

Fill in this information to identify the case:

Debtor Gas-Mart USA, Inc.
 United States Bankruptcy Court for the Western District of Missouri
 Case number 15-41915-11

Proof of Interim Administrative Claim

Read the instructions before filling out this form. Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of March 31, 2016.

Part 1: Identify the Claim

1. Who is the current creditor?

Fidelity + Deposit Company of Maryland
 Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☒ No

☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Carol Z. Smith #1070
 Name
9225 Indian Creek Pkwy
 Number Street
Overland Park KS 66210
 City State ZIP Code

Contact phone 913-317-5100

Contact email CSmith@gh-ks.com

Where should payments to the creditor be sent?

Name _____

Number Street _____

City State ZIP Code _____

Contact phone _____

Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known) _____

Filed on ____ / ____ / ____

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes. Who made the earlier filing? _____

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Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes, Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 558,097.49 Does this amount include interest or other charges?
☒ No
☐ Yes, Attach statement itemizing interest, fees, expenses, or other charges.

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim.
 Limit disclosing information that is entitled to privacy, such as health care information.

See Exhibit A

9. Is this claim based on a lease? ☒ No
☐ Yes, Attach a copy of the lease and any amendments thereto.

10. Is this claim subject to a right of setoff? ☐ No
☒ Yes, Identify the property: Credit Card Receipts

11. Is all or part of the claim entitled to administrative priority under 11 U.S.C. § 503(b)? ☐ No
☒ Yes. Check all that apply:

If your claim is not entitled to administrative priority under 11 U.S.C. § 503(b), you should not submit a claim using this form. Please see the Administrative Bar Date Notice for more information.

☒ Actual, necessary costs and expenses of preserving the estate under 11 U.S.C. § 503(b)(1)(A).

☒ Any tax incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam or both, except a tax of a kind specified in section 507(a)(8). 11 U.S.C. § 503(b)(1)(B).

☒ Any fine, penalty or reduction in credit relating to a tax of a kind specified in section 503(b)(1)(B). 11 U.S.C. § 503(b)(1)(C).

☐ Compensation and reimbursement awarded under section 330(a). 11 U.S.C. § 503(b)(2).

☐ The actual, necessary expenses, other than compensation and reimbursement specified in section 503(b)(3)(A)-(F). 11 U.S.C. § 503(b)(3).

☐ Reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under section 503(b)(3)(A)-(E). 11 U.S.C. § 503(b)(4).

☐ The fees and mileage payable chapter 119 of title 28. 11 U.S.C. § 503(b)(6).

☒ Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies.

Amount entitled to priority

\$ 540,758.49

\$ 17,339.00

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/18 and every 3 years after that for cases begun on or after the date of adjustment.

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Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP §011(b).

If you file this claim electronically, FRBP §005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3671.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3006.

I understand that an authorized signature on this *Proof of Administrative Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Administrative Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

06/10/2016
MM/DD/YYYY

Terri McDaniel
Signature

Print the name of the person who is completing and signing this claim:

Name

Terri
First name

Middle name

McDaniels
Last name

Title

Claims Counsel

Company

Zurich North America / Commercial Surety Claims
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

P O Box 968036

Number

Street

Schaumburg

IL
State

60196
ZIP Code

Contact phone

602-503-8690

Email

terri.mcdaniels@zurichna.com

DEBTOR: GAS-MART USA, INC.
CASE NUMBER: 15-41915-11

DESCRIPTION OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND'S
ADMINISTRATIVE CLAIMS

Fidelity & Deposit Company of Maryland ("F&D") issued the following bonds on behalf of Gas-Mart USA, Inc. ("Debtor") to enable it to conduct its ordinary course of business:

- a. Surety Bond No. 09159686 (for 9/03/14 to 9/03/15) with Gas-Mart as principal in favor of CITGO Petroleum Corporation ("CITGO") as obligee to secure payment for gasoline purchases from CITGO
- b. Nebraska Motor Fuels Tax Bond No. 09166366 with Gas-Mart as principal in favor of the State of Nebraska as obligee in the penal sum of \$165,000 to secure Debtor's compliance with Nebraska's laws relating to its motor fuel tax program and payment of motor fuel taxes to the State of Nebraska
- c. Surety Bond No. 09159686 (renewed for 9/03/15 to 9/03/16) with Gas-Mart as principal in favor of CITGO as obligee in the penal sum of \$743,608.82 to secure payment for gasoline purchases from CITGO
- d. Indiana Gasoline Use Tax Bond No. 09158810 with Gas-Mart as principal in favor of the State of Indiana as obligee in the penal sum of \$2,000 to secure payment of gasoline use taxes to the State of Indiana
- e. Indiana State Gross Retail and Use Taxes Bond No. 09016696 with Gas-Mart as principal in favor of the State of Indiana as obligee in the penal sum of \$16,200 to secure the payment of gross retail and use taxes to the State of Indiana
- f. Motor Fuel Tax Surety Bond No. 09016694 with Gas-Mart as principal in favor of the State of Missouri as obligee in the penal sum of \$207,500 to secure the payment of motor fuel taxes to the State of Missouri

