

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>TMT USA SHIPMANAGEMENT LLC, et al.,<sup>1</sup></b>	§	<b>Case No. 13-33740</b>
	§	
<b>DEBTORS.</b>	§	<b>(Joint Administration Requested)</b>

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**DEBTORS' EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING THE  
DEBTORS TO USE CASH COLLATERAL OF EXISTING SECURED LENDERS,  
(II) GRANTING ADEQUATE PROTECTION FOR USE THEREOF, AND  
(III) SCHEDULING FINAL HEARING**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**THE DEBTORS HAVE REQUESTED THAT THIS MOTION BE CONSIDERED AT THE DEBTORS' FIRST DAY HEARINGS.**

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<sup>1</sup> The Debtors in these chapter 11 cases are: (1) A Whale Corporation; (2) B Whale Corporation; (3) C Whale Corporation; (4) D Whale Corporation; (5) E Whale Corporation; (6) G Whale Corporation; (7) H Whale Corporation; (8) A Duckling Corporation; (9) F Elephant Corporation; (10) F Elephant Inc.; (11) A Ladybug Corporation; (12) C Ladybug Corporation; (13) D Ladybug Corporation; (14) A Handy Corporation; (15) B Handy Corporation; (16) C Handy Corporation; (17) B Max Corporation; (18) New Flagship Investment Co., Ltd; (19) RoRo Line Corporation; (20) Ugly Duckling Holding Corporation; (21) Great Elephant Corporation; (22) TMT Procurement Corporation; and (23) TMT USA Shipmanagement LLC.

TMT USA Shipmanagement LLC, *et al.*, the above-captioned debtors and debtors in possession (together, the “Debtors”), by and through their undersigned proposed attorneys, hereby file this motion (the “Motion”) for an order (i) authorizing the Debtors to use cash collateral of existing secured lenders, (ii) granting adequate protection for the use thereof, and (iii) scheduling a final hearing. In support thereof, the Debtors would show as follows:

### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157. Venue of these chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§ 105, 361, 362, 363 and Bankruptcy Rules 2002, 4001, and 9014.

### **II. RULE 4001 STATEMENT**

2. By this Motion the Debtors seek authority to use the Cash Collateral (as defined below) of (a) First Commercial Bank Co. Ltd.; (b) Sinopac Bank; (c) Mega International Commercial Bank; (d) Cathay United Bank; and (e) Shanghai Bank. The Debtors seek to use such Cash Collateral as working capital in the operation of their business for the purposes specified in, and at least for the period defined in, the attached budget. As adequate protection for the diminution in value of Cash Collateral, the Debtors will (i) provide an existing equity cushion, (ii) maintain the value of their business as a going-concern, (iii) provide replacement liens upon now owned and after-acquired cash to the extent of any diminution in value of Cash Collateral, and (iv) provide superpriority administrative claims to the extent of any diminution in value of Cash Collateral.

### III. BACKGROUND

#### Business Description

3. On June 20, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are operating their businesses and managing their property as debtors in possession. The Debtors have requested joint administration of these chapter 11 cases by motion filed concurrently herewith. No trustees or examiners have been appointed in these cases.

4. Together, the Debtors are known in the industry as the TMT Group (“TMT”) based on the original company known as Taiwan Marine Transport Co. Ltd. (a non-debtor), which was founded in 1958 as a banana boat operator with inter-Asia routes.<sup>2</sup> Since then, the TMT Group has grown into a provider of worldwide sea borne transportation services. The Debtors’ fleet consists of 17 vessels (the “Vessels”), each held by an individual ship owning company (a common corporate structure in the industry). The TMT fleet is diversified to span several sectors of maritime transportation, such as the bulk sector, vehicle sector, ore sector, and oil sector. Vessels range in size from approximately 27,000 dead weight tons (dwt) to approximately 320,000 dwt. The Debtors’ total dwt capacity is approximately 3.2 million dwt, and the average age of the fleet is younger than two and a half years (excluding *M/V A Duckling*, which is 14 years old, and *F Elephant*, which is 23 years old). Vessels are variously flagged in Liberia, Panama, and the Marshall Islands.

