

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

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

**MOTION FOR ORDER AUTHORIZING PAYMENT OF
PREPETITION WAGES, SALARIES, REIMBURSABLE EMPLOYEE EXPENSES,
MEDICAL AND OTHER CRITICAL PREPETITION EMPLOYEE BENEFITS**

Debtors Crescent Oil Company, Inc., *et al.*, (collectively, “Debtors”), for their Motion for Order Authorizing Payment of Prepetition Wages, Salaries and Reimbursable Employee Expenses, Medical and Other Critical Prepetition Employee Benefits (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 Debtors¹ 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 manage their property as debtors-in-possession pursuant to Code §§ 1107 and 1108.
4. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and the Amended General Order of the United States District Court for the District of Kansas as amended. Venue of the captioned cases and the Motion in this district are proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Crescent Fuels, Inc.; Crescent Stores Corporation; Crescent Realty, Inc.; and Crescent Business Development Corp.

5. Established in 1987, Debtors have served fuel distribution and convenience store markets for over 20 years. Corporate offices are located at 116 W. Myrtle, Independence, Kansas. Debtors distribute petroleum to over 340 locations in Kansas, Oklahoma, Arkansas, Missouri, Illinois and Louisiana. Debtor Crescent Stores Corporation operates 35 convenience stores at various locations in Kansas, Missouri, Arkansas, and Louisiana. Debtors distributed 282 million gallons of petroleum in 2007. For the nine months ending September 30, 2008, Debtors distributed 215 million gallons of petroleum.

6. For the year ending December 31, 2007, Crescent Fuels, Inc. (“CFI”), on a consolidated basis, experienced a loss of \$3,475,000 on sales of \$728,000,000. The most significant sources of loss were the cost of discontinuation of the unprofitable “commission” business unit of COI and operating losses of CSC. For the year ending December 31, 2008, CFI, on a consolidated basis, experienced an estimated loss of \$12,780,000 on revenues of \$910,000,000. During 2008, Debtors experienced extremely volatile fuel prices and margins, combined with continuing losses in CSC and, as Debtors’ increased, they were required to bear extremely high interest and finance charges. As of the Filing Date, Debtors had assets of \$85,292,000 and the liabilities \$88,815,000 on a consolidated basis.

7. COI is a wholly owned subsidiary of CFI, engaged in the distribution of motor fuels, including supply to its sister corporation, CSC. For the year ending December 31, 2007, COI experienced a loss of \$2,487,000 on revenues of \$693,000,000. For the year ending December 31, 2008, COI experienced a loss of \$1,770,000 on sales of \$821,000,000. Losses were attributable to the discontinuation of the unprofitable “commission” business division, high financing costs and extremely weak fuel margins in the fourth quarter of 2008. At the Filing

Date, COI had assets of \$68,693,000 and liabilities of \$65,649,000. COI has approximately 76 employees.

8. CSC is a wholly owned subsidiary of CFI, engaged in the operation of convenience stores in Kansas, Missouri, Oklahoma, Arkansas and Louisiana. For the year ending December 31, 2007, CSC experienced a loss of \$1,120,000 on sales of \$103,000,000. For the year ending December 31, 2008, CSC experienced a loss of \$2,214,000 on sales of \$100,500,000. The routine acquisition and development of various “c-store” operations contributed heavily to losses in both years due to start-up and divestment costs. At the Filing Date, CSC had assets of \$4,268,000 and liabilities of \$2,029,000, with 243 full and part-time employees operating at 35 locations.

9. CRI is a wholly owned subsidiary of CFI, which owns four parcels of real estate, all used in connection with the operations of its sister companies. CRI has no employees.

10. CBDC is a wholly owned subsidiary of CFI, which owns four parcels of real estate all used in connection with the operations of its sister companies. CBDC has no employees.

The Employees

11. Debtors employ approximately 288 salaried and hourly employees, the majority of whom are convenience store employees. All of these employees are on the payroll of, and paid by, Debtors. Debtors’ employees are comprised of the following categories:

- | | | |
|----|---------------------------|-----|
| a. | Exempt ² – | 25 |
| b. | Non-Exempt ³ – | 263 |

² “Exempt” refers to employees who are exempt from the wage and hour laws (*i.e.*, professional and managerial employees).

³ “Non-Exempt” refers to employees’ status as not being exempt from wage and hour laws (*i.e.*, production workers, clerical employees and administrative staff).

c. Total Employees– 288

12. The majority of employees are paid on an hourly basis. The employees are all non-union. A smaller percentage of employees (*i.e.*, management, professionals, or supervisors) are paid on a salaried basis. All employees will suffer great hardship if they were to lose or suffer any delay in receiving their pay and/or benefits.

