

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re: §
LEWIS EQUIPMENT COMPANY, INC., § CASE NO. 09-45785-rfn-11
ET. AL., § (Jointly Administered)
Debtors. §

**THE FROST NATIONAL BANK'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY AND REQUEST FOR ADEQUATE PROTECTION**

The trustee (if one has been appointed) or the debtor shall file a response to any motion for relief from the automatic stay within 12 days from the service of the motion. The debtor's response shall include a detailed and comprehensive statement as to how the Movant can be "adequately protected" if the stay is to be continued. If the debtor does not file a response as required, the allegations in the creditor's motion for relief from the automatic stay shall be deemed admitted, unless good cause is shown why these allegations should not be deemed admitted, and an order granting the relief sought may be entered by default.

TO THE HONORABLE RUSSELL F. NELMS, UNITED STATES BANKRUPTCY JUDGE:

The Frost National Bank ("Frost") files its Motion for Relief from the Automatic Stay and Request for Adequate Protection (the "Motion") as follows:

I.
NOTICE

1. This Motion is filed in conjunction with the efforts of the Trustee and the Debtors' management to streamline operations and close unnecessary remote locations. This Motion relates to only those locations which are not necessary to an effective reorganization.

II.
BACKGROUND

2. Lewis Equipment Company, Inc., LWL Management, LLC, Hardrock Machine Shop, LLC, Great White Transportation, LLC, Lewis Crane & Hoist, Inc., Rock Island Rigging, Inc., and Hardrock Road Properties, LLC (the "Debtors"), the debtors-in-possession in the above

styled and numbered bankruptcy cases (the “Bankruptcy Cases”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on September 18, 2009 (the “Petition Date”). On February 19, 2009, the Court Ordered the appointment of a Chapter 11 Trustee and terminated the Debtor’s cash collateral usage under the Final Order Authorizing Debtors’ Use of Cash Collateral (Docket No. 327).

3. Frost is the Debtors’ largest secured lender with a claim on the Petition Date of no less than \$27,656,254.11. Frost’s claim is secured by, *inter alia*, equipment, real property, and the Debtor’s cash. It has been firmly established in these proceedings that the Debtor’s operations have resulted in significant harm to Frost’s cash collateral position and that the Debtor has not in the past, and is not currently, adequately protecting Frost’s secured position.

III. THE NOTE AND SECURITY

4. Frost’s secured claim is based upon the Debtors’ obligations under the Lines of Credit (defined herein), the Letter of Credit (defined herein) and the HRP Loans (defined herein) (collectively referred to as the “Frost Loan Documents”). Frost holds various security for the Debtors’ obligations under the Frost Loan Documents (the “Frost Security”), including liens on the Debtors’ accounts receivable and cash collateral¹, real estate², equipment³ and other personal property including parts inventory⁴. Frost’s claims herein are asserted against each of the

¹ Frost holds a pre-petition lien on the Debtor’s cash collateral pursuant to the Frost Loan Documents and a post-petition lien on cash collateral pursuant to the Final Order Authorizing Debtors’ Use of Cash Collateral (Docket No. 327) .

² The real estate collateral under the Frost Loan Documents (collectively the “Real Property”). includes the Debtors’ interest in real property commonly referred to as: 1829 Shady Grove Road, Grand Prairie, Texas; 3326 Hardrock Road, Grand Prairie, Texas; 4191 E. Dandelion Street, Pharump, Nevada; 598 Armstead Lane, Holt, Florida; 560 Armstead Lane, Holt, Florida; 16209 Canyon Road, Puyallup, Washington; 2700 Betty Lane, Sunrise Manor, Nevada; 2670 Betty Lane, Sunrise Manor, Nevada; 14800 Jersey Shore, Houston, Texas.

³ Pursuant to the Frost Loan Documents, Frost holds a lien on all of the Debtors’ equipment, but with respect to certain equipment, such lien is subordinate to a first lien in favor of other lenders. As a result, Frost’s lien is secured by all of the Debtors’ equipment.

