0 | 0 | 0 | 0 | 0 | 0 | 269,063 |
| Repairs & Maint | 42000 | 42000 | 45000 | 45000 | 0 | 0 | 0 | 0 | 0 | 0 | 174,000 |
| Licenses/Registrations | 14000 | 14000 | 14000 | 14000 | 0 | 0 | 0 | 0 | 0 | 0 | 56,000 |
| Bank Fees | 16000 | 15000 | 15000 | 15000 | 0 | 0 | 0 | 0 | 0 | 0 | 61,000 |
| Refuse Disposal | 4500 | 4500 | 5000 | 5000 | 0 | 0 | 0 | 0 | 0 | 0 | 19,000 |
| Telephone | 2000 | 2000 | 2000 | 2000 | 0 | 0 | 0 | 0 | 0 | 0 | 8,000 |
| Utilities | 2500 | 2500 | 2500 | 2500 | 0 | 0 | 0 | 0 | 0 | 0 | 10,000 |
| Travel | 6000 | 5625 | 5625 | 5813 | 0 | 0 | 0 | 0 | 0 | 0 | 23,063 |
| Safety and Supplies | 4000 | 4000 | 4000 | 4000 | 0 | 0 | 0 | 0 | 0 | 0 | 16,000 |
| Tickets/Fines/Misc | 2000 | 2000 | 2200 | 2200 | 0 | 0 | 0 | 0 | 0 | 0 | 8,400 |
| Total Other | 164000 | 158250 | 161950 | 164325 | 0 | 0 | 0 | 0 | 0 | 0 | 648,525 |