13. Debtors are engaged in a highly competitive business and depend upon their ability to retain existing skilled and dedicated employees. The continued, uninterrupted service of Debtors' employees is vital to Debtors' operations and their ability to maximize the value of their assets. The employee compensation, reimbursement and benefits described in the Motion are reasonable compared to cash and non-cash payments and benefits provided by other employees and are absolutely necessary to maintain Debtors' work force.

14. Debtors' ability to preserve their businesses and/or maximize the value of their assets will be adversely affected if they are unable to retain the services of their employees. Accordingly, it is essential that undue hardships that employees may suffer as a consequence of the captioned Chapter 11 filings be minimized and that morale be maintained.

15. As described more fully herein, employees have claims against Debtors consisting of wages, salaries, vacation pay, holiday pay, sick leave pay, family medical leave pay, life insurance, 401(k) contributions, payroll deductions to custodial accounts, reimbursable business expenses, workers' compensation, and medical, dental benefits and other benefits (collectively referred to as the "Pre-Petition Employee Claims").

16. By the Motion Debtors seek emergency relief. Any delay in making scheduled payments and/or providing the employee benefits described herein undermines relationships with Debtors' employees, irreparably impairs employee morale and risks interruption of services at the practice time when employee dedication, confidence and cooperation are critical.

17. The initiation of the captioned bankruptcy proceedings creates a precarious situation for Debtors. The loss of employees could have significant adverse economic impacts upon Debtors' businesses and the value of their assets.

18. The vast majority of employees will receive less than the \$10,950 amount allowed by Code § 507. To the extent that payment of the amounts described in the Motion may subsequently be determined to be greater than a recipient thereof would otherwise have received in these cases were commenced or proceeded under Chapter 7 of the Code, Debtors (or any subsequently appointed Trustee) expressly reserve the right to seek recovery of such payments.

19. Approval of the Motion and the payment of compensation, reimbursements and benefits described herein are essential to Debtors' businesses and are in the best interests of all parties in interest.

20. Notwithstanding anything contained herein to the contrary, the Motion shall not constitute the assumption of any executory contract of any type, kind or nature, under Code §§ 365, 1113 or 1114 or otherwise, and is filed without prejudice to Debtors' rights to assume, assign, reject, terminate, or modify any of its executory contracts, all of which rights are expressly reserved.

21. In order to effectuate the relief sought in the Motion, Debtors also seek an Order authorizing all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on Debtors' employee-related accounts, whether presented prior to or after the Filing Date in accordance with Debtors' stated policies with regard thereto, and with any charges (including charges for returned or dishonored checks) for the same payable by Debtors, provided sufficient funds exist in the employee-related accounts to cover such payments.

22. Additionally, the rationale for entering such an Order relating to the payment of employee obligations is set forth in Debtors' Motion for Order Authorizing Maintenance of Existing Cash Management System, Maintenance of Bank Accounts and Continued Use of Business Forms, to be filed.

Pre-Petition Wages

23. Debtors remain obligated to pay their employees for work completed before the Filing Date (the "Pre-Petition Payroll"). By the Motion, Debtors request authority to pay such Pre-Petition Payroll in the ordinary course of their businesses. The estimated amount of Pre-Petition Payroll, including federal, state and local tax obligations, for all employees is approximately \$192,800. The next regular payroll disbursement for Debtors' convenience store employees, in the amount of \$69,500 is scheduled to be made on February 11, 2009, covering the period February 1, 2009 through February 7, 2009. The next regular payroll disbursement for Debtors' administrative employees, in the amount of \$123,300 is scheduled to be made on February 11, 2009, covering the period January 25, 2009 through February 7, 2009. The entire amount of this disbursement related to a pre-petition period. To the extent necessary, Debtors request authority to pay the Pre-Petition Payroll in the ordinary course of their business.

Reimbursable Expenses

24. Prior to the Filing Date, certain employees incurred a variety of business expenses on behalf of Debtors which, consistent with ordinary practice, are reimbursable. It is both inequitable and serves as an undue hardship if employees are required to bear all of those expenses, all of which were incurred on behalf of Debtors with the expectation that they would be promptly reimbursed by Debtors. The average outstanding cost to Debtors of such reimbursement is approximately \$5,000, which is estimated to be due as of the Filing Date.

Workers' Compensation Benefits

25. Workers' compensation claim coverage is required under law, is necessary to maintain the status quo, provides benefits to employees injured in the ordinary course of Debtors' business and prevents undue hardship for disable employees who depend upon such benefits to satisfy personal needs and obligations.

26. In compliance with statutory requirements, Debtors maintain workers' compensation coverage in Louisiana, Kansas, Arkansas, Missouri and Oklahoma through various insurance companies. Debtor's policy periods vary by state, with a total annual premium of \$160,000 based on an estimated per state payroll. Debtors remaining balance due on all policies is approximately \$65,000.