⁴ See Frost Loan Documents.

Debtors' due to, *inter alia*, the cross-guaranty agreements by the Debtors and the name changes of the Debtors pre-petition. As of the filing of this case on September 18, 2009, \$27,656,254.11 is due and owing under the Frost Loan Documents.

5. The Lines of Credit⁵ have two components: the Working Capital Line of Credit and the Equipment Line of Credit. As of September 18, 2009, \$5,480,880.35 is due and owing under the Working Capital Line of Credit. Such amount is comprised of a principal balance of \$5,468,323.78, unpaid interest of \$4,778.97, late fees of \$250.00, and attorney's fees of

⁵ The documentation related to the Lines of Credit, including the Working Capital Line of Credit and the Equipment Line of Credit, is voluminous and includes prior documents that have been amended and/or superseded by later renewals and restatements. The operative documents include that certain: Certification and Authorization by Trustee (Keith T. Lewis, Trustee) funding a loan in the amount of \$8,850,000.00 dated May 25, 2005; Guaranty Agreement with Guarantor Hardrock Road Properties, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor K. Kyle Lewis Trust I dated May 25, 2005; Guaranty Agreement with Guarantor K. Kyle Lewis Trust II dated May 25, 2005; Guaranty Agreement with Guarantor K. Kyle Lewis Trust III dated May 25, 2005; Guaranty Agreement with Guarantor L&B Equipment Company, LLC dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Crane & Hoist, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Crane of Dallas, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Crane of Houston, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Crane of Nevada, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Equipment Company, L.P. d/b/a Lewis Crane & Rigging, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Logan Wade Lewis a/k/a Logan Kristopher Lewis, Inc. dated May 25, 2005; Guaranty Agreement with Guarantor Rock Island Rigging, L.P. dated May 25, 2005; Guaranty Agreement with Guarantor Lewis Crane of Florida, Limited Partnership, dated May 25, 2005; Loan Agreement with LWL Management, Inc. dated May 25, 2005; Security Agreement by Hardrock Road Properties, L.P. dated May 25, 2005; Security Agreement by L&B Equipment Company LLC dated May 25, 2005; Security Agreement by Lewis Crane & Hoist, L.P. dated May 25, 2005; Security Agreement by Lewis Crane of Dallas, L.P. dated May 25, 2005; Security Agreement by Lewis Crane of Florida, Limited Partnership, dated May 25, 2005; Security Agreement by Lewis Crane of Houston, L.P. dated May 25, 2005; Security Agreement by Lewis Crane of Nevada, L.P. dated May 25, 2005; Security Agreement by Lewis Equipment Company, L.P. dated May 25, 2005; Security Agreement by Logan Wade Lewis, Inc. a/k/a Logan Kristopher Lewis, Inc. dated May 25, 2005; Security Agreement by LWL Management, Inc. dated May 25, 2005; Security Agreement by Rock Island Rigging, L.P. dated May 25, 2005; First Amendment to Loan Agreement with LWL Management, Inc. dated November 29, 2005; Second Amendment to Loan Agreement with LWL Management, Inc. dated June 13, 2006; Third Amendment to Loan Agreement with LWL Management, Inc. dated December 29, 2006; Revolving Promissory Note in the amount of \$10,000,000.00 executed by LWL Management, Inc. dated March 25, 2008; Revolving Promissory Note in the amount of \$20,000,000.00 executed by LWL Management, Inc. dated March 25, 2008; Arbitration and Notice of Final Agreement with LWL Management, Inc. dated March 25, 2008; Certificate of Corporation Resolutions of LWL Management, Inc. dated March 25, 2008; Certification and Authorization by the Managers of Lewis Equipment Company, LLC dated March 25, 2008; Certification and Authorization by the Managers of Rock Island Rigging, LLC dated March 25, 2008; Certification and Authorization by the Sole Manager of Lewis Crane & Hoist, LLC dated March 25, 2008; Consent to Execution of Fourth Amendment to Loan Agreement with K. Kyle Lewis Trust I dated March 25, 2008; Consent to Execution of Fourth Amendment to Loan Agreement with Kyle Lewis dated March 25, 2008; Consent to Execution of Fourth Amendment to Loan Agreement with Lewis Crane & Hoist, LLC dated March 25, 2008; Consent to Execution of Fourth Amendment to Loan Agreement with Lewis Equipment Company, LLC dated March 25, 2008; Consent to Execution of Fourth Amendment to Loan Agreement with Rock Island Rigging, LLC dated March 25, 2008; Fourth Amendment to Loan Agreement with LWL Management, Inc. dated March 25, 2008; and Guaranty Agreement with K. Kyle Lewis dated March 25, 2008.

