

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:)
)
BILL HEARD ENTERPRISES, INC., et al.,¹) **Chapter 11**
)
) **Case No. _____**
Debtors.)

**EMERGENCY MOTION BY DEBTORS AND GMAC, LLC FOR PRELIMINARY AND
FINAL ORDERS AUTHORIZING DEBTOR TO OBTAIN POST-PETITION
FINANCING ON A SECURED BASIS PURSUANT TO 11 U.S.C. §§ 105, 361, AND 364**

COME NOW Bill Heard Enterprises, Inc. ("Heard") and Heard's direct and indirect subsidiaries listed in footnote 2 (the "Debtors"), and GMAC, LLC ("Lender," and together with the Debtors, collectively, the "Movants"),² and file this emergency motion for interim approval of Debtors' obtaining post-petition financing from Lender in the form of a loan in the aggregate

¹ In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, (xxiii) Columbus Transportation, LLC

² Bill Heard Chevrolet Corporation - Orlando; Bill Heard Enterprises, Inc.; Bill Heard Chevrolet at Town Center, LLC; Bill Heard Chevrolet Company; Tom Jumper Chevrolet, Inc.; Bill Heard Chevrolet - Huntsville; Bill Heard Chevrolet, Inc. - Collierville; Bill Heard Chevrolet, Inc. - Buford; Landmark Chevrolet, Ltd.; Bill Heard Chevrolet Corporation - Las Vegas; Bill Heard Chevrolet Corporation - N.W. Las Vegas.

principal amount of up to Six Million Seven Hundred Sixteen Thousand Nine Hundred Twenty Five Dollars (\$6,716,925.00). In support of the motion, Movants state the following:

JURISDICTION

1. On September 28, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108. The Debtors have moved this Court for joint administration of these chapter 11 cases.

2. Movants bring this motion (the "Motion") pursuant to 11 U.S.C. §§ 105, 361, and 364 and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Under Bankruptcy Rule 4001(c)(2), the Court may commence a final hearing on a motion for authority to obtain credit no earlier than fifteen (15) days after service of the motion and notice of hearing on the motion. Bankruptcy Rule 4001(c)(2) further provides, however, that the Court may conduct a preliminary hearing before the expiration of the 15-day notice period as necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing. Movants respectfully request the Court to conduct a preliminary hearing at the Court's earliest convenience to authorize the secured post-petition financing as necessary to avoid immediate and irreparable harm to Debtors' bankruptcy estates pending a final hearing.

FACTUAL BACKGROUND

Company Background and Industry

4. William T. Heard, Sr. began a single dealership in Columbus, Georgia in 1919, eleven years after Henry Ford first produced the Model T. In 1961, Bill Heard, Jr. took the reins of the company and the company has since grown to become the equity holder of, either directly or indirectly, subsidiaries which own and operate fourteen Chevrolet dealerships in seven states. Specifically, these dealerships are located in Sanford, Florida; Plant City, Florida; Huntsville, Alabama; Columbus, Georgia; Union City Georgia; Buford, Georgia; Atlanta, Georgia; Kennesaw, Georgia; Collierville, Tennessee; Houston, Texas; Sugar Land, Texas, Scottsdale, Arizona; and Las Vegas, Nevada. Additionally, Heard operates a Saab/Cadillac dealership at one of their locations. The model of the Heard business was to operate large stores that focused on maximizing the volume of vehicles sold. This model led Heard to adopt the slogan of “Mr. Big Volume.” At its peak, Heard’s revenue approximated \$2.5 billion per year. Over the past several years, Heard has transitioned from older, smaller dealerships in many locations to newer, larger dealerships in order to effectuate this business model. These larger locations enabled Heard to maximize the volume of vehicles sold at the locations, but also resulted in increased operating expenses. Heard has historically been one of, if not the, largest Chevrolet dealers in the country based upon the volume of cars sold.

5. Beginning in mid-2007, Heard’s dealerships began to suffer significant monthly operating losses. These losses are attributable to a variety of factors, including credit availability and decreased demand. In 2008, Heard’s dealerships suffered monthly losses ranging from approximately \$2.0 million to \$5.0 million. Due to these losses and the resulting financial liquidity crises at the dealerships, the Debtors ceased operations at the dealerships on September 24, 2008.

