

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF OREGON

**GUIDELINES REGARDING MOTIONS TO USE CASH COLLATERAL
OR TO OBTAIN CREDIT**

EACH MOTION FOR COURT APPROVAL TO USE CASH COLLATERAL OR TO OBTAIN CREDIT MUST CLEARLY EITHER: (1) STATE THAT IT DOES NOT CONTAIN ANY OF THE FOLLOWING PROVISIONS OR (2) IDENTIFY WHICH OF THE FOLLOWING PROVISIONS ARE CONTAINED IN THE MOTION, AND THE JUSTIFICATION FOR THE PROVISION(S).

The court will not normally approve the following types of provisions in motions either to use cash collateral (Bankruptcy Code §363(c)(2)) or to obtain credit (Bankruptcy Code §364(c)):

1. Cross-collateralizing prepetition debt with postpetition assets.
2. Findings of fact on matters extraneous to the approval process. (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable, whereas a “finding” that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)
3. Provisions or findings of fact that bind the debtor, the estate and/or all parties in interest with respect to the validity, perfection, relative priority or amount of the secured party’s lien or debt. This would include, for example, an order approving a provision that the secured party’s lien is a “first priority” lien on the collateral.
4. Any language that characterizes any postpetition payments as payments of interest, fees or costs on a prepetition loan.
5. Waiver of Bankruptcy Code §506(c) right to seek to charge collateral of secured party for the trustee’s expenses in preserving or disposing of assets for the benefit of the secured party.
6. Granting a security interest in bankruptcy avoiding power causes of action or avoiding power recoveries.
7. Waiver or release by debtor or the estate of any or all claims the debtor/estate may have against the lender/secured party, including waiver of avoiding power causes of action against the lender/secured party or against insiders of the lender/secured party.
8. Waiver by debtor or the estate of the right to seek to “prime” the secured position of the lender/secured party under Bankruptcy Code §364(d).
9. “Priming” any other party’s lien, without that party’s consent or without providing adequate protection.
10. Waiver of nonbankruptcy law requirements for perfecting any lien granted by the court as part of postpetition lending/cash collateral use.
11. Automatic relief from the stay of Bankruptcy Code §362(a) upon the occurrence of a default, upon conversion to Chapter 7 or upon appointment of a trustee, without further application to, and order of the court.
12. Waiver, effective on default, or expiration of a prior court order, of the debtor’s right to move for a court order pursuant to Bankruptcy Code §363(c)(2)(B), authorizing the use of cash collateral in the absence of the secured party’s consent.