\$7,527.60. The principal balance continues to accrue interest at the rate of \$341.20061 per day at the contact rate. As of September 18, 2009, \$12,080,931.57 is due and owing under the Equipment Line of Credit. Such amount is comprised of a principal balance of \$12,070,133.02, unpaid interest of \$10,548.55, and late fees of \$250.00. The principal balance continues to accrue interest at the rate of \$753.12600 per day at the contact rate.

6. As of September 18, 2009, \$1,715,000.00 is authorized under the Letters of Credit.⁶ Upon belief, no claims have been made under the Letters of Credit as of September 18, 2009 but Frost reserves the right to amend its claim based upon additional information.

7. As of September 18, 2009, \$8,379,442.19 is due and owing under the HRP Loans.⁷ Such amount is comprised of a principal balance of \$8,177,622.77, unpaid interest of

⁶ The Letters of Credit include: (a) that certain Irrevocable Standby Letter of Credit No. ****-SA dated July 3, 2007 naming Ace Fire Underwriters Insurance Company as beneficiary and all amendments, renewals, and modifications thereto; (b) that certain Irrevocable Standby Letter of Credit dated March 20, 2007 naming Liberty Mutual Insurance Company as beneficiary and all amendments, renewals, and modifications thereto.

⁷ The HRP Loans include the Original Loan Documents (defined herein) and the 9001 through 9007 Loan Documents (defined herein), which include: (a) the Promissory Note dated February 1, 2002; (b) the Construction Deed of Trust Security Agreement-Fixture Filing dated February 1, 2002; (c) the Construction Loan Agreement dated February 1, 2002; (d) the Arbitration and Notice of Final Agreement dated January 28, 2002; (e) the Lease Agreement dated November 1, 2002 (items a – e constitute the “*Original Loan Documents*”); (f) the Promissory Note dated January 28, 2002; (g) the Deed of Trust Security Agreement – Financing Statement dated January 28, 2002; (h) the Loan Agreement dated January 28, 2002; (i) the four (4) Guaranty Agreements dated January 28, 2002 (Rock Island Rigging, Ltd. Lewis Crane & Hoist I, L.P., Lewis Crane & Rigging, L.P., and K. Kyle Lewis as Guarantors); (j) the Arbitration and Notice of Final Agreement; (k) the Lease Agreement (items f – k constitute the “*9001 Loan Documents*”); (l) the Promissory Note dated June 28, 2005; (m) the Mortgage and Security Agreement dated June 28, 2005; (n) the Deed of Trust dated June 28, 2005; (o) the Construction Loan Agreement dated June 28, 2005; (p) the three (3) Commercial Guaranties dated June 28, 2005 (Lewis Crane of Florida, Limited, LWL Management, Inc, and K. Kyle Lewis as Guarantors); (q) Notice of Final Agreement dated June 28, 2005; (r) Agreement to Provide Insurance dated June 28, 2005; (s) the Disbursement Request and Authorization dated June 28, 2005; (t) the Corporate Resolution to Guarantee dated June 28, 2005; (u) the two (2) Partnership Authorizations dated June 28, 2005 (Hardrock Road Properties, L.P. and Lewis Crane of Florida, Limited); (v) Resolutions of Corporate Partners dated June 28, 2005 (both from LWL Management, Inc.); (w) the two (2) Lease Agreements dated January 1, 2002 (8302 South Presa, San Antonio, Texas and 3322 Hardrock Road, Grand Prairie, Texas) (items l - w constitute the “*9002 Loan Documents*”); (x) the Promissory Note dated November 8, 2006; (y) the Commercial Guaranty of K. Kyle Lewis dated November 8, 2006; (z) the two (2) Deeds of Trust dated November 8, 2006 (14800 Jersey Shore Drive, Houston, Texas and 3326 Hard Rock Road, Grand Prairie, Texas); (aa) the Title Company Loan Closing Instructions dated November 8, 2006 which include an Agreement for Loans Involving Mineral Rights and the Seller/Owner Affidavit (bb) the Agreement to Provide Insurance dated November 8, 2006; (cc) the Notice of Final Agreement dated November 8, 2006; (dd) the Lease Agreements dated January 1, 2002 and June 1, 2002; (ee) the Resolution of Corporate Partner dated November 8, 2006; (ff) the Disbursement Request and Authorization dated November 8, 2006 (items x – ff constitute the “*9003 Loan Documents*”); (gg) the Promissory Note dated October 30, 2007; (hh) the Deed of Trust Security Agreement – Financing Statement dated November