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<sup>2</sup> The “TMT” acronym was changed from Taiwan Marine Transport to Today Makes Tomorrow in 2007 as the TMT Group expanded operations throughout the world.

5. TMT generates revenues by employing its fleet of Vessels on time charters as well as in the spot market. Additionally, TMT charters out its “Whale” and “Elephant” vessels to the affiliated non-debtor Blue Whale Corporation under bareboat charters. Technical and commercial management of the Vessels are carried out by various non-debtor affiliate entities.

**Description of Secured Bank Debt**

*First Commercial Bank Co. Ltd.*

6. The Debtor A Whale Corporation is a borrower pursuant to that certain loan facility with First Commercial Bank Co. Ltd., as lender, dated February 15, 2011, in the amount of \$90 million (the “First Bank Facility”).

7. The First Bank Facility is secured by, among other things, a first priority mortgage on the *M/V A Whale*. The First Bank Facility is further secured by, among other things an (i) assignment of earnings, (ii) assignment of charter, (iii) assignment of insurance; and (iv) assignment of requisition compensation. Approximately \$76.5 million is currently outstanding under the First Bank Facility.

*Bank Sinopac*

8. The Debtor B Whale Corporation is a borrower pursuant to that certain loan facility with Bank Sinopac, as lender, in the amount of \$84 million (the “Sinopac Bank Facility”).

9. The Sinopac Bank Facility is secured by, among other things, a first priority mortgage on the *M/V B Whale*. The Sinopac Facility is further secured by, among other things an (i) assignment of earnings, (ii) assignment of charter, (iii) assignment of insurance; and (iv) assignment of requisition compensation. Approximately \$67.2 million is currently outstanding under the Sinopac Bank Facility.

Mega International Commercial Bank

10. The following Debtors are each borrowers under credit facilities in which Mega International Commercial Bank is an arranger, agent and security trustee (together, the “Mega Bank Facilities”):

- (a) C Whale Corporation;
- (b) D Whale Corporation;
- (c) E Whale Corporation;
- (d) G Whale Corporation;
- (e) H Whale Corporation;
- (f) A Duckling Corporation; and
- (g) TMT Procurement Corporation.

(together, the “Mega Bank Borrowers”). The Mega Bank Facilities total \$517.2 million. Each Mega Bank Facility is secured by, among other things, a first priority mortgage on the vessel of the respective Debtor.<sup>3</sup> Each Mega Bank Facility is further secured by, among other things (i) assignments of earnings, (ii) assignments of charter, (iii) assignments of insurance; and (iv) assignments of requisition compensation by the respective Debtor. Approximately \$415.5 million is currently outstanding under the Mega Bank Facilities.

Cathay United Bank

11. F Elephant Inc. and New Flagship Investment Co., Ltd. (the “Cathay Bank Borrowers”) are each borrowers under credit facilities in which Cathay United Bank is an

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<sup>3</sup> The TMT Procurement Corporation facility relates to the *M/V A Ladybug*. The owner of the *A Ladybug* (i.e. A Ladybug Corporation) has provided an (i) assignment of earnings, (ii) assignment of charter, (iii) assignment of insurance; and (iv) assignment of requisition compensation.

arranger and agent (together the “Cathay Bank Facilities”).<sup>4</sup> The Cathay Bank Facilities total approximately \$201.8 million. Each Cathay Bank Facility is secured by, among other things, a first priority mortgage on the vessel of the respective Debtor. Each Cathay Bank Facility is further secured by, among other things (i) assignments of earnings, (ii) assignments of charter, (iii) assignments of insurance; and (iv) assignments of requisition compensation by the respective Debtor. Approximately \$173.5 million is currently outstanding under the Cathay Bank Facilities.

Shanghai Commercial and Savings Bank Ltd.

