



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 08, 2012

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re  
  
AMERICAN WEST DEVELOPMENT,  
INC., a Nevada corporation,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

**INTERIM ORDER PURSUANT TO  
11 U.S.C. §§ 361, 362 AND 363 AND FED. R.  
BANKR. P. 4001(b) AND 4001(d):  
(I) AUTHORIZING DEBTOR TO USE  
CASH COLLATERAL AND PROVIDE  
ADEQUATE PROTECTION PURSUANT  
TO AGREEMENT WITH PRE-PETITION  
LENDERS; (II) GRANTING RELATED  
RELIEF; AND (III) SCHEDULING FINAL  
HEARING**

Hearing Date: March 6, 2012  
Hearing Time: 2:00 p.m.

The Court, having reviewed and considered the Motion (the "Motion") filed by American West Development, Inc. ("Debtor"), for entry of an interim order (the "Interim Order") and final order (the "Final Order") pursuant to sections 361, 362 and 363 of title 11 of the United States Code, §§ 101 *et. seq.* (the "Bankruptcy Code"), Rules 4001(b) and 4001(d) of the Federal Rules of Bankruptcy

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1 Procedure (the “Bankruptcy Rules”), and Rules 4001(b) and 4001(c) of the Local Rules for the  
 2 U.S. Bankruptcy Court, District of Nevada (“Local Rules”): (i) authorizing and approving, among  
 3 other things, (a) Debtor to use the cash collateral of the Pre-Petition Lenders<sup>1</sup> pursuant to the terms of  
 4 the Cash Collateral Agreement, (b) Debtor to provide adequate protection to the Pre-Petition Lenders,  
 5 (c) the form and manner of service of the Motion; and (ii) scheduling interim and final hearings with  
 6 respect to the relief requested therein; and it appearing that the relief requested is in the best interests of  
 7 Debtor’s estate, its creditors and all other parties in interest; and the Court having jurisdiction to  
 8 consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and  
 9 consideration of the Motion and the relief requested therein being a core proceeding pursuant to  
 10 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and  
 11 the Court having reviewed and considered all other pleadings and evidence submitted by the parties in  
 12 connection with the Motion; and due and proper notice of the Motion having been provided; and it  
 13 appearing that no other or further notice need be provided; and the Court having determined that the  
 14 legal and factual grounds set forth in the Motion establish just cause for the relief granted herein; and  
 15 the Court having considered the oral arguments of counsel at the hearing held on March 6, 2012; and  
 16 the Court having made findings of fact and conclusions of law on the record, which (to the extent not  
 17 expressly set forth below) are incorporated herein pursuant to Rule 52 of the Federal Rules of Civil  
 18 Procedure, made applicable to these proceedings by Bankruptcy Rule 9014(c); and good and sufficient  
 19 cause appearing therefor,

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

21 **I. Background, Jurisdiction and Notice.**

22 A. On March 1, 2012 (the “Petition Date”), Debtor commenced its bankruptcy case  
 23 by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor is continuing  
 24 to operate its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and  
 25 1108. No trustee, examiner, or statutory committee has been appointed in this case.

26 <sup>1</sup> Capitalized terms used but not defined herein shall have the meaning set forth in the agreement  
 27 (the “Cash Collateral Agreement”) attached as **Exhibit “B”** to the Omnibus Declaration of Robert M.  
 28 Evans filed in support of Debtor’s First Day Motions [Docket Nos. 56 and 57] on March 1, 2012.

1 B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334.  
2 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant  
3 to 28 U.S.C. §§ 1408 and 1409.

4 C. Debtor has complied with the requirements of Bankruptcy Rules 4001(b) and 4011(d),  
5 and Local Rules 4001(b), 4001(c) and 9006, requiring, among other things, that the Interim Hearing be  
6 held on less than twenty-one (21) days notice by serving the Motion and providing notice of the Interim  
7 Hearing by electronic mail, facsimile or overnight mail to: (i) the U.S. Trustee; (ii) all parties listed on  
8 the List of Creditors Holding the 20 Largest Unsecured Claims; (iii) the DIP Financing lender; (iv) the  
9 Pre-Petition Lenders; and (v) all other parties requesting notice pursuant to Bankruptcy Rule 2002.  
10 Given the nature of the relief sought in the Motion, the Court concludes that the foregoing notice was  
11 sufficient and adequate under the circumstances and complies with Bankruptcy Rule 4001 in all  
12 respects.

13 **II. Findings Regarding the Use of Cash Collateral Based on the Record at the Interim**  
14 **Hearing.**

15 D. Debtor has an immediate and critical need to use cash collateral. Debtor's ability to use  
16 cash collateral is critical to Debtor's ability to continue as a going concern during the course of this  
17 Chapter 11 Case. The Initial Cash Budget provides for Debtor to use cash collateral to fund the costs of  
18 administering Debtor's estate, including, without limitation, (i) funding the operations of Debtor's  
19 business, (ii) making adequate protection payments to the Pre-Petition Lenders, (iii) paying expenses  
20 incurred for the administration of the Chapter 11 Case, including compensation of professional fees and  
21 expenses, (iv) paying contractual obligations consistent with the Final Order, and (v) repaying  
22 borrowings under any DIP Financing. Debtor's ability to use cash collateral under the terms of the  
23 Cash Collateral Agreement and this Interim Order are vital to the preservation and maintenance of the  
24 going concern value of Debtor's estate and to Debtor's successful reorganization. Consequently,  
25 without the ability to use cash collateral to the extent authorized pursuant to this Interim Order, Debtor  
26 and its estate would suffer immediate and irreparable harm.