To the extent payments are made to one or more of the obligees pursuant to the terms of any of the above-referenced bonds for the liabilities of Debtor, F&D is subrogated to the obligee's claim and the treatment of such claim. F&D is entitled to administrative claims as follows:

EXHIBIT A

1. Administrative Claim for Gasoline Supplied by CITGO Prepetition

On September 10, 2013, Debtor and CITGO entered into a Marketer Franchise Agreement (“MFA”) which governed Debtor’s purchase of motor vehicle fuel from CITGO. On September 3, 2014, F&D issued Surety Bond 09159686 to secure Debtor’s obligation to pay for gasoline as set forth in the MFA. At the time the bankruptcy case was filed, CITGO held a pre-petition claim against the Debtor in the amount of \$977,581 (“CITGO Vendor Claim”) and had asserted a claim against Surety Bond 09159686 for recovery of that amount. Debtor and CITGO also wanted F&D to renew the Surety Bond to enable Debtor to continue selling gasoline at CITGO branded stations. Pursuant to the Court’s Final Order Granting Motion for Entry of Order Authorizing, but not Directing, Payments of Pre-Petition Claims of Critical Vendor CITGO Petroleum Corporation [Docket No. 172], Debtor, CITGO and F&D entered into a CITGO Critical Vendor Agreement [Docket No. 227] whereby (1) CITGO was permitted to setoff credit card receipts of \$221,190.12 which it was holding against the oldest outstanding invoices comprising the CITGO Vendor Claim; (2) F&D agreed to pay CITGO \$756,391.18, the remaining unpaid amount of the CITGO Vendor Claim after the application of the credit card receipts; (3) Debtor acknowledged that F&D was subrogated to the CITGO Vendor Claim (for fuel delivered to Debtor within the 20 days prior to the Petition Date), which was entitled to allowance under § 503(b)(9) as an administrative claim; (4) F&D was entitled to payment of the CITGO Vendor Claim in accordance with the Schedule of Payments attached to the CITGO Critical Vendor Agreement; and (5) F&D renewed the Surety Bond in the amount of \$743,608.82. F&D received scheduled payments totaling \$251,000 pursuant to the CITGO Critical Vendor Agreement.

Accordingly, F&D is entitled to an administrative claim in the amount of \$505,391.18 (\$756,391.18 less \$251,000 in payments received) for gasoline delivered to Debtor within 20 days prior to the Petition Date pursuant to § 503(b)(9). A copy of the back-up for the CITGO Vendor Claim is attached as Exhibit A-1.

1.a. Contingent Administrative Claim for Gasoline Provided by CITGO Pre-Petition.

In the event F&D is required to repay any portion of the scheduled payments it received, F&D is entitled to an administrative claim in the amount of the repaid amount up to \$251,000, the amount of scheduled payments received by F&D pursuant to the CITGO Critical Vendor Agreement.

2. Administrative Claim for Gasoline Provided by CITGO Post-Petition

While winding up its business at CITGO branded stations, Debtor stopped payment on an ACH transfer in the amount of \$22,980.95 that had been initiated to pay for CITGO provided gasoline during the months of January and February 2016. Debtor further advised CITGO that it would not pay CITGO for the dishonored item or any remaining unpaid invoices. These actions resulted in CITGO making a claim on the renewed Surety Bond in the amount of \$743,608.82. F&D paid \$35,367.31 of this claim, representing the amount payable for gasoline delivered by CITGO to Debtor post-petition for which payment was not made by Debtor.

Accordingly, F&D is entitled to an administrative claim in the amount of \$35,367.31 for gasoline delivered to Debtor post-petition pursuant to § 503(b)(1)(A). Copies of CITGO's claim and a list of the invoices paid by F&D are attached as Exhibit A-2.

3. Administrative Claim for Taxes Paid to the State of Nebraska

The State of Nebraska made a claim for \$17,339 for unpaid motor fuel taxes on Bond No. 09166366, which F&D paid. By virtue of its payment to the State of Nebraska, F&D is subrogated to the State of Nebraska's claim for taxes. Accordingly, F&D is entitled to an administrative claim in the amount of \$17,339 under 11 U.S.C. § 507(a)(8). A copy of the claim by the State of Nebraska is attached as Exhibit A-3.