12. A Handy Corporation, B Handy Corporation, B Max Corporation, and C Handy Corporation (the “Shanghai Bank Borrowers”) are each borrowers under credit facilities in which Shanghai Commercial and Savings Bank Ltd. is the lender (the “Shanghai Bank Facilities”). The Shanghai Bank Facilities total \$79.7 million. Each Shanghai Bank Facility is secured by, among other things, a first priority mortgage on the vessel of the respective Debtor. Each Shanghai Bank Facility is further secured by, among other things (i) assignments of earnings, (ii) assignments of charter, (iii) assignments of insurance; and (iv) assignments of requisition compensation by the respective Debtor. Approximately \$69.7 million is currently outstanding under the Shanghai Bank Facilities.

13. Together, the lenders under the First Bank Facility, Sinopac Bank Facility, Mega Bank Facility, Cathay Bank Facility, and Shanghai Bank Facility are referred to herein as the “Prepetition Bank Lenders.” All collateral securing the bank facilities is referred to herein as the “Prepetition Collateral.”

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<sup>4</sup> New Flagship Investment Co., Ltd. is a borrower under two distinct Cathay Bank Facilities, one in which C Ladybug Corporation is the owner, and one in which D Ladybug Corporation is the owner.

#### **IV. RELIEF REQUESTED**

14. As a consequence of the prepetition secured financing under the various credit facilities described above, certain cash in the Debtors' possession or in which the Debtors have an interest on and after the Petition Date constitutes asserted cash collateral ("Cash Collateral") in which the Prepetition Bank Lenders may assert an interest within the meaning of § 363(a) of the Bankruptcy Code. By this Motion, pursuant to Bankruptcy Code §§ 105, 361, 362, and 363 and Bankruptcy Rules 2002, 4001, and 9014, the Debtors request that the Court enter an order (i) approving the Debtors' use of Cash Collateral, (ii) providing adequate protection for, and to the extent of, any diminution in the value of the Cash Collateral, and (iii) scheduling a final hearing (the "Final Hearing") for this Court to consider entry of a final order (the "Final Order") authorizing and approving the relief requested in this Motion.

#### **V. BASIS FOR RELIEF**

15. Under 11 U.S.C. § 363(c)(2), a debtor may use cash collateral if each entity that has an interest in such cash collateral consents or if the Court, after notice and a hearing, authorizes the use of the cash collateral. Pursuant to 11 U.S.C. § 363(c)(3), the Court must condition a debtor's use of cash collateral as is necessary to provide adequate protection of the interest in the cash collateral claimed by a party.

16. Bankruptcy Rule 4001(b) and (d) govern the procedure for consideration of motions to use cash collateral, and both of these subsections provide for expedited consideration of such motions for cases in which immediate interim relief may be crucial to the success of a reorganization.

17. At a hearing on a debtor's motion for the use of cash collateral, the debtor bears the burden of proof on the issue of adequate protection, and the party claiming an interest in the

cash collateral bears the burden of proof on the issue of the validity, priority, or extent of the lien.

18. As of the Petition Date, the Debtors do not have unencumbered cash sufficient to fund their business operations and pay present operating expenses. Notably, the Prepetition Bank Lenders have frozen all Debtor funds held in cash retention accounts at each respective lending institution. Frozen Cash Collateral totals approximately \$54.31 million. As a result of these actions, the Debtors have been unable to meet basic operating expenses, which has imperiled the survival of their business. Therefore, the Debtors have an urgent need for the immediate use of this and other Cash Collateral pending a final hearing on this Motion.

19. The operation of the Debtors' vessels is extremely capital intensive, and any lapse in operation, no matter how transitory, could have a devastating economic impact on the going concern value of the Debtors' business. For example, the Debtors incur ongoing operating expenses related to navigating vessels on the high seas, which costs include crew costs, provisions, deck and engine stores, lubricating oils, insurance, maintenance and repairs, bunkers, port expenses, etc. Absent the use of Cash Collateral, these expenses cannot be met and the sole income producing assets of the Debtors—the Vessels—will be unable to operate and could possibly be subject to maritime liens and the threat of seizure at international ports.

