

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Chapter 11
SCHWAB INDUSTRIES, INC., <i>et al.</i> ¹)	
)	Case No. 10-60702-rk
Debtors.)	(Jointly Administered)
)	
)	Judge Russ Kendig

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO FINAL AGREED ORDER
AUTHORIZING LIMITED USE OF CASH COLLATERAL**

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned bankruptcy cases, by and through its proposed counsel, hereby files this limited objection and reservation of rights (the “Limited Objection”) to the *Final Agreed Order Authorizing Limited Use of Cash Collateral* (the “Cash Collateral Order”), and states:

PRELIMINARY STATEMENT

The Debtors have requested that several “non-core” personal property assets that were originally to be sold as part of the *Motion for Order (1) Authorizing the Auction Sales of Certain Non-Core Assets, Free and Clear of Liens, Claims, Interests and Encumbrances; (2) Waiving the Fourteen-Day Stay Period Provided by Bankruptcy Rule 6004(h); and (3) Granting Related Relief* (the “Non-Core Asset Sale Motion”) be pulled from auction and immediately liquidated to help fund working capital. Through its ongoing investigation of the Pre-Petition Lenders’ alleged liens, however, the Committee has determined that the Pre-Petition Lenders do not have valid, perfected liens on these assets (as defined in the Cash Collateral Order, the “*Immediate Assets to Be Sold*”). While the Committee does not oppose the immediate liquidation of these

¹ The Debtors are Schwab Industries, Inc. (“SIP”), Medina Cartage Co. (“MCC”), Medina Supply Company (“MSC”), Quality Block & Supply, Inc. (“QBS”), O.I.S. Tire, Inc. (“OIS”), Twin Cities Concrete Company (“TCC”), Schwab Ready-Mix, Inc. (“SRM”), Schwab Materials, Inc. (“SMP”) and Eastern Cement Corp. (“ECC”).

assets to help preserve the Debtors as a going concern, it is possible that these valuable, unencumbered assets will have the sole benefit of preserving – and perhaps even enhancing – the Pre-Petition Lenders’ collateral. Accordingly, the Committee submits this Limited Objection to preserve its rights with respect to the sale of the Immediate Assets to Be Sold and the proceeds thereof.

BACKGROUND

A. The Chapter 11 Cases

1. On February 28, 2010 (the “*Petition Date*”), Schwab Industries, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “*Debtors*”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Ohio (the “*Court*”).

2. The Debtors are currently operating and managing their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Committee was appointed on March 9, 2010.

B. The Non-Core Asset Sale Motion

3. Pursuant to the Non-Core Asset Sale Motion, the Debtors seek to sell several dozen vehicles and other equipment – including mixer trucks and ready-mix plants – that have been deemed “non-core” to the Debtors’ businesses (the “*Non-Core Assets*”). The Debtors propose to sell these assets at auction, and concurrently have sought to retain Cincinnati Industrial Auctioneers (“*Cincinnati*”) to conduct this auction on behalf of the estates.

4. Earlier this morning, however, the Debtors informed the Committee that it was removing certain of the Non-Core Assets (six (6) mixer trucks and one (1) ready-mix plant) from the list of assets being sold at auction, and that it wished to liquidate these assets immediately to

help fund the Debtors' immediate working capital needs. The proposed order granting the Non-Core Asset Sale Motion provides for the Debtors' ability to pull the Immediate Assets to Be Sold from the basket of Non-Core Assets to be sold at auction. The Committee has consented to this revised language, as well as the Debtors' efforts to immediately sell the Immediate Assets to Be Sold.