27 E. The Cash Collateral Agreement has been negotiated in good faith and at arms' length,  
28 and is fair and reasonable under the circumstances. The Cash Collateral Agreement reflects Debtor's

1 sound exercise of prudent business judgment consistent with its fiduciary duties.

2 F. The adequate protection to be provided pursuant to the Cash Collateral Agreement,  
3 including, without limitation, the Replacement Liens and the Pre-Petition Lenders' Superpriority Claim,  
4 is consistent and in compliance with the Bankruptcy Code, including sections 361, 362 and 363 thereof.

5 G. Good cause has been shown for immediate entry of this Interim Order pursuant to  
6 Bankruptcy Rules 4001(b)(2) and 4001(d), and, to the extent it applies, Bankruptcy Rule 6003, as the  
7 Court finds that entry of this Interim Order is necessary to avoid immediate and irreparable harm to  
8 Debtor and its estate. Entry of this Interim Order is in the best interest of Debtor, its estate and  
9 creditors.

10 H. Based on the foregoing, and upon the record made before this Court at the Interim  
11 Hearing, and good and sufficient cause appearing therefor:

12 **III. Disposition.**

13 1. The Motion is granted on an interim basis on the terms and conditions set forth in this  
14 Interim Order. This Interim Order shall become effective immediately upon its entry. To the extent the  
15 terms of the Cash Collateral Agreement differ in any material respect from the terms of this Interim  
16 Order, this Interim Order shall control.

17 2. The terms and conditions of the Cash Collateral Agreement, including, without  
18 limitation, the Replacement Liens and the Pre-Petition Lenders' Superpriority Claim, are hereby  
19 approved on an emergency interim basis. Debtor is hereby authorized to use cash collateral pursuant to  
20 the Cash Collateral Agreement and the Initial Cash Budget for a period up to and including the date of  
21 entry of the Final Order.

22 3. The Replacement Liens and the Pre-Petition Lenders' Superpriority Claims shall be  
23 subject to the payment of the Carve-Out.

24 4. The Pre-Petition Lenders shall not be subject to the doctrine of marshalling.

25 5. The provisions of this Interim Order shall be binding upon and inure to the benefit of the  
26 Pre-Petition Lenders, Debtor, and their respective successors and assigns.

27 6. The automatic stay is vacated and modified to the extent necessary to permit Debtor to  
28 make the Adequate Protection Payments and the Pre-Petition Lenders to apply them against the Pre-

1 Petition Lenders' Claims as provided in the Cash Collateral Agreement, the Motion and this Interim  
2 Order.

3 7. To the extent applicable, this Interim Order is not subject to the 14-day stay provision of  
4 Bankruptcy Rules 4001(a)(3) or 6003.

5 8. Service of Notice. Debtor shall cause a copy of this Interim Order to be served within  
6 three (3) business days of its entry, by electronic mail, U.S. Mail or the Court's ECF noticing of the  
7 Interim Hearing to: (a) counsel to the DIP Financing lender: Edward C. Lubbers, Esq., Lubbers Law;  
8 (b) counsel to the Pre-Petition Lenders: Donald F. Ennis, Esq., Snell & Wilmer LLP, (b) the Office of  
9 the United States Trustee for the District of Nevada, Attn: Athanasios Agelakopoulos, Trial Attorney;  
10 (c) counsel for any statutory committee appointed in this case, and if no such committee was appointed,  
11 then to the parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims; and (d) all  
12 other secured creditors, and all other parties requesting notice pursuant to Bankruptcy Rule 2002 (the  
13 "Notice Parties").

14 9. Final Hearing. A hearing to consider entry of an order granting the relief set forth in this  
15 Interim Order on a final basis (the "Final Order") shall be held on April 10, 2012 at 9:30 a.m. (the  
16 "Final Hearing") in the Foley Federal Building, 300 Las Vegas Boulevard South, Courtroom No. 2, Las  
17 Vegas, Nevada 89101; with any objections (the "Objections") to entry of a Final Order due to be timely  
18 filed electronically with the Court and served on the Notice Parties and Debtor's counsel: Fox  
19 Rothschild, LLP, 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169, Attn: Brett A.  
20 Axelrod, Esq. (collectively, the "Objection Notice Parties") (with a courtesy copy delivered directly to  
21 the Chambers of the Honorable Mike K. Nakagawa) by March 27, 2012. Replies to timely-filed  
22 Objections, if any, shall be filed with the Bankruptcy Court electronically and served by April 3, 2012  
23 (with a courtesy copy delivered directly to the Chambers of the Honorable Mike K. Nakagawa) by the  
24 Objection Notice Parties and the objecting party.

25 DATED: March 6, 2012.

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Prepared and respectfully submitted by:

**FOX ROTHSCHILD LLP**

By /s/Brett A. Axelrod

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*[Proposed] Counsel for Debtor*

APPROVED/DISAPPROVED:

APPROVED/DISAPPROVED:

**OFFICE OF THE UNITED STATES TRUSTEE**

**SNELL & WILMER LLP**

BY \_\_\_\_\_

BY /s/Donald F. Ennis

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**CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

- The Court has waived the requirement set forth in LR 9021(b)(1).
- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

ATHANASIOS  
AGELAKOPOULOS, OFFICE OF  
THE UNITED STATES TRUSTEE

DONALD F. ENNIS, SNELL &  
WILMER LLP

APPROVED

APPROVED

- I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion, pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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*[Proposed] Counsel for Debtor*

APPROVED/DISAPPROVED:

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**OFFICE OF THE UNITED STATES TRUSTEE**

**SNELL & WILMER LLP**

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**CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that:

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- No party appeared at the hearing or filed an objection to the motion.
- I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

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