IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
GASTAR EXPLORATION INC., *et al.*,[1]	§	Case No. 18-36057 (MI)
Debtors.	§	(Jointly Administered)
	§	(Emergency Hearing Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES, AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER FOR NOVEMBER 1, 2018, AT 2:30 P.M. (CT) BEFORE THE HONORABLE MARVIN ISGUR, 515 RUSK STREET, COURTROOM 404, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gastar Exploration Inc. (1640), and Northwest Property Ventures LLC (8685). The location of the Debtors' service address is: 1331 Lamar Street, Suite 650, Houston, Texas 77010.

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] respectfully state as follows in support of this motion:

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"): (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto, and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the "Amended Standing Order"). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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[2] A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Michael A. Gerlich, Chief Financial Officer and Senior Vice President of Gastar Exploration Inc., in Support of Chapter 11 Petitions and First Day Motions,* (the "First Day Declaration"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), on October 31, 2018 (the "Petition Date").

4. The bases for the relief requested herein are sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

The Debtors' Workforce

5. The Debtors' employees, temporary workers, and independent contractors perform a wide variety of functions critical to the Debtors' operations, the administration of these chapter 11 cases, and the Debtors' successful reorganization. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Debtors' employees, temporary workers, and independent contractors include highly trained personnel who are not easily replaced. Without the continued, uninterrupted services of their employees, temporary workers, and independent contractors, the Debtors' reorganization efforts likely may be jeopardized.

6. The vast majority of the Debtors' employees rely exclusively on their compensation and benefits to pay their daily living expenses and support their families. Thus, the Debtors' employees will be exposed to significant financial constraints if the Debtors are not permitted to continue paying their compensation and providing benefits. Consequently, the relief requested herein is necessary and appropriate.

7. As of the Petition Date, the Debtors employ approximately 40 individuals on a full-time and part-time basis (the "Employees"). Approximately 9 Employees are paid on an hourly basis, and approximately 31 Employees earn a salary. None of the Employees are subject to a collective bargaining agreement.

8. The Debtors have a co-employment relationship with Insperity PEO Services, L.P. ("Insperity"), which is set forth in a Client Service Agreement effective as of November 18, 2009

(collectively, with all related agreements, amendments, and modifications, the "Insperity CSA"). Under the Insperity CSA, Insperity serves as the legal co-employer of the Employees and handles certain administrative responsibilities for human-resources related functions, including payroll, processing, offer of employee health and welfare benefits, and withholding, remittance, and reporting of payroll taxes (including the employer-paid portion of payroll taxes) for the Employees. Although the Debtors handle the day-to-day management of the Employees and their activities related to the Debtors' core business, Insperity supports the Debtors in the administration of many critical personnel issues.

9. The Debtors' relationship with Insperity is vital to the Debtors' progress moving forward as a company. As previously noted, the relationship with Insperity allows the Debtors to (a) realize substantial cost savings with respect to the administration of their employee payroll and benefits by not having to employ additional human resources professionals and administer payroll and benefit programs in several states, and (b) allows the Debtors to offer better and broader benefits to their employees at significantly reduced rates relative to the costs of participating in those programs without a third-party intermediary like Insperity.

10. The Debtors pay Insperity for the cost of Employee wages and benefits, as well as Insperity's fees for these services. In the past twelve months, the Debtors paid approximately $17.7 million for all payroll, bonus, benefit expenses, compensation, withholding obligations, health and welfare benefits, and Insperity's fees and deposits for the administration of employee benefits, human resource services, and related technology. The Debtors intend to continue to perform under the Insperity CSA during the course of these chapter 11 cases, including continuation of the Insperity Health and Welfare Benefits (as described below), and seek authority

to pay all amounts owed to Insperity under the Insperity CSA that arise in the ordinary course of business.

11. In addition to the Employees, the Debtors supplement their workforce by utilizing independent contractors, who provide critical support to the Debtors' field operations (the "Independent Contractors" and, together with the Employees, the "Workforce").

12. At this time, the Debtors retain approximately 21 Independent Contractors. The Independent Contractors are critical to the operation of the Debtors' business and support the efforts of their Employees.