4. Contingent Administrative Claim For Potential Claims on Bonds

F&D is entitled to a contingent administrative claim in the amount of the remaining penal sums of the above described bonds in the event that it receives and pays claims on the bonds as follows:

- b. Nebraska Motor Fuels Tax Bond No. 09166366 in the remaining penal sum of \$147,601 (\$165,000 less prior payment of \$17,339)
- c. Surety Bond No. 09159686 (renewed for 9/03/15 to 9/03/16) in favor of CITGO as obligee in the remaining penal sum of \$708,241.51 (\$743,608.82 less prior payment of \$35,367.31)
- d. Indiana Gasoline Use Tax Bond No. 09158810 in favor of the State of Missouri in the penal sum of \$2,000
- e. Indiana State Gross Retail and Use Taxes Bond No. 09016696 in the penal sum of \$16,200
- f. Motor Fuel Tax Surety Bond No. 09016694 in favor of the State of Missouri in the penal sum of \$207,500

These amounts are contingent as set forth above and only intended to reserve F&D's right to payment.

NEBRASKA'S CLAIM

COPY

August 3, 2015

Fidelity and Deposit Company of Maryland
1400 American Lane Tower I
18th Floor
Schaumburg, IL 60196-1056

RE: Gas Mart USA, Inc.
Nebraska Identification Number: 73-xxx4193
Federal Identification Number: xx-xxx2645
Bond Number: 09166366
May 2015

This letter is to inform you that the above referenced permitholder has an unpaid liability on their Nebraska Motor Fuels tax account. Records held by the Department of Revenue indicate your bond was in force while the company was operating in Nebraska. The Motor Fuels tax balance due as of August 14, 2015 is \$17,289 which includes tax, interest and penalty. Interest will continue to accrue at \$1.28 per day until all tax is paid. Payment should be rounded to whole dollars.

Gas Mart USA, Inc., has filed for protection under Chapter 11 of Title 11 of the United States Code with the United States Bankruptcy Court for the Western District of Missouri, in Case Number 15-41915. Since the Department is unable to collect the delinquent amount from Gas Mart USA, Inc., because of the bankruptcy filing, demand is hereby made upon Fidelity and Deposit Company of Maryland for payment.

Demand is hereby made upon you at this time so that you may file a claim with the United States Bankruptcy Court to recover payment to the Department. We request payment on or before August 14, 2015. Please use the enclosed envelope when returning payment to the Department.

Please contact this office if you have any further question. You may reach me directly at (402) 595-2070; toll free at 1-(888) 871-8960 or e-mail at john.gahan@nebraska.gov.

Once again thank you for your assistance.

For The Tax Commissioner



John Gahan
Revenue Senior Agent
Compliance Division
Bankruptcy Unit

cc: Paul Hoffmann, Attorney for the Debtor

Enclosure:

[illegible]

Western District of Missouri Claims Register

[15-41915-abf11 Gas-Mart USA, Inc.](#)

Judge: Arthur B. Federman

Chapter: 11

Office: Kansas City

Last Date to file claims:

Trustee:

Last Date to file (Govt):

Creditor: (15700269) Fidelity & Deposit Company of Maryland c/o Carol Z. Smith Gilliland & Hayes, LLC 9225 Indian Creek Parkway Suite 1070 Overland Park, KS 66210	Claim No: 127 <i>Original Filed</i> Date: 06/13/2016 <i>Original Entered</i> Date: 06/13/2016 <i>Last Amendment</i> Filed: 06/13/2016 <i>Last Amendment</i> Entered: 06/13/2016	Status: <i>Filed by:</i> CR <i>Entered by:</i> Carol Z. Smith <i>Modified:</i>
Amount claimed: \$558097.49		

History:

<u>Details</u> <u>1</u>	<u>127-</u> 06/13/2016 Claim #127 filed by Fidelity & Deposit Company of Maryland, Amount claimed: \$558097.49 (Smith, Carol)
<u>Details</u> <u>2</u>	<u>127-</u> 06/13/2016 Amended Claim #127 filed by Fidelity & Deposit Company of Maryland, Amount claimed: \$558097.49 (Smith, Carol)

Description:

Remarks:

Claims Register Summary

Case Name: Gas-Mart USA, Inc.

Case Number: 15-41915-abf11

Chapter: 11

Date Filed: 07/02/2015

Total Number Of Claims: 1

Total Amount Claimed*	\$558097.49
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured		
Priority		
Administrative		