Pension and 401(k) Contributions

27. Like many companies, Debtors maintain a 401(k) savings plan for their employees (the "Plan"). Debtors do contribute or match contributions of employees in the amount of 25% of the employees contributing up to a maximum of 6% of employees' annual compensation. The Plan is sponsored and administered by Debtors and is administered and controlled by Werntz and Associates. As of February 6, 2009, Debtors had funded the amounts directed from payroll cycles ending January 24, 2009 and yet to be funded payroll cycles ending January 31, 2009; the total amount withheld from the unfunded payroll is \$44. Debtors also pay nominal costs to administer the Plan, which is estimated to be \$4,000 for the week ending February 7, 2009.

Payroll Deductions

28. As a convenience and accommodation for employees, Debtors make deductions from employees' payroll checks and subsequently pay those funds, along with any required

employee refunds, to various third parties. These payroll deductions are for such items as health, dental, vision or supplemental insurance premiums, child support and claims under writs of garnishment. These funds are not property of the captioned estates under Code § 541 and, accordingly, Debtors request authority to pay over all such funds to the designated payees.

The Oklahoma Stores

29. In November 2008, Debtors acquired certain convenience stores throughout Oklahoma (the “Oklahoma Stores”) from Gas N Shop, Inc. In anticipation of a transfer of the Oklahoma Stores to Appalachian Oil Company (“APPCO”), APPCO provided the services of its employees for the operations of the Oklahoma Stores. Although Debtors own the Oklahoma Stores, the employees of the Oklahoma Stores (the “Oklahoma Employees”) are still technically employees of APPCO. APPCO essentially serves as a pass-through, whereby as soon as APPCO pays the Oklahoma Employees their wages, Debtors immediately wire money to APPCO to cover the payroll amount.

30. As of the Filing Date, the Oklahoma Stores had 90 employees. The estimated amount of pre-Filing Date payroll, including federal, state and local tax obligations, for all Oklahoma Employees is approximately \$35,000 (the “Oklahoma Payroll”). The next regular payroll disbursement for the Oklahoma Employees is scheduled to be made on February 13, 2009, covering the period February 1, 2009 through February 8, 2009. To the extent necessary, Debtors request authority to reimburse Appalachian for the Oklahoma Payroll in the ordinary course of their business.

Applicable Law

31. Authority to pay the Pre-Petition Employee Claims and the Oklahoma Payroll is essential to the continued operation of Debtors’ business and is in the best interest of Debtors’

estates and all creditors. Courts in Kansas and elsewhere have recognized the need to satisfy pre-petition obligations relating to employees to maintain and protect the continuity of a debtor's business and preserve employee morale. See *In re Gateway Ethanol, L.L.C.*, Case No. 08-22579 (Bankr. D. Kan. 2008); *In re Wire Rope Corporation of America, Incorporated*, Case No. 02-54093 (Bankr. W.D. Mo. 2002); *In re Farmland Industries, Inc.*, Case No. 02-50557 (Bankr. W.D. Mo. 2002); *In re Valley Food Services, LLC*, Case No. 06-50038 (Bankr. W.D. Mo. 2006); and *In re Weld Wheel Industries, Inc.*, Case No. 06-42105 (August 17, 2006). See also *In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987) (approving bankruptcy court order authorizing debtor to pay certain prebankruptcy wages, salaries, employee reimbursement expenses and benefits, including payments for workers' compensation claims; *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing debtor in possession to pay prebankruptcy employee wages and benefits, and health, life and workmen's compensation insurance premiums).

32. This Court, pursuant to the "Necessity of Payment" doctrine, may authorize the payment of the Pre-Petition Employee Claims and Oklahoma Payroll if (i) necessary to the continued operation of Debtors; (ii) in the best interest of Debtors' creditors and employees; and (iii) necessary for Debtors' successful reorganization. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *In re Chateaugay Corp.*, 80 B.R. 279, 281 (S.D.N.Y. 1987).

33. Moreover, Debtors are authorized to continue to retain their assets and operate their business pursuant to Code §§ 1107 and 1108. Code § 363(c)(1) authorizes Debtors to enter into transactions in the ordinary course of business without notice or a hearing. Thus, with respect to Debtors' authority to continue to provide employee benefits post-petition, no Court Order is required. However, to minimize the disruption and preserve values, Debtors must also

honor employee compensation, reimbursements and benefits that were earned or accrued pre-petition or which are based, in whole or in part, upon pre-petition services.

34. Time is of the essence with respect to the relief requested herein as Debtors must avoid for their employees, as well as for themselves, the adverse effects likely to result from any interruption (whether actual or perceived) in their ability to satisfy pre-Filing Date obligations. Thus, for all of the foregoing reasons, Debtors submit that it is in the best interest of their estates that they be authorized to pay the Pre-Petition Employee Claims and the Oklahoma Payroll.

WHEREFORE, Debtors respectfully requests that the Court enter an Order authorizing Debtors to pay the Pre-Petition Employee Claims and Oklahoma Payroll as set forth herein and grant such other and further relief as is just and proper.

Date: February 8, 2009

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