Employee Compensation and Benefits

13. The Debtors, through Insperity, provide wages and health and welfare benefits programs for their Employees and pay Insperity various related administrative fees and premiums for those programs. The Debtors' compensation obligations and benefits programs are comprised of: (a) Wage Obligations, (b) Paid Time Off and Other Leave Benefits, (c) Withholding Obligations, (d) Reimbursable Expenses, (e) Company Car Benefits, (f) Health and Welfare Benefits, (g) the 401(k) Plan, and (h) the KERP (each as defined below, and collectively, the "Employee Compensation and Benefits"). The Employees rely on the Employee Compensation and Benefits to support themselves and their families, and they will face financial hardship if the Employee Compensation and Benefits are not paid.

14. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Compensation and Benefits programs in the ordinary course of business. Out of an abundance of caution, the Debtors request the right to modify, change, and discontinue any of their Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without

the need for further Court approval, subject to applicable law.

15. By this motion, the Debtors seek authority to continue to honor Employee Compensation and Benefits in the ordinary course of business, including $140,000 in aggregate prepetition obligations that may come due in the the first 25 days of these chapter 11 cases.

A. Unpaid Wages.

16. In the ordinary course of the Debtors' business, the Debtors pre-fund Insperity for all wages and salaries owed to the Employees (collectively, "Wage Obligations"). Insperity is responsible for administering and distributing the Debtors' Wage Obligations to the Employees. Over the last twelve months, the Debtors have paid an average of approximately $710,000 per bi-weekly pay period for Wage Obligations. Payroll amounts often vary depending upon the season, taxes, overtime, and other factors.

17. Employees are paid at the end of a two-week pay period for the work performed in the two weeks ending one week prior to the pay date. As such, Employees are owed for five workdays in arrears at the end of every pay date. The Debtors spent an average of approximately $1.5 million a month on Wage Obligations in the twelve months preceding the Petition Date.

18. The Debtors have funded Compensation and Benefits for the payroll period ending November 9, 2018. Therefore, they do not owe Employees any amounts on account of accrued Wage Obligations earned before the Petition Date.

B. Paid Time Off and Other Leave Benefits

19. The Debtors offer Employees paid time off benefits ("PTO"), including up to 80 hours of sick leave annually (which does not carry over), ten company holidays, up to five days of bereavement leave, and up to five days of leave for jury duty. The Debtors also provide several other types of paid leave and unpaid leave (together with PTO, the "Leave Benefits"), including:

- unpaid leave under the Family and Medical Leave Act of 1993 for: (a) birth, adoption, or foster care, (b) family care, (c) medical emergencies, (d) military exigencies, and (e) military caregiving needs;

- short-term disability of up to 100% of pay for two weeks for maternity leave (depending on the type of birth) provided by Cigna Corporation ("Cigna") through Insperity; and

- other paid and unpaid leaves of absence for personal reasons, many of which are required by law, including missed work time in the ordinary course of business for time spent voting, and unpaid leaves of absence for family medical emergencies and military service.

20. The Debtors also offer between two and five weeks of vacation days ("Vacation") per year. As part of their overall compensation, employees are allowed to carry-over 80 hours of unused Vacation from one calendar year to the next,[3] which is available for use when other leave benefits are not available. Pursuant to the Debtors' policy, Employees who are terminated or resign are entitled to a cash payment in lieu of any accrued but unused Vacation. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unused Vacation is approximately $620,000. The Debtors do not believe they will have to make any payments as a result of accrued but unused Vacation during the first 25 days of these chapter 11 cases. In the event that an Employee resigns or is terminated during the first 25 cases of these chapter 11 cases, however, the Debtors request the ability to payout any accrued but unused Vacation pursuant to their policy without the need for further court approval.

21. The Debtors believe that the continuation of the policies providing the Leave Benefits in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtors anticipate that their Employees will continue to utilize any

[3] Employees can carry over additional Vacation with management approval.

accrued Leave Benefits in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations. As a result, the Debtors, pursuant to the Order, seek authority to allow eligible Employees to use their Leave Benefits in the ordinary course of business on a postpetition basis.

C. Withholding Obligations.

22. During each applicable pay period, the Debtors, through Insperity, routinely deduct certain amounts from Employees' paychecks, including, without limitation, garnishments, levies, child support, and related fees, and pre-tax deductions payable pursuant to certain of the Health and Welfare Programs (as defined below) (collectively, the "Deductions"). Some of the Deductions are forwarded to various third-party recipients. During the twelve months preceding the Petition Date, monthly Deductions totaled approximately $6.4 million. As of the Petition Date, the Debtors believe that they do not owe any amounts on account of Deductions.

