

Bankruptcy Court Issues New Opinion Addressing First Day Critical Vendor Relief (In Re O&S Trucking)

Read the Opinion Here: <http://chapter11cases.com/new-bankruptcy-opinion-in-re-os-trucking-inc-bankr-court-wd-missouri-2012-case-no-12-61003-issue-first-day-critical-vendor-relief/>

Summary: Company & Case Background

O&S Trucking, Inc. filed this Chapter 11 bankruptcy case on May 30, 2012. The Debtor owns and operates a fleet of trucks, trailers and related equipment for the hauling of freight throughout the country. The day after the filing, on May 31, 2012, the Debtor filed an Emergency Motion for Authorization to Pay Prepetition Claims of Critical Vendors and Contractors, and requested an expedited hearing on that Motion. That same day, the Court set the Motion for expedited hearing on June 5, 2012. Following the June 5, 2012 hearing, the court entered an Interim Order granting the Critical Vendors Motion in part, denying it in part, and granting it on an interim basis in part.

The Debtor is a mid-sized truckload carrier located in Springfield, Missouri, which owns and operates a fleet of trucks, trailers, and related equipment for the hauling of freight throughout the country. Much of the Debtor's business involves the hauling of refrigerated freight. According to the Debtor's president and CEO, James E. O'Neal, the Debtor began to experience difficulties in 2008 as a result of the overall economic downturn and some unspecified one-time incidents which caused significant cash losses to the company. Mr. O'Neal's efforts to improve cash flow and profitability culminated in discussions with a competitor, Prime, Inc., one of the largest trucking carriers in the country. These discussions ultimately resulted in a Carrier-Broker Agreement entered between Prime and the Debtor on May 25, 2012, just a few days before the filing of the Chapter 11 bankruptcy case on May 30, 2012. It is the Debtor's position that this Agreement with Prime is the linchpin of its successful reorganization. In sum, the Debtor says



that, due to Prime's size, the arrangement will result in significant reductions in its fuel and maintenance costs, as well as overhead and administrative costs. In addition, much like a factoring agreement, Prime will provide the Debtor with immediate cash based on its receivables, as opposed to the Debtor having to wait 30 to 45 days to collect its own accounts receivable.

Summary: Requested Critical Vendor Relief

As to the Critical Vendors Motion, the Debtor asserts the payment of the so-called critical vendors and contractors is absolutely necessary in order to make the transition to Prime and achieve a successful reorganization. Attached to the Critical Vendor Motion was a Critical Vendor List, which identified three categories of creditors whose prepetition claims the Debtor asserts had to be paid immediately in order for any reorganization to be possible. As discussed more fully below, these consisted of (i) independent truck drivers; (ii) contract carriers; and (iii) vendors and suppliers of fuel and mechanical services. The total amount sought to be paid was \$943,100.01. Mercedes-Benz Financial Services USA, LLC d/b/a Daimler Truck Financial; Transportation Alliance Bank; Caterpillar Financial Services Corporation; and the United States Trustee all voiced objections, either in writing or verbally at one of the hearings.

The court granted final relief as to the independent truck drivers and the contract carriers and one of the requested vendors. The court denied critical vendor relief as to the remaining vendors and suppliers of fuel and mechanical services because the debtor did not provide sufficient evidence that the following criteria were met:

- (a) whether each Interim Vendor would refuse to continue to do business with the Debtor without immediate critical vendor payment;
- (b) whether the Debtor has no reasonable alternative to the services provided by each Interim Vendor;
- (c) whether each Interim Vendor will continue to do business on the same terms with the Debtor after receiving critical vendor payment; and



(d) what portion of each Interim Vendor's claim is entitled to administrative expense priority or reclamation.

IN RE: O&S TRUCKING, INC., Debtor.

Case No. 12-61003

United States Bankruptcy Court, W.D. Missouri

June 29, 2012

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