Debt Structure

6. Heard has three floor plan lenders that finance the dealerships' purchase of automobiles at Heard's fourteen dealerships. A floor plan lender is a lender that finances inventory and each loan advance is made against a specific piece of inventory (in the case of Heard, that inventory was Chevrolet vehicles). Heard's floor plan lenders include GMAC, LLC ("GMAC"), BMW Financial Services N.A., LLC and JPMorgan Chase Bank, N.A. BMW Financial Services N.A., LLC provides the floor plan lending at Heard's dealerships in Plant City, Florida, Union City, Georgia and Sugar Land, Texas. JPMorgan Chase Bank, N.A. provides the floor plan lending at Heard's dealership in Scottsdale, Arizona. GMAC provides the floor plan lending at the remaining ten Heard dealerships.³ The total amount of the Debtors' floor plan debt approximates \$229 million.

7. The majority of the dealerships are located on real property owned by one or more of the Heard subsidiaries, some of which are not filing for bankruptcy protection at this time. This real property is mortgaged to various entities including GE Commercial Finance Business Property Corporation, Astar Finance Falcon II LLC, Columbus Bank & Trust Company, GMAC or JPMorgan Chase Bank, N.A. However, several of the dealerships are located on property leased from third parties.

8. The Debtors generally have unsecured debt of approximately \$40 million. Additionally, the Debtors owe amounts for, among other things, unpaid wages, employee medical claims and various state taxes.

Events Leading to Bankruptcy

³ Navistar Financial Corporation provides the floor plan financing for International trucks sold at the Columbus, Georgia dealership. GMAC provides the floor plan financing for the remaining trucks sold at the dealership.

9. The Debtors' bankruptcy filing has been precipitated by a variety of factors that has served to create a "perfect storm." Over the past year, the nation has seen an astronomical rise in gasoline prices. This unprecedented rise in fuel costs, combined with Chevrolet's product mix focused on SUVs and trucks, has led to a significant decline in the volume of purchases of Chevrolet manufactured vehicles. The overall volume of new car sales in the United States has fallen from an estimated 16.1 million last year to a projected 14 million this year. A recent study by Grant Thornton, LLP found that 2,736 dealerships would need to close in order to maintain sales per dealer at last year's volume. This decrease in volume left the Heard dealerships, which were focused on selling large volumes of vehicles, with a reduced volume of vehicles sold, but remaining high operating expenses.

10. Additionally, the current economic climate has triggered reluctance by the public to make large purchases. The current state of affairs in the banking and financial sectors have also resulted in some retail lenders that formerly financed the consumers' purchase of new and used automobiles to significantly restrict their lending to certain buyers, while other lenders have ceased such lending altogether.

11. Over the past several months, Heard has suffered from a financial liquidity crisis at its dealerships. Due to the lack of liquidity at the dealerships, the Debtors ceased operations at the dealerships on September 24, 2008.⁴

Bankruptcy Filing

12. Through the filing of this Bankruptcy proceeding, the Debtors seek to accomplish an orderly liquidation of the Debtors' businesses that will maximize the recovery to all of the Debtors' creditors, whether secured, unsecured, or with priority pursuant to the Bankruptcy

⁴ The Debtors' dealership located in Scottsdale, Arizona ceased operations on September 12, 2008.

Code. The Debtors are in the process of negotiating debtor-in-possession financing with the Debtors' floor plan lenders to fund the orderly liquidation of the Debtors' respective businesses.

13. The Debtors are currently negotiating asset purchase agreements for some of their dealerships and are actively marketing the remainder of their dealerships for immediate sale.

RELIEF REQUESTED

14. By this Motion, Movants request that the Court (1) authorize the Debtors to enter into certain financial arrangements with Lender in order to obtain post-petition extensions of credit thereunder; (2) grant a replacement lien to Lender security interests and liens to the same extent and priority as they enjoyed pre-petition; (3) grant an administrative expense claim on certain terms; (4) enter the Interim Order in substantially the form attached hereto as Exhibit "A" (the "Interim Financing Order"), and (5) after a final hearing on the Motion (the "Final Hearing"), enter a final order (the "Final Order"), which grants relief pursuant to §364 of the Bankruptcy Code and Bankruptcy Rule 4001.