23. The Debtors, through Insperity, are also required by law to withhold from Wage Obligations amounts related to, among other things, federal and state income taxes, as well as Social Security and Medicare taxes (collectively, the "Employee Payroll Taxes"), for remittance to the appropriate federal and state taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the "Employer Payroll Taxes," and together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to the appropriate federal or state taxing authority at the same time Employees' payroll checks are disbursed. During the twelve months preceding the Petition Date, Employer Payroll Taxes were approximately $610,000, or approximately $24,000 bi-weekly.

24. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Deductions and Payroll Taxes (together, the "Withholding Obligations") is approximately $25,000. The Debtors seek authority, pursuant to the Order, to pay in a manner consistent with historical practice any unpaid Withholding Obligations and to continue to honor the Withholding Obligations in the ordinary course of business during these chapter 11 cases.

D. Reimbursable Expenses.

25. In the ordinary course of business, the Debtors reimburse Employees for certain reasonable and customary expenses that such Employees personally incur in the scope of their employment (collectively, the "Expense Reimbursements"). Expense Reimbursements typically include expenses associated with travel, lodging, ground transportation, meals, and other business-related expenses related to the discharge of an Employee's duties. The Expense Reimbursements are incurred by Employees through the use of personal funds, and the applicable Employees may be held personally liable for any unpaid obligations even though the obligations were incurred for the Debtors' benefit. Thus, the Debtors' inability to reimburse the Expense Reimbursements likely would impose significant hardship on Employees.

26. The Debtors paid Expense Reimbursements of approximately $34,000 per month in the aggregate on average over the twelve months preceding the Petition Date. Due to the timing of when Employees submit expense reimbursements, it is difficult for the Debtors to precisely estimate the amount of prepetition Expense Reimbursements outstanding as of the Petition Date. Based on historical practice, however, the Debtors estimate that as of the Petition Date, the Debtors have accrued approximately $34,000 on account of Expense Reimbursements, all of which will become due within the first 25 days of these chapter 11 cases. By this motion, the Debtors seek authority to pay the Employees' unpaid prepetition Expense Reimbursements that have accrued

prior to the Petition Date and to continue paying prepetition and postpetition Expense Reimbursements in the ordinary course of the Debtors' business on a postpetition basis.

27. The Debtors have one American Express credit card held at their corporate office and four gas cards issued by Wex Bank for use in the field (the "Company Cards"). The Company Cards are used to pay for the Debtors' every day, ordinary course business expenses. Payments on the Company Cards totaled approximately $185,000 over the twelve months preceding the Petition Date. Based on historical practice, the Debtors estimate that as of the Petition Date, the Debtors have accrued approximately $16,000 on account of the Company Cards, all of which will come due in the first 25 cases of these chapter 11 cases. The Debtors, pursuant to the Order, seek authority to pay the outstanding balances related to the Company Cards that have accrued prior to the Petition Date and to continue paying prepetition and postpetition amounts owed in the ordinary course of the Debtors' business on a postpetition basis.

E. Company Car Benefits.

28. In the ordinary course of business, the Debtors provide vehicles (collectively, the "Company Vehicles") to two Employees in the field, have one additional Company Vehicle available for day-to-day use at their Oklahoma City Office, and provide a car allowance of $350 per pay period for one Employee. None of the Company Vehicles are provided for Employees based in the Debtors' headquarters in Houston. The Debtors provide insurance and reimburse those Employees who use a Company Vehicle for the costs of repairs and gas (the "Company Car Benefits"). The Debtors intend to continue the Company Car Benefits during the course of their chapter 11 cases. As of the Petition Date, the Debtors do not believe that they have any accrued but unpaid obligations under the Company Car Benefits program.

F. Health and Welfare Benefits.

29. The Debtors offer their Employees a suite of health and welfare benefits (the "Insperity Health and Welfare Benefits"), which are funded in whole or in part by the Debtors and the remainder of which are funded by Employee contributions. All of the Insperity Health and Welfare Benefits are provided or otherwise administered by Insperity under the Insperity CSA. The Insperity Health and Welfare Benefits are an integral part of the Employees' compensation, and the Debtors intend to honor them in the ordinary course of business during the course of these chapter 11 cases.

30. Insperity manages the Insperity Health and Welfare Benefits that include, among other things: (i) medical care and dental care, vision care, and applicable coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"); (ii) Employee-funded flexible spending (the "Flexible Spending Account Program") and health savings accounts; (iii) employer-paid basic life and personal accident insurance; (iv) Employee-paid voluntary group universal life insurance and personal accident insurance; (v) short-term and long-term disability insurance; (vi) a dependent care program (the "Dependent Care Program"); and (vii) an Employee Assistance Program.

