

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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In re: Chapter 11  
MR. T CARTING CORP., Case No.: 11-42725 (JF)

Debtor.

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**AFFIDAVIT PURSUANT TO LOCAL RULE 1007-4  
AND IN SUPPORT OF "FIRST DAY" ORDERS**

State of New Jersey   )  
  ) ss.:  
County of Essex         )

Thomas N. Toscano, of full age, being duly sworn according to law, upon his oath,  
deposes and states:

1.       I am the Chief Financial Officer of Mr. T Carting Corp., the above captioned debtor (the "Debtor") in this chapter 11 case.
2.       I am fully familiar with the Debtor's operations and business affairs as well as the facts and circumstances contained herein. As such, I am duly authorized to make this Affidavit on behalf of the Debtor.
3.       I submit this Affidavit in compliance with Rule 1007-4 under the Local Rules of the Bankruptcy Court for the Eastern District of New York. If called upon to testify, I would testify competently to the facts set forth herein, unless otherwise noted
4.       On March 31, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Title 11, Chapter 11 of the United States Code (the "Bankruptcy Code").

5. Since the Petition Date, the Debtor has remained in possession of its assets and continued management of its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. To minimize the potential disruptive impact the commencement of this Chapter 11 case might otherwise have on the Debtor's ability to conduct its business and formulate a plan of reorganization, the Debtor will be requesting that the Court consider, on an expedited basis, the following three (3) "first day" motions (the "First Day Motions"): (i) Motion for an Order Granting the Debtor's Interim and Final Use of Cash Collateral Pursuant to 11 U.S.C. §§ 363 and 364 and Federal Rule of Bankruptcy Procedure 4001 (the "Cash Collateral Motion"); (ii) Motion for an Order Granting the Debtor an Extension of Time Within Which to File The Schedules of Assets and Liabilities and Statement of Financial Affairs (the "Motion to Extend Time to File Statements and Schedules"); and (iii) Motion for an Order Authorizing, But Not Directing, the Debtor to Pay Pre-Petition Wages, Salaries, Taxes and Other Compensation (the "Wage Motion").

6. The purposes of the First Day Motions include, among other things: (a) assisting the Debtor in continuing to operate in the ordinary course of business; (b) easing the Debtor's transition into Chapter 11; (c) allowing for the efficient and orderly administration of this case; and (d) providing the Debtor with a "breathing spell" from aggressive creditor action while the Debtor formulates and proposes a plan of reorganization designed to maximize recoveries for the estate, creditors and other stakeholders.

#### **The Debtor's Structure and Formation**

7. The Debtor is a corporation existing under the laws the state of New York. It was founded, in its current form, in 1976.

8. The Debtor is a privately held corporation. The Debtor's shares have never been listed on a public stock exchange. The Debtor has made no public offering of its securities.

9. The Debtor's equity interests are comprised of stock owned by the following individuals, in the following proportions:

<u>Shareholder<sup>1</sup></u>	<u>Shares (percentage)</u>
Peter Toscano	18%
John Toscano Sr.	17%
Vincent Zambrotta	17%
Thomas N. Toscano	16%
Peter Toscano Jr.	16%
Paul Zambrotta	16%

10. The Debtor provides quality and cost effective waste and recycling services for industrial, municipal and commercial consumers throughout the New York metropolitan area. The Debtor's operations consists of commercial garbage pick-up, renting of roll-off containers and mini containers for residential, municipal and commercial construction projects, including the pick-up and disposal of the debris that is accumulated in the containers.

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<sup>1</sup> Each shareholder is active in the Debtor's operations and day-to-day affairs. Peter Toscano, Sr. is a Director, and is the Vice President of Sales, and manages the Debtor's entire sales team. John Toscano is a Director, and manages the rolloff container division, and is also involved in sales with respect to the larger rolloff container accounts. Vincent Zambrotta is a Director and is also the Debtor's President, although he receives no salary from the Debtor. Thomas N. Toscano is the Debtor's Chief Financial Officer and the Debtor's Chief Legal Officer. Like Vincent, Thomas N. Toscano receives no salary from the Debtor. Peter Toscano, Jr., is the Debtor's Chief Operating Officer and is in charge of the company's packer division. Finally, Paul Zambrotta is in charge of all health and safety, and manages the Debtor's risk management.