\$30,055.49, and prepayment penalties of \$171,763.93. The principal balance continues to accrue interest at the rate of \$1,323.99871 per day at the contact rate.⁸

IV.
CURRENT STATUS OF CASE AND FROST SECURITY

8. As previously determined by the Court, the Debtor spent millions of dollars of Frost's cash collateral by failing to streamline its business post-petition. Frost's secured position has suffered materially as a result. For these and other reasons, the Court terminated the Debtor's usage of cash collateral and appointed a Chapter 11 Trustee.

9. As of the filing of this Motion, the Trustee does not believe the Debtors' locations located at: 4191 E. Dandelion Street, Pharr, South Carolina; 598 Armstead Lane, Holt, Florida; 560 Armstead Lane, Holt, Florida; 16209 Canyon Road, Puyallup, Washington; 2700 Betty Lane, Sunrise Manor, Nevada; and 2670 Betty Lane, Sunrise Manor, Nevada (the "Unnecessary Locations") are necessary to an effective reorganization because there is very little demand for equipment in those locations. Upon belief, the Trustee intends to surrender all equipment and

13, 2007; (ii) the Assignment of Leases and Rents dated October 30, 2007; (jj) the Letter Loan Agreement dated October 30, 2007; (kk) the Arbitration and Notice of Final Agreement dated October 7, 2007; (ll) the Guaranty Agreement dated October 30, 2007 by K. Kyle Lewis ; (mm) the Certificate of Corporate Resolutions of LWL Management, Inc. dated October 30, 2007; (nn) the Certification and Authorization by the Partners of Hardrock Road Properties, L.P. dated October 7, 2007; (oo) the UCC Financing Statement ; (pp) the Authorization for Automatic Deduction dated October 30, 2007; (qq) the Request for Partial Reconveyance dated September 19, 2008 (items gg - qq constitute the "**9004 Loan Documents**"); (rr) the Promissory Note dated March 25, 2008; (ss) the two (2) Deeds of Trust Security Agreements – Financing Statements dated March 25, 2008; (tt) the Assignment of Leases and Rents dated March 25, 2008; (uu) the Arbitration and Notice of Final Agreement dated March 28, 2008 (items rr – uu constitute the "**9006 Loan Documents**"); (vv) the Promissory Note dated December 19, 2008; (ww) the Deed of Trust Security Agreement – Financing Statement dated December 19, 2008; (xx) the Environmental Indemnity dated December 19, 2008; (yy) the UCC Financing Statement; (zz); the Letter Loan Agreement dated December 19, 2008; (aaa) the Arbitration and Notice of Final Agreement dated December 19, 2008; (bbb) the Agreement on Advance Procedures dated December 19, 2008 (items vv –bbb constitute the "**9007 Loan Documents**").