20. Accordingly, the Debtors face “immediate and irreparable harm to the estate” absent the emergency consideration of the relief requested in this motion. The immediate use is necessary, and it will stabilize the Debtors' operations and revenue by paying ordinary, postpetition operating expenses, as well as any court approved prepetition expenses that may be at issue. Without authority to use Cash Collateral, the Debtors will not be able to function as a going concern, and will not be able to proceed to consideration of a plan of reorganization.

Accordingly, authority to use Cash Collateral is necessary to avoid the shutdown of the Debtors' businesses, and will be in the best interests of the Debtors, their estates and their creditors.

21. Through this Motion, the Debtors intend to provide adequate protection, to the extent of the aggregate diminution in value of Cash Collateral from and after the Petition Date, to the Prepetition Bank Lenders for the use of the Cash Collateral by:

- (a) providing an existing equity cushion in the Vessels;
- (b) maintaining the going concern value of the Prepetition Bank Lenders' collateral by using the Cash Collateral to continue to operate the business and administer these cases, including using Cash Collateral to satisfy the secured claims of certain maritime lien claimants, which secured claims are currently encumbering certain vessels and providing a basis for the detention and arrest of vessels;<sup>5</sup>
- (c) providing to each Prepetition Bank Lender a postpetition replacement lien pursuant to 11 U.S.C. § 361(2) in the accounts receivable of the relevant Debtor(s), including cash generated or received by such Debtor(s) subsequent to the Petition Date, but only to the extent that the Prepetition Bank Lender had valid, perfected prepetition liens and security interests in such collateral as of the Petition Date, and subject to the Carve-Out (as defined in the attached proposed order). For the sake of clarity, lenders under the First Bank Facility may only assert postpetition replacement liens in the accounts receivable of A Whale Corporation; lenders under the Sinopac Bank Facility may only assert postpetition replacement liens in the accounts receivable of B Whale Corporation; lenders under the Mega Bank Facilities may only assert postpetition replacement liens in the accounts receivable of C Wale Corporation, D Whale Corporation, E Whale Corporation, G Whale Corporation, H Whale Corporation, A Duckling Corporation and A Ladybug Corporation; lenders under the Cathay Bank Facilities may only assert postpetition replacement liens in the accounts receivable of F Elephant Inc., C Ladybug Corp., and D Ladybug Corp.; lenders under the Shanghai Bank Facilities may only assert postpetition replacement liens in the accounts receivable of A Handy Corporation, B Handy Corporation, C Handy Corporation, and B Max Corporation. The priority of any postpetition replacement liens granted to the Prepetition Bank Lenders shall be the same as existed as of the Petition Date; and

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<sup>5</sup> The Debtors are seeking permission to pay certain prepetition foreign secured maritime lien claims by separate motion filed contemporaneously herewith. Additionally, the Debtors have or will file an adversary proceeding for turnover of their arrested vessels.

- (d) providing to each Prepetition Bank Lender a superpriority claim pursuant to 11 U.S.C. § 507(b) over all administrative expense claims and unsecured claims, of any kind or nature whatsoever, whether in existence on or arising after the Petition Date, against the relevant Debtor or its specific estate, subject only to the Carve-Out. For the sake of clarity, lenders under the First Bank Facility may only assert superpriority claims against the estate of A Whale Corporation; lenders under the Sinopac Bank Facility may only assert superpriority claims against the estate of B Whale Corporation; lenders under the Mega Bank Facilities may only assert superpriority claims against the estate of C Whale Corporation, D Whale Corporation, E Whale Corporation, G Whale Corporation, H Whale Corporation, A Duckling Corporation and A Ladybug Corporation; lenders under the Cathay Bank Facilities may only assert superpriority claims against the estate of F Elephant Inc., C Ladybug Corp., and D Ladybug Corp.; lenders under the Shanghai Bank Facilities may only assert superpriority claims against the estate of A Handy Corporation, B Handy Corporation, C Handy Corporation, and B Max Corporation.