5. The Debtors have also proposed revisions to the Cash Collateral Order to permit the sale of the Immediate Assets to Be Sold:

Immediate Sale of Certain Non-Core Assets. In order to raise certain cash amounts, in accordance with and on the timetable required in the Approved Budget, Debtors and the Pre-Petition Lenders consent and agree to modify the automatic stay in such fashion to permit Debtors to effectuate, negotiate and complete sales of certain Non-Core Assets identified on the List of Immediate Assets To Be Sold attached hereto as Exhibit 2 (collectively the "Immediate Assets to Be Sold"), provided however that the aggregate proceeds generated from the sale of Immediate Assets to Be Sold shall be no less than \$650,000. The Immediate Assets to Be Sold shall be sold free and clear of all interests, liens and encumbrances of any kind and all proceeds from any sale of the Immediate Assets to Be Sold shall be used by Debtors, strictly in accordance with this Final Order and the Approved Budget. Notwithstanding anything included in any other motions presented or Orders of this Court, so long as the Immediate Assets to Be Sold are sold by Debtors prior to May 1, 2010, the Immediate Assets to Be Sold shall be excluded from any Non-Core Assets being sold by or through any other of Debtors' retained professionals, and no compensation shall be provided to any such professional from the sale of the Immediate Assets to Be Sold.

Proposed Cash Collateral Order, at ¶ 3A.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

6. Based on information furnished by the Debtors to the Committee earlier this afternoon, the Committee believes that the Pre-Petition Lenders do not have valid, properly perfected liens on any of the six mixer trucks (the "*Trucks*") included among the Immediate

Assets to Be Sold. Under Florida law, a lender perfects its security interest in titled vehicles by notating their liens on the applicable certificate of title. *See Fla. Stat. § 319.27 (2010)*. The Committee has reviewed the titles for each of the Trucks (the “*Titles*”), which contain absolutely no notations as to the Pre-Petition Lenders’ alleged security interest in the Trucks.² In fact, on each of the Titles under the heading “1st Lienholder,” the word “NONE” appears. Given this reality, the Committee can only conclude that the Trucks are unencumbered and, thus, excluded from the Pre-Petition Collateral.

7. This conclusion stands in contrast to paragraph 3A of the Cash Collateral Order, which implicitly states that the Immediate Assets to Be Sold represent part of the Pre-Petition Collateral. The Committee is justifiably concerned that these unencumbered assets may end up being used solely to preserve the Pre-Petition Collateral at the direct expense of unsecured creditors. Given this well-founded concern, the Committee submits that appropriate protections should be put in place to ensure that the Pre-Petition Lenders are not unjustly enriched from the Trucks’ liquidation.

8. The protections requested by the Committee are warranted under paragraph 18 of both the interim cash collateral order and the proposed Cash Collateral Order, which grant the Committee a period of time to investigate the validity, priority and extent of the Pre-Petition Lenders’ asserted liens in the Pre-Petition Collateral (the “*Investigation Period*”). Since the Investigation Period has not yet expired, the Committee requests that any Cash Collateral Order approved by this Court include an appropriate reservation of rights which preserves: (i) the Committee’s ability to further investigate the validity, priority and extent of the Pre-Petition Lenders’ asserted liens in the Immediate Assets to Be Sold; (ii) the Committee’s right to seek a

² True and correct copies of the Titles as provided by the Debtors to the Committee are attached hereto as Exhibit A.

determination by this Court that the Immediate Assets to Be Sold are not subject to the alleged Pre-Petition Lenders' liens; and (iii) all other rights of the Committee with respect to the sale of the Immediate Assets to Be Sold and the proceeds thereof, including, without limitation, for quantum meruit for any unencumbered estate assets used to preserve the Pre-Petition Collateral.

9. In chapter 11 cases such as these, where expected distributions to unsecured creditors is anything but certain, it is vitally important to protect the estates' interest in unencumbered assets. The absence of protective language in the Cash Collateral Order may result in irreparable harm to unsecured creditors, in that significant unencumbered assets of these estates could be improperly used to maintain the Pre-Petition Collateral without recourse.

WHEREFORE, the Committee respectfully requests that the Court (a) order that the Cash Collateral Order be revised in the manner suggested above; (b) deny the sale of the Immediate Assets to Be Sold absent the granting of appropriate protections and reservations of rights to the Committee; and (c) grant such other and further relief as is just and proper.

Dated: April 14, 2010

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF SCHWAB
INDUSTRIES, INC., *et al.***

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