THE PROPOSED DEBTOR IN POSSESSION FACILITY

15. After substantial negotiations, Debtors and Lender have agreed to enter into a Loan Agreement (the "Loan Agreement"), whereby Lender will make a new loan to Debtors, in the aggregate amount up to Six Million Seven Hundred Sixteen Thousand Nine Hundred Twenty Five Dollars (\$6,716,925.00) (the "DIP Loan"), for Debtors' use during the pendency of the Bankruptcy Case pursuant to the terms and requirements of the Loan Agreement and the budget (the "Budget") attached thereto. The Loan Agreement will be substantially in the form attached hereto as Exhibit "B" and is expressly incorporated herein by reference. Capitalized terms not defined herein have the meaning assigned to them in the Loan Agreement. The promissory note to be executed by Debtors to effectuate the terms of the Loan Agreement (the "Promissory Note"), will be substantially in the form attached hereto as Exhibit "C" and is expressly

incorporated herein by reference. The Budget will be substantially in the form attached hereto as Exhibit "D" and is expressly incorporated herein by reference.

16. The DIP Loan shall be in the amount of Six Million Seven Hundred Sixteen Thousand Nine Hundred Twenty Five Dollars (\$6,716,925.00), with interest compounding monthly at a rate per annum equal to prime plus 4%. The term of the DIP Loan, as described in detail in Article V of the DIP Loan Agreement, will commence on the date of the entry of the Interim Financing Order, and end when all Obligations (as defined in the Loan Agreement) under the Loan Agreement are satisfied and paid in full, subject to the limitations and restrictions set forth in the Loan Agreement.

17. The DIP Loan proceeds shall be used by Debtors in accordance with the terms of the Loan Agreement and the Budget, as described in detail in Articles I and III of the Loan Agreement.

18. As provided for in Article VI of the Loan Agreement, the Lender shall be granted a replacement lien to the same extent and priority as it enjoyed pre-petition.

19. As provided in Section 13.21 of the Loan Agreement, the Lender shall be granted an administrative expense claim against each Movants' estate to the extent that that any DIP Loan Advances were made to that specific entity.

20. Conditions precedent to advances under the Loan Agreement are set forth in detail in Article X of the Loan Agreement, and include, but are not limited to, (i) the execution of all DIP Financing Documents to the satisfaction of the Lender; (ii) the absence of any Default or Event of Default at the time of a requested DIP Loan Advance; (iii) entry of the Interim Financing Order; (iv) Lender must be satisfied with the form and content of the "first day orders"

presented to the Court on or around the commencement of the Debtors' chapter 11 case; and (v) receipt by Lender of satisfactory copy of the Budget.

21. Events of default under the Loan Agreement are enumerated in Article XI of the Loan Agreement and include, but are not limited to, (i) failure by Debtors to make timely payments; (ii) misrepresentations by Debtors; (iii) breach of specific covenants or other covenants by Debtors; (iv) default under other DIP Financing Documents; (v) uninsured losses or unauthorized dispositions; (vi) the occurrence of certain bankruptcy events; (vii) change of control of Debtors; (viii) the entry of certain judgments against Debtors; (ix) the failure of the DIP Financing Documents; (x) the occurrence of any event that could be reasonably assumed to have a Material Adverse Effect (as defined in the Loan Agreement); and (xi) criminal forfeiture.

THE DEBTORS' NEED FOR FINANCING

22. Debtors have an immediate need for financing pursuant to the Loan Agreement. The Loan Agreement will allow Debtors to continue to finance its orderly liquidation and the wind down of its affairs for the benefit of the relevant estates. Without immediate authority to obtain financing on the terms and conditions set forth in the Agreement, Debtors will be unable to meet the costs and expenses attendant to winding down in an orderly fashion. This wind-down will maximize distributions to creditors, and the failure to wind down in an orderly fashion could cause immediate and irreparable harm to Debtors' bankruptcy estates.

23. Pursuant to 364(d), Debtors are unable to obtain post-petition financing in the form of (1) unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense, (2) unsecured credit allowable under §§ 364(a) and (b) of the Bankruptcy Code, or (3) credit secured by liens on the Debtors' assets junior to the liens of the Debtors' pre-petition secured lenders. Debtors and GMAC negotiated the Loan Agreement in good faith and at arms-length. The Loan Agreement represents the Debtors' best opportunity

under the circumstances to obtain emergency post-petition financing necessary to fund the Debtors' orderly liquidation in Chapter 11 to ensure that the value of the Debtors' estates is preserved and maximized for its creditors. The Loan Agreement results from the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitutes a transaction for reasonably equivalent and fair consideration.

