

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

**IN RE:**  
**BRUNO'S SUPERMARKETS, LLC,**  
  
**Debtor.**

)  
)  
) **Chapter 11**  
) **Case No. 09-00634**  
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**DEBTOR'S EMERGENCY MOTION TO UTILIZE CASH COLLATERAL ON A  
LIMITED BASIS PURSUANT TO 11 U.S.C. § 363 AND TO PAY CERTAIN  
PREPETITION LIABILITIES SUBJECT TO A HEARING ON RELEVANT FIRST DAY  
PLEADING**

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**COMES NOW**, Bruno's Supermarkets, LLC, as debtor and debtor in possession ("Bruno's" and/or the "Debtor"), pursuant to §§ 105, 361, and 363(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and moves this Court (this "Motion") to enter an interim order (the "Interim Order") and a final order (the "Final Order") approving and authorizing Debtor to use cash collateral on a limited basis, pay certain prepetition liabilities, subject to a hearing on certain First Day Pleadings and schedule a final hearing as necessary.

**JURISDICTION AND VENUE**

1. On the date hereof (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. Debtor continues to operate its business and manage its properties as debtor in possession pursuant to §§ 1107 and 1108.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is Bankruptcy Code §§ 105, 361 and 363(c) in addition to Bankruptcy Rules 2002, 4001 and 9014.

## **BACKGROUND**

### **Company Background and Industry**

3. Bruno's is a privately held company headquartered in Birmingham, Alabama that owns and operates three grocery store chains: Bruno's, Food World, and FoodMax. Combined, Bruno's has a total of 66 locations in Alabama and the Florida panhandle. There are a total of 2 FoodMax locations. Food World has 41 locations with approximately 34 stores in Alabama and 7 stores in Florida. Bruno's has a total of 23 locations with 21 stores in Alabama and 2 stores in Florida. Bruno's employs a total of approximately 4,200 employees, approximately 40% of which are full time employees and approximately 60% of which are part time employees. Bruno's has a total of 2,600 union employees and 1,600 non-union employees. Bruno's is a party to certain collective bargaining agreements with the United Food & Commercial Workers Local #1657 (collectively, the "CBA"), and the majority of Bruno's employees are covered by the CBA.

4. Bruno's was founded in 1933 by Joe Bruno with the opening of an 800 square foot corner grocery store in Birmingham, Alabama. By 1959, Bruno's had grown to be a chain of 10 grocery stores. In 1972, Bruno's launched Food World, which was designed as a chain of discount grocery stores. By the early 1990s, Bruno's was one of the Top 40 grocery store chains in the country as measured by sales volume. In 1995, after a prolonged period of stagnant sales

and earnings, Bruno's was acquired by Kohlberg Kravis Roberts & Co in a leveraged buyout. Due to the significant debt incurred by Bruno's through the leveraged buyout and substantial losses in 1996 and 1997, Bruno's filed for bankruptcy under chapter 11 of the Bankruptcy Code in early 1998. At the time of Bruno's emergence from bankruptcy in 2000, Bruno's operated approximately 152 stores in Alabama, Georgia, Florida and Mississippi. Bruno's was acquired, in 2001, by Ahold USA, Inc., the U.S. subsidiary of Royal Ahold, an international supermarket conglomerate. In 2005, Bruno's was sold to Lone Star Fund V (U.S.), L.P. ("Lone Star Five"), one of the funds held by the private equity firm Lone Star Funds. Following the sale to Lone Star Five, Bruno's sold approximately 100 of its stores to C & S Wholesale Grocers.

### **Debt Structure**

5. Bruno's has a revolving line of credit (the "Revolver") with Regions Bank "Regions" and/or "Pre-Petition Lender". The current amount outstanding under the Revolver is approximately \$10.8 million. The Revolver is secured by the majority of Bruno's assets. Bruno's owes approximately \$22.5 million in accounts payable to trade and other creditors. There is also approximately \$6.8 million owed to various state and local taxing authorities. Bruno's also owes an affiliated company, Bi-Lo, LLC ("Bi-Lo"), approximately \$3.5 million.

6. The vast majority of Bruno's grocery stores are located on leased property. Bruno's does, however, own the real property on which five of its stores are located.

### **Events Leading to Bankruptcy**

7. Debtor's bankruptcy filing has been precipitated by a variety of factors that have led to a deterioration in Bruno's business and a lack of liquidity. Over the past 18 months, the country has seen a significant decline in the economy as a whole. The economic decline has

resulted in a significant decrease in consumer spending, including food and grocery items. This decreased demand has led to a decline in Bruno's sales.

8. Furthermore, Bruno's has also seen an increased amount of competition in its core market from other grocers. With an abundance of older locations, Bruno's has had difficulty competing with the newer grocery stores that have moved into its markets. This increased competition from newer grocery stores has reduced Bruno's market share.