31. The Debtors remit to Insperity approximately $63,000 per bi-weekly payroll period, or approximately $1.6 million per year, for securing from third parties, or itself providing, the Insperity Health and Welfare Benefits, Matching Contributions, all employer-paid taxes and withholding taxes, worker's compensation, EPLI insurance, and all other products and services under the Insperity CSA. The approximately $63,000 remitted to Insperity per payroll period directly funds the Health and Welfare Benefits and other human resources programs. The Debtors seek authority to continue to honor all obligations related to the Health and Welfare Benefits and

other human resources programs, including any obligations running to Insperity. Due to prepayments, the Debtors do not believe there are any amounts due on account of the Health and Welfare Benefits as of the Petition Date.

32. In addition, Insperity administers the Debtors' workers' compensation insurance program (the "Workers' Compensation Programs"). In 2018, Insperity did not pay any workers' compensation claims, as there were none accepted. The Debtors are currently in the process of rejecting a former employee's re-submitted workers' compensation claim that was previously rejected. If the Workers' Compensation Programs are not properly funded, however, the Debtors could be subject to administrative or legal proceedings. The Debtors could also be subject to actions by states in which the Debtors operate for failure to comply with state laws requiring workers' compensation coverage. The Debtors pay workers' compensation insurance programs in all jurisdictions where they operate and need to continue to do so. Accordingly, the Debtors seek authority to pay all workers' compensation obligations, including any outstanding insurance premiums and any other amounts related to prepetition workers' compensation claims as they become due in the ordinary course of the Debtors' business.

G. 401(k) Plan.

33. Under the Insperity CSA, the Employees are eligible to participate in a tax-qualified defined contribution retirement plan (the "401(k) Plan"). Approximately 33 Employees currently contribute to the 401(k) Plan. Through contributions withheld from regular payroll and bonus payroll, eligible Employees may establish an account as of the first payroll following the date of hire at which time they can elect to contribute a percentage of their eligible compensation to the 401(k) Plan on a pre-tax basis. The Debtors make matching contributions to each Employee participant's account under the 401(k) Plan equal to 100% of up to the first 4% of compensation

deferred (the "Matching Contributions"), which is included in the per-payroll-period amounts paid to Insperity identified above. The approximate amount of Matching Contributions is $10,000 for each bi-weekly payroll. Matching contributions are fully vested when paid pursuant to the Debtors' policy. As of the Petition Date, the Debtors do not believe they owe any Matching Contributions. In addition, the Debtors believe that the 401(k) Deductions generally are held in trust by the Debtors and are not property of their estates. Therefore, the Debtors request the authority to continue the 401(k) Plan in the ordinary course of business on a postpetition basis, including (a) remitting the 401(k) Contributions consistent with their ordinary course practice and (b) transferring the 401(k) Deductions on a pre- or postpetition basis consistent with their ordinary course practice.

H. Key Employee Retention Program.

34. Prior to the Petition Date, the Debtors offered a cash-based incentive program to certain non-insider Employees as an additional component of overall compensation for key personnel (the "KERP"). Under the KERP, the Debtors award additional compensation to Employees participating in the program, with each such Employee eligible to receive payments on a quarterly basis if still employed by the Debtors upon those dates, or if the Employee incurred a qualifying termination. To date, the Debtors have made approximately $1.09 million in total payments under the KERP. As of the Petition Date, the Debtors do not owe any amounts under the program. The Debtors anticipate approximately $1.09 million will come due in January 2019 on account of the next quarterly KERP payment. Based on the confirmation schedule the Debtors have requested that the Court approve contemporaneously herewith, the Debtors do not anticipate that any payments under the KERP will come due during the pendency of these chapter 11 cases. Out of an abundance of caution, however, and to safeguard employee morale during these chapter

11 cases, the Debtors seek the authority to honor all obligations under the KERP in the ordinary course of business during these chapter 11 cases.

Non-Employee Workforce Obligations

35. The Debtors make payments to Independent Contractors (the "Non-Employee Workforce Obligations") for the performance of certain services critical to the Debtors' operations, including, among other things, land maintenance services and operational functions related to the Debtors' oil and gas businesses. The Debtors' Employees rely on the support of Independent Contractors to complete discrete projects that help the Debtors' businesses—primarily in the oil and gas fields—and to complete discrete assignments. The Debtors believe the authority to continue paying their Independent Contractors is critical to minimize disruption of the Debtors' continued business operations.