24. The Debtors investigated, but were unable to locate, alternate financing, and the Debtors believe that financing is not available from other sources on equally favorable terms. The Loan Agreement is the most efficient, least expensive mechanism available to meet Debtors' immediate short term needs. The Loan Agreement provides Debtors the best available opportunity to maximize liquidity. Finding new financing from other sources, even if possible, would likely be markedly more expensive. Accordingly, Debtors aver that the Loan Agreement is Debtors' best source of post-petition financing, is fair and reasonable, is in the best interests of Debtors, Debtors' estates, and Debtors' creditors, and that Debtors' entry into the Loan Agreement reflects a sound exercise of Debtors' business judgment.

25. To preserve the value of Debtors' assets and Debtors' ability to manage its estates for the benefit of creditors and other parties in interest, Debtors request authorization to obtain financing under the Loan Agreement on a preliminary basis as necessary to avoid immediate and irreparable harm to the estates pending a final hearing on the Motion. Debtors propose to obtain financing from Lender under the DIP Loan prior to a final hearing and entry of a final order approving same only to the extent necessary to meet their cash requirements of the Budget. As set forth above, the amount of financing proposed in the Loan Agreement reflects borrowing only for adequate amounts necessary to satisfy the Debtors' minimum cash and credit needs to liquidate their business in an orderly fashion and avoid immediate and irreparable harm to their

estates pending a final hearing. Accordingly, approval of the Loan Agreement on an interim basis pending a final hearing is in the best interests of Debtors, Debtors' estates and Debtors' creditors.

26. By this Motion, Debtors seek authorization (i) to execute and deliver all instruments, agreements, assignments and other documents referred to therein or requested by Lender to give effect to the terms of the Loan Agreement (the "Loan Documents"); (ii) to obtain the DIP Loan and to incur any and all liabilities and obligations thereunder; (iii) to perform all obligations provided for thereunder; and (iv) to perform the obligations hereunder in accordance with the terms hereof. Debtors will obtain the DIP Loan under the terms of the Loan Documents.

27. The Debtors stipulate that Lender has acted in good faith, as required by §364(e) of the Bankruptcy Code, in connection with the negotiation of the Loan Agreement.

28. Movants request that the Court enter the Interim Financing Order, and after the Final Hearing, enter a final order granting the relief requested herein (the "Final Order") which grants relief pursuant to §364 of the Bankruptcy Code and Bankruptcy Rule 4001.

CONCLUSION

29. To maintain the value of their estates as they wind down their business operations, Debtors must secure the interim financing pursuant to the Loan Agreement to pay expenses occurring in connection with the administration and protection of Debtors' estates. This is vital for the preservation the value of the Debtors' businesses as they are marketed to prospective buyers, and as the Debtors wind down their affairs.

30. The Debtors' funding needs, while critical and potentially threatening to the viability of the estates, are finite and very short term. Consequently, the benefit to the estates of the DIP Loan is one that is necessary to the orderly liquidation and provides imposition of terms

that, in comparison to the harm to the estates if such credit is not immediately provided, are minimally burdensome to the interests of all interested parties herein.

31. Based on the foregoing, approval of the Loan Agreement is in the best interests of Debtors, Debtors' estates and Debtors' creditors. The Loan Agreement represents the most favorable terms under which Debtors can obtain financing necessary to continue operations and preserve the value of its estates for creditors. The Loan Agreement is fair and reasonable and represents the sound exercise of Debtors' judgment. The Loan Agreement was negotiated in good faith between the parties at arms-length. Accordingly, the parties to the Agreement are entitled to protections of Section 364(e) of the Bankruptcy Code.

NOTICE AND PRIOR MOTIONS

32. Notice of this Motion has been given to (1) the Bankruptcy Administrator for the Northern District of Alabama; (2) counsel for the Debtors' primary prepetition secured lenders; (3) counsel for the Debtors' proposed postpetition secured lenders; (4) the Debtors' forty (40) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama. The Debtors submit that given the circumstances and the notice of the relief requested herein, no other or further notice is required.

33. No previous request for the relief sought in this Application has been made to this Court or any other Court.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully requests the Court:

A. Enter an order (i) authorizing the Debtors to obtain post-petition financing from Lender pursuant to the Loan Agreement as necessary to avoid immediate and irreparable harm pending a final hearing of the Motion; and (ii) finding that the parties have acted in good faith and are protected by the provisions of Section 364(e) of the Bankruptcy Code;

B. Set the Motion for Final Hearing at the earliest practicable date after fifteen days from service of the Motion;

C. Upon such Final Hearing, enter a final order granting the Motion and approving the Loan Agreement and obtaining of credit on the terms and conditions of the Loan Agreement; and

D. Grant such other, further and different relief as may be just and proper.

/s/ Robert B. Rubin

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