9. Additionally, the frozen credit markets have limited the availability of capital for improvements to Bruno's stores to allow Bruno's to compete with the newer stores of its competitors. Furthermore, the lack of available capital has resulted in Bruno's being unable to locate sufficient working capital with which to operate its stores.

**RELIEF REQUESTED**

10. By this Motion, Debtor seeks authority to enter an order granting the relief as set forth in the proposed Order, attached hereto as Exhibit "A."

**BASIS FOR RELIEF**

**A. Use of Cash Collateral and Adequate Protection**

11. Section 363(c)(2) of the Bankruptcy Code provides that a debtor “may not use, sell, or lease cash collateral...unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

12. A debtor has the burden to establish that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection must be determined on a case-by-case basis, permitting a debtor maximum flexibility in structuring its adequate protection proposal. *See Id.; In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *In re George Ruggierie Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). Nonetheless, “[a] debtor, attempting to reorganize a business under chapter 11, clearly has a compelling need to use ‘cash collateral’ in its effort to rebuild.” *George Ruggierie*, 727 F.2d at 1019. The Debtor avers that Regions is adequately protected due to the substantial equity cushion in the collateral.

13. Debtor requires access to its cash and the proceeds of existing accounts receivable and inventory to pay outstanding prepetition checks for business licenses, for the direct store delivery of goods, for payment of prepetition payroll and the delivery of pharmaceuticals. However, the cash and proceeds of the existing accounts receivable and inventory constitute part

of the Cash Collateral. An estimated Cash Flow Forecast for the Week Ending 02/07/09 is attached hereto as Exhibit "B" and incorporated by reference.

14. As discussed above, the proposed Interim Order provides for replacement liens to protect Regions against any diminution in value of its interests in the Cash Collateral. The replacement liens shall be subject and subordinate only to the security interests and liens granted to Lender and the Carve-Out.

15. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing (the "Final Hearing") on a motion to use cash collateral pursuant to § 363 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

16. Pursuant to Rule 4001(b) and 4001(c), Debtor requests that the Court conduct an expedited preliminary hearing on the Motion (the "Interim Hearing") and grant the relief requested in the proposed Interim Order in order to (a) maintain Debtor's ongoing operations and (b) avoid the immediate and irreparable harm and prejudice to Debtor's estate and all parties in interest that would otherwise ensue.

17. Debtor has an urgent and immediate need for cash to continue to operate. Debtor will be immediately and irreparably harmed absent authorization from the Court to use cash collateral and as requested on an interim basis pending a Final Hearing on the Motion. In the short-term, if Debtor is unable to provide customers with a continuous supply of product, competitors will capitalize on its inability to promptly fulfill the demand of its customer base,

which likely will have a long-term negative impact on the value of Debtor's business, to the detriment of all parties in interest.

**REQUEST FOR FINAL HEARING**

18. Debtor also requests that the Court schedule the final hearing during the week that is three weeks after the date of this Motion, with objections, if any, to the Final Order being due in writing on or before the date that is at least five (5) business days prior to the Final Hearing.

**NOTICE AND PRIOR MOTIONS**

19. Notice of this Motion has been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to Regions Bank, Debtor's pre-petition lender; (3) counsel for Debtor's proposed post-petition lender; (4) the holders of Debtor's equity interests; (5) Debtor's twenty (20) largest unsecured creditors; and (6) the District Director of the Internal Revenue Service for the Northern District of Alabama. In light of the nature of the relief requested herein, Debtor submits that no other or further notice is necessary or required.

**WHEREFORE**, Debtor respectfully requests that the Court enter an order substantially similar to the order attached hereto as Exhibit "A" and further relief as this Court may deem just and proper.

/s/ Charles L. Denaburg

Charles L. Denaburg

Conflicts Counsel for Debtor  
BRUNO'S SUPERMARKETS, LLC

**OF COUNSEL:**

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Dated: Birmingham, Alabama

February 5, 2009

**"Exhibit B"**

# Bruno's Supermarkets, LLC

## Cash Flow Forecast

For the Week Ending 02/07/09

(Amounts in 000s)

FORECAST	FORECAST
Thursday 02/05/09	Friday 02/06/09

Beginning Balance:	\$0	\$1,320
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Estimated Receipts:

Credit Card Settlement	\$700	\$800
Cash & Check (Net Change)	600	800
Pharmacy Insurance Reimbursements	100	100
Vendor Rebates & Misc.	75	75
<u>Total Receipts:</u>	<u>\$1,675</u>	<u>\$1,775</u>

Estimated Disbursements:

Accounts Payable, DSD (Cash-in-Advance)	\$290	\$450
AP Checks (Other)	30	50
Cardinal Pharmacy Drugs (Cash-in-Advance)	0	750
Payroll & Payroll Taxes	35	560
<u>Total Disbursements:</u>	<u>\$355</u>	<u>\$1,810</u>

Net Cash Flow:	<u>\$1,320</u>	<u>(\$35)</u>
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Ending Balance	<u>\$1,320</u>	<u>\$1,285</u>
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