22. The Debtors believe that almost all of the Prepetition Bank Lenders are adequately protected for the use of the Cash Collateral in that the orderly liquidation value of the Prepetition Bank Lenders' collateral exceeds the amounts outstanding under the relevant facility. "A sufficient equity cushion is itself a recognized form of adequate protection." *Baybank-Middlesex v. Ralar Distributors, Inc.*, 69 F.3d 1200, 1203 (1st Cir. 1995). Further, "[a] classic method for finding adequate protection is the existence of an equity cushion. In fact, it has been found that an equity cushion standing alone can provide evidence of adequate protection for a secured claim." *In re Patrician St. Joseph Partners Ltd.*, 169 B.R. 669, 677 (D. Ariz. 1994) (citing *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984)).

23. The continuation of the Debtors' operations presents the best opportunity for the Prepetition Bank Lenders to receive the greatest recovery on account of their claims. Accordingly, the Debtors submit that use of the Cash Collateral will allow the Debtors to continue their operations and thereby protect the Prepetition Bank Lenders' interests. Courts have consistently recognized that the preservation of the going concern value of secured lenders'

collateral constitutes adequate protection of such creditors' interest in the collateral. *See, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably postpetition, then the secured creditor is adequately protected); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Willowood E. Apartments of Indianapolis II, Ltd.*, 114 B.R. 138, 143 (Bankr. S.D. Ohio 1990) (same); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditors' secured position would be enhanced by the continued operation of the debtors' business); *In re Aqua Assocs.*, 124 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The important question, in determining whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.") (citation omitted).

24. Additionally, through this Motion, the Debtors intend to provide further adequate protection, to the extent of any diminution in value, to the Prepetition Bank Lenders for the use of the Cash Collateral by providing to the Prepetition Bank Lenders postpetition replacement liens pursuant to 11 U.S.C. § 361(2) in accounts receivable, including cash generated or received by the Debtors subsequent to the Petition Date, but only to the extent that the Prepetition Bank Lenders had valid, perfected prepetition liens and security interests in such collateral as of the Petition Date. The priority of any postpetition replacement liens granted to the Prepetition Bank Lenders shall be the same as existed as of the Petition Date.

## VI. REQUEST FOR INTERIM AND FINAL RELIEF

25. An immediate need exists for the Debtors to obtain approval of the use of Cash Collateral in order to meet key expenses as described above and as identified in the interim budget (“Interim Budget”) attached hereto as **Exhibit A**. Without the immediate use of the Cash Collateral for an interim period, the Debtors will essentially be forced to call their vessels to port, close their business, and risk arrest and fire sales of their Vessels. Obviously this would have a severe negative impact upon the Debtors’ going concern value and ability to successfully create value for all creditors. The Debtors’ business, as a going concern, has a value far in excess of any value that might be obtained in a chapter 7 liquidation. A complete shutdown of the Debtors’ business, even for a short period, would result in the loss of employees, and creditors and equity receiving substantially less from the enterprise than going concern value. Accordingly, it is imperative that a preliminary hearing be set immediately.

26. Pursuant to Bankruptcy Rule 4001, the Debtors request that the Court set a preliminary hearing on the use of Cash Collateral, and that at such preliminary hearing, the Court authorize the temporary use of Cash Collateral consistent with the Interim Budget, in order to avoid immediate and irreparable harm to these bankruptcy estates pending a final hearing.

27. The Debtors’ also request a final hearing as soon as the Court’s schedule permits, following 14 days after service of this Motion.

## VII. NOTICE

28. Notice of this Motion has been or will be provided to (a) the Office of the United States Trustee for the Southern District of Texas, (b) all known or alleged secured creditors, (c) the 30 largest unsecured non-insider creditors of the Debtors (on a consolidated basis), (d) all known shareholders holding over 5% of a class of equity interests in any of the Debtors, (e) all

Debtor professionals, (f) the United States Attorney's Office for the Southern District of Texas, (g) the Internal Revenue Service, (h) any persons who have filed a request for notice pursuant to Bankruptcy Rule 2002, and (i) any such other government agencies to the extent required by the Bankruptcy Rules and Local Rules. The Debtors submit that no further notice of this Motion is required.

WHEREFORE, premises considered, the Debtors request that this Court enter an Order, in substantially the form attached hereto, authorizing the Debtors to use Cash Collateral as described herein, setting the Motion for a final hearing, and granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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