

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS**

**(KANSAS CITY DIVISION)**

<b>In Re:</b>	)	<b>In Proceedings Under Chapter 11</b>
	)	
<b>CRESCENT OIL COMPANY, INC., et</b>	)	<b>Case Nos. 09-20258</b>
<b>al.,</b>	)	<b>09-20259</b>
<b>Debtors.</b>	)	<b>09-20260</b>
	)	<b>09-20261</b>
	)	<b>09-20262</b>

**MOTION TO EMPLOY NACHMAN HAYS BROWNSTEIN, INC. AS FINANCIAL  
ADVISOR FOR THE DEBTORS AND DEBTORS-IN-POSSESSION AND VERIFIED  
STATEMENT OF JOHN TITTLE, JR. PURSUANT TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 2014**

Debtors Crescent Oil Company, Inc., Crescent Fuels, Inc., Crescent Stores Corporation, Crescent Business Development Corporation and Crescent Realty, Inc. (collectively, “Debtors”), by and through their undersigned attorneys, hereby seek authority to employ NachmanHaysBrownstein, Inc. (“NHB”) as their financial advisor pursuant to 11 U.S.C. §327(a) and Federal Rule of Bankruptcy Procedure 2014. In further support of this Motion, Debtors submit the verified statement required by Rule 2014 and state as follows:

1. Debtors commenced the above-captioned cases by filing separate voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”) on February 7 and 8, 2009 (the “Filing Dates”).
2. Debtors continue to manage their businesses and property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.
3. No trustee or examiner has been appointed and no official committee of creditors or equity interest holders has yet been established.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 as a core matter pursuant to 28 U.S.C. §157. Venue of this case and Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. Debtors have continued in the operation of their businesses since the Petition Date. Any interruption of cash flow, even on a temporary basis, would severely and irreparably harm their operations and be detrimental to the value of their assets, which is optimized by the use of those assets in a going concern.

6. Debtors' principal secured creditor is M&I Bank ("M&I"). At a hearing on February 10, 2009, this Court granted interim approval to a cash collateral and post-petition financing stipulation between M&I and the Debtors. The final hearing on that financing is set for March 10, 2009.

7. As part of the financing agreement between M&I and Debtors, and approved by this Court on an interim basis, Debtors are required to aggressively market and sell their businesses and assets pursuant to 11 U.S.C. §363, and to:

- (a) obtain this Court's approval of their employment of a financial advisor by February 20, 2009;
- (b) obtain entry of a bid procedures order by March 6, 2009;
- (c) conduct an auction of its assets by March 27, 2009;
- (d) select a prevailing bidder by March 30, 2009; and
- (e) obtain entry of an order approving the sale by April 3, 2009.

8. Debtors require the specialized knowledge and assistance of a financial advisor to review the assets and estimate their value in the marketplace, market the businesses and assets to strategic and financial purchasers, manage the due diligence procedure, assist in the Section 363 sale

process, evaluate the offers received and select the prevailing bid, and to close the sales that are obtained.

9. Debtors have interviewed a number of firms to assess their abilities to serve the financial advisor functions. They have selected NHB due to its experience in the Debtors' industry and further NHB's experience with the Section 363 sale process. M&I has consented to the employment of NHB on the terms contained in this Motion.

10. NHB is a management consulting firm with offices in Dallas, Boston, New York, Philadelphia and Wilmington, Delaware. Its professionals are experienced in corporate renewal, financial restructuring and investment banking. NHB has experience with several other fuel distribution and convenience store businesses. Debtors believe NHB is well-qualified to serve as their financial advisors in the Section 363 sale process and this case.

11. Debtors propose to compensate NHB for its services on the following terms:

- (a) A flat monthly fee of \$75,000 (the "Monthly Fees"). The Monthly Fees for February 2009 to be prorated. To the extent that NHB's services continue after April 30, 2009, any Monthly Fees paid after that date will be credited against the Performance Fee to be paid at closing;
- (b) NHB will also be paid a Performance Fee at the closing of the sale of the assets, or any portion thereof, to the extent that the gross sale proceeds equal the amounts indicated below, measured on a cumulative basis beginning at the commencement of NHB's employment:

<b>Cumulative Gross Proceeds on Sale of Assets</b>	<b>Performance Fees</b>
Under \$38,000,000	\$380,000 (Minimum Fee)
\$38,000,000 to \$39,999,999	\$380,000 + 2.5% Over \$38,000,000
\$40,000,000 to \$41,999,999	\$430,000 + 5.0% Over \$40,000,000
Over \$42,000,000	\$530,000 + 10.0% Over \$42,000,000

- (c) All out-of-pocket expenses incurred by NHB on behalf of the Debtors in this matter, primarily relating to travel costs to/from Dallas and due diligence trips/site visits, will be reimbursed by the Debtors on a monthly basis, subject to Bankruptcy Court approval and the provisions of the Interim Compensation Order;
- (d) Monthly Fees are to be paid upon retention and on the first day of each month thereafter without regard to the twenty percent (20%) holdback specified in the Interim Compensation Order. In order to be paid the Performance Fee at closing, NHB will prepare and file a Fee Application to substantiate the Minimum Fee, Performance Fee and the Monthly Fees;
- (e) Notwithstanding the foregoing, Debtors may terminate the employment of NHB on seven (7) calendar days' notice in the event either: (i) Titan Global Holdings, Inc. acquires M&I Bank's claims and security interests against the Debtors; or (ii) M&I Bank successfully credit bids at the Section 363 sale of substantially all of the Debtors' assets. Upon such a termination, NHB shall file a fee application with the Court and its compensation shall be limited to its hourly fees and out-of-pocket expenses.