⁸ Frost reserves the right to claim pre-payment penalties, additional interest, post-petition attorney's fees and other expenses and/or amounts as appropriate. Frost's claims here have been filed as a SECURED CLAIM, except to the extent that the security for any such claim is insufficient to satisfy the claim. To that extent, this claim is filed as an unsecured claim. All references herein include all amendments, renewals, and modifications thereto. Nothing contained herein is or shall be deemed to be a waiver or relinquishment in whole or in part of any security interests, liens, or mortgages securing any indebtedness owed Frost by the Debtors or any other party. Frost reserves the right to amend or supplement this Claim and/or file additional Proofs of Claim for additional claims or interests at any time, either before or after any bar date established by the Bankruptcy Court.

other personal property at the Unnecessary Locations to the operative secured lender and otherwise has no future plans or other use for the Unnecessary Locations. A complete legal description of the Unnecessary Locations is attached as Exhibit “1” hereto and incorporated herein.

V.
RELIEF REQUESTED

10. The Debtors have no equity in the Unnecessary Locations sufficient for a trustee to be able to liquidate such property and realize unencumbered proceeds for the benefit of the Debtors’ bankruptcy estate. The Trustee has no use or plans for the Unnecessary Locations, and they are therefore not necessary for a reorganization. Moreover, the Trustee is not adequately protecting Frost for the use of the Unnecessary Locations. Frost requests the Court to terminate the automatic stay as to Frost and the Unnecessary Locations pursuant to 11 U.S.C. § 362(d)(1) and/or (d)(2) to allow Frost to exercise its state law remedies to the Unnecessary Locations under the Frost Loan Documents.

11. Upon belief, other lenders have collateral at the Unnecessary Locations and Frost will need to coordinate the removal of same with the lenders prior to marketing the property. In order to move forward on these efforts immediately, Frost maintains that sufficient cause exists to waive the 10-day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, and Frost requests the Court to waive such stay.

12. In the unlikely event that the Court finds that grounds for termination of the automatic stay are not present, Frost requests adequate protection on the Unnecessary Locations to enable Frost to maintain its pre-petition secured position, including payments on the Frost Loan Documents and maintenance of the Frost Security in a manner consistent with the contractual arrangement between the Debtors and Frost.

WHEREFORE, PREMISES CONSIDERED, Frost requests the Court to: (a) waive the 10-day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure; (b) immediately terminate the automatic stay imposed by 11 U.S.C. § 362 as to Frost and the Unnecessary Locations pursuant to allow Frost to exercise its state law remedies to the Unnecessary Locations under the Frost Loan Documents; (c) in the alternative, condition the automatic stay on the strict performance of sufficient adequate protection; and (d) award Frost such further relief, general or special, at law or in equity, to which Frost may show itself justly entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Telecopy)

By: /s/ Michael J. Quilling
Michael J. Quilling
State Bar No. 16432300
Hudson Jobe
State Bar No. 24041189

ATTORNEYS FOR THE FROST
NATIONAL BANK

CERTIFICATE OF CONFERENCE

This is to certify that on March 1, 2010, Frost contacted the Trustee regarding the relief requested herein and was advised that the Trustee does not oppose the relief requested herein.

/s/ Michael J. Quilling
Michael J. Quilling

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument, without the appendix, was served by electronic transmission via the CM/ECF system upon all parties registered to receive electronic notice in this bankruptcy case, and/or regular U.S. mail, postage prepaid, on this 3rd day of March, 2010, on the parties listed on the attached service list.

/s/ Michael J. Quilling
Michael J. Quilling