

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS  
(Kansas City Division)**

<b>In Re:</b>	)	<b>In Proceedings Under Chapter 11</b>
	)	
<b>CRESCENT OIL COMPANY, INC.,</b>	)	<b>Case No. 09-20258</b>
<i>et al.,</i>	)	
<b>Debtors.</b>	)	

**MOTION TO APPROVE STANDING ORDER NO. 2  
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION  
AND ESTABLISHING FEE AND EXPENSE GUIDELINES**

Debtors Crescent Oil Company, Inc., *et al.*, for their Motion to Approve Standing Order No. 2 Establishing Procedures for Interim Compensation and Establishing Fee and Expense Guidelines (the “Motion”), state as follows:

1. Debtor Crescent Oil Company, Inc. filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Code”) on February 7, 2009.
2. The remaining Debtors<sup>1</sup> commenced the captioned cases by filing separate voluntary petitions for relief under Chapter 11 of the (“Code”) on February 8, 2009 (the “Filing Date”).
3. Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 110 of the Bankruptcy Code.
4. An official committee of unsecured creditors (the “Committee”) has not yet been established.

**RETENTION OF PROFESSIONALS**

5. Simultaneously herewith, Debtors have filed their Application for Order Authorizing Employment of Spencer Fane Britt & Browne LLP (“SFBB”) as Attorneys for Debtors (the “Application”). No Order has yet been entered on the Application.

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<sup>1</sup> Crescent Fuels, Inc.; Crescent Stores Corporation; Crescent Realty, Inc.; and Crescent Business Development Corp.

6. Debtors anticipate that they may need to retain additional professionals in the captioned cases. In addition, Debtors anticipate that an official committee of unsecured creditors (“Committee”) will be established and will file applications to retain counsel to assist in the performance of its statutory duties. Any professional firms employed by Debtors or the Committee in these proceedings are hereinafter collectively referred to as the “Professionals.”

7. Pursuant to Section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the court permits.

### **RELIEF REQUESTED**

8. Debtors assert that in these complex proceedings, the Court and all Professionals in the captioned cases are better served by establishing a procedure for compensating and reimbursing such Professionals at periodic intervals and establishing fee and expense guidelines. Such procedures will afford appropriate compensation and reimbursement to all professionals involved in the captioned proceedings. Given the amount of fees and expenses anticipated in these cases, waiting 120 days to file interim fee applications would be inequitable and burdensome to such Professionals.

9. Debtors request the entry of an Order authorizing and establishing procedures for compensating and reimbursing the Professionals on a monthly basis. Such an Order would enable the Court, the United States Trustee for the District of Kansas (the “U.S. Trustee”) and all other parties to effectively and efficiently monitor the Professionals’ fees and expenses incurred in these cases.

10. Specifically, Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows (the “Compensation Procedures”):

(a) No earlier than the 15th day of each calendar month, each Professional seeking interim compensation shall file an application (the “Monthly Fee Notice”) with the Court pursuant to 11 U.S.C. § 331 for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during the immediately preceding month (the “Compensation Period”).

(b) Each Monthly Fee Notice shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), applicable Tenth Circuit law and the Local Rules of this Court, and shall be served upon all parties set forth on the service list attached hereto as **Exhibit A** (the “Notice Parties”).

(c) Each Notice Party shall have 20 days after service of a Monthly Fee Notice to object (the “Objection Deadline”). Upon the expiration of the Objection Deadline, each Professional may file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which Debtors are authorized to pay each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) 80 percent of the fees and 100 percent of the expenses requested in the Monthly Fee Notice (the “Maximum Payment”) or (ii) 80 percent of the fees and 100 percent of the expenses not subject to an objection.

(d) If any Notice Party objects to a Professional’s Monthly Fee Notice, it must file a written objection with the Court and serve it on the Professional and each of the Notice Parties so that it is received on or before the Objection Deadline. Thereafter, the objecting party and the Professional may attempt to resolve the objection on a consensual basis. If the parties are unable to reach a resolution of the objection within 20 days after service of the objection, then the Professional may either (i) file a response to the objection with the Court, together with a request for payment of the difference, if any, between the Maximum Payment

and the Actual Interim Payment made to the affected Professional (the “Incremental Amount”); or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection, if requested by the parties.

(e) Allowance of monthly fees and expenses shall not constitute an interim or final approval of the Professionals fees and expenses.

11. Beginning with the period ending on May 31, 2009, and at three month intervals or such other intervals convenient to the Court (“Interim Period”), each Professional shall file with the Court and serve upon the Notice Parties an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Notices filed during such period (the “Interim Fee Application”). The Interim Fee Application must include a summary of the Monthly Fee Notices that are the subject of the request and any other information requested by the Court or required by the Local Rules. An Interim Fee Application must be filed and served within 45 days of the conclusion of the Interim Period. The first Interim Fee Application should cover the time between the commencement of the cases, through and including March 31, 2009. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the compensation procedures until such time as the Interim Fee Application is submitted.

12. The Applicant shall file its notice of the Interim Fee Application (“Hearing Notice”) as provided by the Local Rules of the United States Bankruptcy Court for the District of Kansas and the noticing guidelines applicable to the judge to whom the cases are assigned.

13. The pendency of an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

14. Neither the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses, nor the filing of or failure to file an objection will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of Professionals.

15. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

16. Debtors further request that the Court limit the Hearing Notices to consider Interim Fee Application Requests and final fee applications (collectively, the “Applications”) to the Notice Parties and all parties who have filed a notice of appearance with the Clerk of this Court and have requested such notice. Such notice of the Applications and Hearing Notices in this manner will reach the parties most active in the case and will save the expense of undue duplication and mailing.

17. Debtors further request that each member of the Committee be permitted to submit statements of expenses and supporting vouchers (excluding the member’s professional fees) to counsel for the Committee, who will collect and submit such requests for reimbursement in accordance with the foregoing Compensation Procedures.

18. Debtors will include all payments made to Professionals in accordance with the Compensation Procedures in their monthly operating reports identifying the amount paid to each of the Professionals.

## **II. APPLICABLE AUTHORITY**

19. Section 331 of the Bankruptcy Code provides, in relevant part, states as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under Section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under Section 330 of this title.

11 U.S.C. § 331.

20. Section 105(a) of the Bankruptcy Code provides, in relevant part, states as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

11 U.S.C. § 105(a).

21. Similar procedures for compensating and reimbursing court-approved professionals have been established in other large Chapter 11 cases in this district. *See In re Gateway Ethanol, L.L.C.*, Case No. 08-22579 (Bankr. D. Kan. 2008). Such procedures are needed to avoid having professionals fund the reorganization case. *See In re Int'l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensations). Appropriate factors to consider include “the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors.” *Id.* at 897-98. Debtors submit that the procedures sought herein are appropriate, considering the above factors.

WHEREFORE, Debtors respectfully request that the Court enter an Order establishing procedures for interim compensation and reimbursement of Professionals and Committee members in this case, and for such other relief as the Court deems just and proper.

Date: February 8, 2009

SPENCER FANE BRITT & BROWNE LLP

s/ Lisa A. Epps

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ATTORNEYS FOR DEBTORS AND  
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**EXHIBIT A- NOTICE PARTIES**

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Counsel for the Official Committee of Unsecured Creditors or Creditors holding 20 largest claims if no committee is formed

All parties requesting notice