12. To the best of Debtors' knowledge, NHB has no connection with, and neither holds nor represents any interest adverse to Debtors, their estates, creditors, or any other parties in interest or their respective attorneys or accountants, in the matters for which NHB is to be retained.

13. NHB does not hold or represent any material adverse interest in connection with this case and is a "disinterested person" within the meaning of Bankruptcy Code Sections 101(14) and 327. The Declaration of John Tittle, Jr., executed as a Principal of NHB, in accordance with Bankruptcy Code Section 327 and Federal Rule of Bankruptcy Procedure 2014, follows this Motion. The Debtors' knowledge, information and belief regarding NHB's disinterestedness is based on Mr. Tittle's declaration.

WHEREFORE, NHB respectfully requests the Court to enter its Order authorizing the Debtors to retain NachmanHaysBrownstein, Inc. as its financial advisor on the terms provided in this Motion, to further authorize the Debtors to execute a retention agreement with NHB not inconsistent with the terms stated in this Motion, and for such other and further relief as the Court deems just and proper.

Dated: February 18, 2009

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP

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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

## **DECLARATION OF JOHN TITTLE, JR.**

I, John Tittle, Jr., hereby declare the following:

1. I am over the age of eighteen years and am not a party to the above-captioned bankruptcy cases.  
If called as a witness I would and could competently testify to each of the following matters.
2. I am a Principal and the Southwest Practice Leader of NachmanHaysBrownstein, Inc. (“NHB”).  
NHB is a management consulting firm with offices in Dallas, Boston, New York, Philadelphia and Wilmington, Delaware. Its professionals are experienced in corporate renewal, financial restructuring and investment banking. NHB has experience with several other fuel distribution and convenience store businesses and is well-qualified to serve as the Debtors’ financial advisor in this case.
3. NHB will use its specialized knowledge of the industry to assist Debtors to review the assets and estimate their value in the marketplace, market the Debtors’ businesses and assets to strategic and financial purchasers, manage the due diligence procedure, assist in the Section 363 sale process, evaluate the offers received and determine the successful bid, and to close the sales that are obtained.
4. NHB has five Shareholder Principals: Thomas D. Hays, III, CTP, Howard Brod Brownstein, CTP, Edward T. Gavin, CTP, John Tittle, Jr. CIRA and John Bambach, CTP (collectively, the “Principals”) and one non-Shareholder Principal, several Managing Directors, several Senior Consultants and other associates (collectively, the “Associates”). NHB’s Principals each own a separate business entity (corporation, limited liability company, or other legal entity) of which the Principal is the sole employee except possibly for family members. Each of these entities does all or substantially all of its business with NHB. These entities provide the services of the Principals to NHB and its clients pursuant to written agreements between each such entity and

NHB. Compensation received by the Principals' business entities is substantially unrelated to fees received by NHB from any particular client. The Associates each have written independent contractor agreements with NHB pursuant to which they provide services to NHB and, through NHB, to its clients, through a business entity owned by each Associate and of which the Associate is the sole employee, except possibly for family members. Each of the Associates or their respective business entities does all or substantially all of its business with NHB, and all of them are considered regular members of NHB's professional staff, and are featured in NHB's marketing literature and on its website. Compensation received by the Associates or their respective entities is based in substantial part upon fees received by NHB from each of NHB's clients.

5. To the best of my knowledge, information and belief, and after reviewing its records, NHB has no prior connections with the Debtors, its creditors or any other parties in interest, or with their respective attorneys or accountants, or the United States Trustee for the District of Kansas, or any person employed by the United States Trustee with respect to the subject matter of Debtors' Chapter 11 cases, other than and in each instance in matters unrelated to this case:

- a) Wells Fargo;
- b) CIT, including my adult daughter who lives outside my home, Beverly Tittle, and serves as an collateral analyst in the Dallas office of CIT involving matters unrelated to this case;
- c) Bryan Cave; and
- d) Polsinelli Shugart.

6. Any connections that NHB may have had with Debtors' creditors or other parties in interest have been wholly unrelated to the matters for which NHB is now being retained. NHB has in the past worked in the same cases as, and may currently work in the same cases as, some of the professional firms that will be involved in these cases, including those set forth above, in connection with matters wholly unrelated to these Chapter 11 proceedings.
7. To the best of my knowledge, no professional of NHB has any personal or family relationship with the Bankruptcy Judge presiding over the Debtors' cases.
8. Based on the foregoing, I believe that NHB neither holds nor represents any interest adverse to Debtors or their bankruptcy estates.
9. NHB has agreed to provide financial advisory and consulting services to the Debtors on the terms set forth in the Motion. NHB is charging fees and costs in this case similar to those it customarily charges in cases of this size and complexity.
10. NHB has not entered into any agreement to share its compensation from these cases except as permitted by 11 U.S.C. § 504(b).

I state under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed on this Eighteenth Day of February, 2009, at Dallas, Texas.

  
JOHN TITTLE, JR.