11. It should be noted that the Debtor's operations are subject to heavy regulation. Because historically, the "waste management" industry has been portrayed by the media and the government as one with a reputation of being tied to organized crime, in 1997, Mayor Giuliani, in an apparent regulatory reaction to the indictment of several individuals who were alleged to have control over the waste hauling industry, took an aggressive approach to reforming the industry as whole by essentially making it very difficult for waste haulers to make money. As his beacon of enforcement, Mayor Giuliani, commensurate with an aggressive rate decrease, established an agency dedicated solely to the eradication of crime from the waste hauling industry, now known as the Business Integrity Commission (the "BIC"). As a result, the Debtor's operations are and remain subject to heavy regulation under the BIC. Among other things, as part of the BIC's regulatory protocol, the Debtor is required to submit to a full financial audit on a yearly basis. The Debtor is currently licensed and in compliance with BIC regulations.

12. The Debtor's corporate headquarters is located at 73-04 Edsall Avenue, Glendale, NY 11385 (the "Office"), which is leased from an affiliate. The Debtor also leases two (2) additional lots across the street from its Office where vehicles are parked, as well as an adjacent building where vehicles are stored and repaired, and all are leases with affiliates. The Debtor leases a small garage from an affiliate where smaller vehicle are parked.. Finally, the Debtor leases additional space in Brooklyn, from a third party, where it stores containers.

13. The Debtor's primary assets are as follows: (i) Accounts Receivable, in the approximate amount of \$2,800,000.00<sup>2</sup>; (ii) machinery and equipment ("M&E") having a fair market value of approximately \$50,000.00; (iii) containers having a fair market value of \$50,000.00; and (iv) vehicles having a fair market value of approximately \$500,000.00<sup>3</sup>.

14. Capital One Bank ("Capital One") is the Debtor's primary lender having an asserted first priority security interest on substantially all of the Debtor's assets. As of March 29, 2011, the Debtor was indebted to Capital One in the total amount of \$72,900.00.

15. In addition, the Debtor is a party to various vehicle and equipment lease and finance agreements with an aggregate outstanding balance of approximately \$250,000.00. The Debtor is relatively current on these payments.

16. The Debtor's outstanding priority tax claims may approximate \$30,000.00. This number represents payments which may be due in the first quarter of 2011.

17. In addition, Local 813 Pension and Severance Funds, as set forth in further detail below, has asserted a claim of approximately \$1,800,000.00<sup>4</sup> against the Debtor for pension withdrawal liability, which the Debtor disputes. The Debtor's other unsecured trade creditor debts are relatively small and aggregate approximately \$250,000.00.

18. The Debtor currently employs seventy two (72) full-time and eleven (11) part-time employees. Its payroll (not including sales commissions) approximates \$105,000.00 per week, including applicable taxes. The Debtor is a party to four (4) collective bargaining agreements which govern approximately forty one (41) of its employees.

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<sup>2</sup> The Debtor estimates that approximately \$800,000 of this number is "bad debt."

<sup>3</sup> This number is a gross number, and does not take into account the various amounts which may be due and owing to vehicle financing companies.

<sup>4</sup> In fact, with interest and penalties, this number may be as high as \$2,100,000.00.

**Factors Leading up to Chapter 11 Filing**

19. As with many companies whose businesses are tied to construction, the Debtor saw a decline in revenue in the recent years. The Debtor's gross revenues for the year ending December 31, 2009 were approximately \$15,500,000.00 and for the year ending December 31, 2010 were approximately \$15,000,000.00.

20. Traditionally, however, and over the course of several decades, the Debtor has been meticulous in ensuring that its debts were timely paid to all of its creditors. The Debtor's credit worthiness in the industry is worn with pride.

21. Unfortunately, as a result of a recent decision by the Debtor's employees to collectively choose to decertify their former union, Local 813, an alleged "withdrawal" liability to Local 813 Pension and Severance Funds under ERISA was triggered.

22. Local 813 has alleged that under ERISA, if an employer's employees voluntarily decide to decertify their union, liability can be "attributed" to the employer. Specifically, the employer may become responsible for its pro rata share of the unfunded vested liability that exists on the day the employer ceases to have an obligation to contribute to these related union funds. Withdrawal liability is calculated by establishing the employer's pro rata vested amount, which, in turn, is determined by adding up the total contributions of the withdrawing employer to a defined benefit fund over a five (5) year look back period, and then dividing that number by the amount contributed by all participating employers which are subject to contribute to that particular fund by a Collective Bargaining Agreement. That fraction is then multiplied against the total unfunded/vested amount in the particular fund.

23. Over the recent years, there have been many other companies whose employees, for various reasons, have decided to decertify from Local 813. Those actions directly result in a much higher asserted withdrawal liability by the Local 813 Pension and Severance Funds against the Debtor.

24. The Debtor, in one form or another, has been a member of Local 813 since approximately 1951. For as long as I can remember, and at least over the past 20 years, in every annual contract negotiation, Local 813 was able to get whatever it asked for, including yearly increases in between eight (8) and ten (10) percent in overall benefit contributions. During the last contract negotiation, however, the Debtor's employees collectively decided to decertify from Local 813. The result of the Debtor's employees' actions leaves the Debtor not only with potential going forward obligations to a new union, but also with an impossible-to-manage withdrawal liability to Local 813 Pension and Severance Funds.

25. Local 813 Pension and Severance Funds assert a withdrawal liability in the approximate amount of \$1,800,000.00, plus interest and penalties, which the Debtor disputes. The matter was scheduled for arbitration; however, the Debtor recognized that the claims would not likely be amicably settled.

26. It should be noted, and reiterated herein, that the Debtor's current unsecured creditor body (not including Local 813 Pension and Severance Funds) represents creditors whose claims are generally less than thirty (30) days old, and whose claims, but for the filing of this Petition, would have traditionally been paid in the ordinary course. The Debtor does not have the current financial ability to absorb and pay the alleged withdrawal liability.

27. In filing this proceeding, it is the Debtor's intent to negotiate a resolution with Local 813 Pension Fund so that it may continue to operate for the benefit of its creditors and its employees.

**Post-Petition Operations**

28. Subsequent to the Petition Date, the Debtor anticipates continuing its operations.

**Factors Important to the Success of this Chapter 11 Case**

29. The Debtor does not intend to languish in Chapter 11. Where prudent, the Debtor will implement cost reduction measures during its proceeding.

30. The Debtor intends on quickly filing a plan of reorganization that will allow for the maximizing of asset values for the benefit of all creditors.

31. Shortly after filing this Affidavit, the Debtor will be requesting a shortened hearing on its First Day Motions, to enable the Debtor to stabilize and proceed accordingly.

32. Accordingly, the Debtor will respectfully request that the Court enter orders on the First Day Motions, which are summarized below.

**Motion for Use of Cash Collateral**

33. By the Debtor's Motion for the Entry of an Order Authorizing Interim and Final Use of Cash Collateral (the "Cash Collateral Motion"), the Debtor will seek authority to use cash collateral pursuant to sections 105, 363(c)(2)(B) and 363(e) of the Bankruptcy Code.

34. Capital One has an asserted perfected security interest in the Debtor's assets, including its cash, cash equivalents and accounts receivable (collectively, the "Cash Collateral").

35. As will be set forth more fully in the Debtor's Cash Collateral Motion, the Debtor should be authorized to use the Cash Collateral in the ordinary course of its business and in accordance with the Budget annexed as Exhibit "A" to the Cash Collateral Motion. Capital One's



security interest is not being diminished by the use of Cash Collateral. As a matter of fact, the Budget provides that the Debtor will be able to make monthly interest payments to Capital One, and further reflects that the Debtor will be operating cash flow positive. In addition, as stated above, the value of Capital One's collateral far exceeds the amount owed to Capital One. Accordingly, the Debtor believes that Capital One is adequately protected.

36. It is in the best interests of the Debtor and the estate that the Debtor's operations continue as any cessation in business will materially effect the value of the Debtor's assets and, more importantly, effect the lives of the 81 employees who would assuredly have great difficulties in locating new jobs given the current state of the economy. Accordingly, the Debtor should be authorized to use the Cash Collateral.

**Motion for Extension of Time to File Schedules and Statements**

37. In its Motion for the Entry of an Order To Extend Time To File (i) Schedules Of Assets And Liabilities, (ii) Statement Of Financial Affairs, And (iii) Schedule Of Executory Contracts And Unexpired Leases (the "Motion to Extend Time"), the Debtor seeks entry of an order, pursuant to Bankruptcy Rule 1007, extending the time within which the Debtor must file its schedules of assets and liabilities, statements of financial affairs, and schedules of executory contracts and unexpired leases (collectively, the "Schedules and Statement"), as required by § 521 of the Bankruptcy Code, through and including April 29, 2011, a date which is approximately thirty (30) days after the Petition Date.

38. The Debtor' management and employees, together with their outside legal counsel have been working diligently to compile the information necessary for the Schedules and Statement. The magnitude of that task, when taken together with the considerable stresses of

preparing for the filing of this Chapter 11 case, the anticipated burdens of preparing the Debtor's transition into Chapter 11, the limited staffing that the Debtor is currently working with, and ongoing burdens of operating the Debtor's business day-to-day, supports an extension of the deadline set forth in the Bankruptcy Rules for filing the Schedules and Statement.

39. The relief requested in the Motion to Extend Time will not prejudice or adversely affect the rights of the Debtor's creditors or other parties-in-interest. The extension requested by the Motion to Extend Time will aid the Debtor's efforts to ensure the accuracy and completeness of the Schedules and Statement, which in turn will promote efficient administration of this Chapter 11 case.

#### **Wage Motion**

40. By the Motion For Entry Of An Order Pursuant To 11 U.S.C. §§ 105(a), 363 and 507(a)(3) Authorizing, But Not Directing, The Debtors To Pay Pre-Petition Wages, Salaries, Taxes And Other Compensation (the "Wage Motion"), the Debtor seeks authorization to pay certain pre-petition obligations to and on behalf of the current employees, including, but not limited to, the amounts owed for wages, salaries, 401k contributions, commissions and all related taxes. In addition, the Debtor requests authorization to continue to honor its paid time off policy in a fashion that would allow each employee to continue to be paid for the days in which they utilize their vacation or sick days (collectively, the pre-petition wages, etc. and the paid time off are referred to as the "Pre-Petition Employee Obligations").

41. With respect to wages, the Debtor pays its employees every week, one week in arrears (the "Weekly Payroll"). By way of example, the March 25, 2011 payroll covers the period of March 13, 2011 through March 19, 2011. The Debtor employees the use of an outside

payroll service. Payroll for the preceding week was funded and paid on March 31, 2011, consistent with past practice.

42. As result of the Debtor's Petition, however, payroll due and owing to employees from March 28, 2011 through March 31, 2011, an obligation that would traditionally be paid on or around April 6, 2011, will become pre-petition claims. The Debtor is seeking to honor its Weekly Payroll obligations to its employees for those four (4) days. The Debtor estimates the total amount of Weekly Payroll sought to be paid pursuant to this Motion will be approximately \$84,000.00, which includes all applicable taxes.

43. On top of its Weekly Payroll obligations, once a month, the Debtor makes commission disbursements to its sales employees. Pursuant to the Wage Motion, the Debtor is also seeking to pay such commissions.

44. With respect to vacation days and sick/personal days, on a yearly basis, the nonunion employees are permitted nine (9) sick/personal days and depending on length of employment zero (0) to fifteen (15) vacation days with pay.

45. With respect to unused vacation days, an employee is compensated for same at the end of the calendar year or upon resignation or termination.

46. Finally, it should be noted that the Debtor offers a 401(k) plan. The Debtor is current on matching contributions and also has remitted all employee contributions to such plan.

47. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, claims against a debtor for "wages, salaries, or commissions, including vacation, severance and sick leave pay," earned within one hundred eighty (180) days before the Petition Date, are afforded unsecured priority status to the extent of \$10,950.00 per employee.

48. I am advised that, in the instant case, the Pre-Petition Employee Obligations constitute Priority Claims.

49. Many of the Debtor's employees are compensated at modest levels. It would cause a great hardship to them if they were to lose (or suffer delay in receiving) their pay, or their benefits.

50. To avoid the hardship that the Debtor's employees may otherwise suffer and to maintain morale for the employees that have remained with the Debtor under what are and will continue to be extremely difficult working conditions, the Debtor seeks authority to satisfy the Pre-Petition Employee Obligations.

**General Disclosures Pursuant to Local Rule 1007-4**

51. The Debtor's books and records are kept at the Office.

52. There may be several small miscellaneous legal actions pending against the Debtor (arising out of, for example, small vehicle collisions). There are also several personal injury and/or workman's compensation claims, which are being handled and defended by the Debtor's insurance carriers. The only other major action pending against the Debtor is the one instituted by Local 813 Pension Fund. That action is pending in this District.

53. As stated in paragraph 26 above, the Debtor's intention during its chapter 11 proceeding is to negotiate a consensual restructuring of its debt with its creditors.

54. The Debtor's property is not in the possession of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor, or agents of any such entity.

55. A thirty (30) day budget is being prepared, and is anticipated to be annexed to the Debtor's Cash Collateral Motion.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Thomas N. Toscano  
Thomas N. Toscano, CFO

Sworn to me this  
1st day of April, 2011

/s/ Caroline Cutter  
A Notary Public of the  
State of New Jersey  
My commission expires  
December 18, 2015