36. The Debtors spent approximately $5.1 million on Independent Contractors in the aggregate during the twelve months preceding the Petition Date, and the Debtors owed Independent Contractors an average of $116,000 per week. As of the Petition Date, the Debtors estimate that approximately $80,000 of Non-Employee Workforce Obligations is accrued and unpaid, which, on average amounts to approximately $4,000 for each Independent Contractor.

37. The Debtors do not believe they owe any individual Independent Contractor or Temporary Worker amounts in excess of $12,850 as of the Petition Date.

38. As described above, payment of Non-Employee Workforce Obligations is critical to the survival of the Debtors' business, and the Debtors seek the authority to pay them in the ordinary course of business during the course of these chapter 11 cases.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits and Non-Employee Workforce Obligations.

A. Certain Employee Compensation and Benefits Are Entitled to Priority Treatment.

39. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Employee Compensation and Benefits owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions, including sick leave pay earned by an individual and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein only affects the timing of certain payments to the Employees and does not negatively affect recoveries for general unsecured creditors (who are proposed to be paid in full under the Plan in any event). Indeed, the Debtors submit that payment of the Employee Compensation and Benefits at this time enhances value for the benefit of all interested parties. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.").

B. Payment of Certain Employee Compensation and Benefits Is Required by Law.

40. The Debtors seek authority to pay the applicable Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors'

estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d); *see also In re Equalnet Commc'ns*, 258 B.R. at 370 (Bankr. S.D. Tex. 2000) (noting that, for tax obligations where funds are held by the debtor in trust, "the legal right to payment of such claims at any time appears irrefutable.") (citing *Matter of Al Copeland Enterprise, Inc.*, 991 F.2d 233 (5th Cir. 1993)).

41. Further, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes); *In re Chabrand*, 301 B.R. 468, 475–81 (Bankr. S.D. Tex. 2003) (same). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business.

42. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' ongoing chapter 11 process.

II. Payment of the Employee Compensation and Benefits and Non-Employee Workforce Obligations Is a Sound Exercise of the Debtors' Business Judgment.

43. Courts in the Fifth Circuit have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g.*, *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authorizing payment of certain prepetition claims pursuant to "doctrine of necessity"); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000) (business transactions critical to the survival of the business of the debtor are exceptions to the general rule of nonpayment of prepetition claims prior to plan confirmation); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983). In doing so, these courts acknowledge that several legal theories rooted in sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

44. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the "implied duty of the debtor-in-possession to 'protect and preserve the estate, including an operating business' going-concern value.'" *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497). Moreover, under section 105(a) of the Bankruptcy Code, "the Court may issue any order, process, or judgment that is necessary or

appropriate to carry out the provisions of the Bankruptcy Code." 11 U.S.C. § 105(a); *In re CoServ, L.L.C.*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor-in-possession to pay prepetition claims); *In re CEI Roofing, Inc.*, 315 B.R. at 60 (finding that "[b]ecause Congress has specifically provided that prepetition wage claims up to a certain amount per claim be elevated to priority status under § 503(1)(3)" the court's job is easier when it considers approval of such prepetition claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor's business). The above-referenced sections of the Bankruptcy Code therefore authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g.*, *In re CoServ, L.L.C.*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate.").

45. Payment of Employee Compensation and Benefits and Non-Employee Workforce Obligations is warranted under this authority and the facts of these chapter 11 cases. The majority of the Employees and Independent Contractors rely exclusively on the Employee Compensation and Benefits and Non-Employee Workforce Obligations to satisfy their daily living expenses. Consequently, Employees and Independent Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits and Non-Employee Workforce Obligations. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

46. Moreover, Employees and Independent Contractors provide the Debtors with services necessary to conduct the Debtors' business, and the Debtors believe that absent the payment of the Employee Compensation and Benefits and Non-Employee Workforce Obligations owed to the Employees and Independent Contractors, the Debtors may experience workforce turnover and instability at this critical time in these chapter 11 cases. The oil and gas industry is a highly specialized business that requires unique technical expertise. The Debtors believe that without these payments, their Workforce may become demoralized and unproductive because of the potential significant financial strain and other hardships these Employees and Independent Contractors may face. Such individuals may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' business is tied to their Workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits and Non-Employee Workforce Obligations is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their business in these chapter 11 cases.

47. Indeed, bankruptcy courts in this district have recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested herein. *See, e.g.*, *In re EXCO Resources, Inc.*, No. 18-30155 (MI) (Bankr. S.D. Tex. Feb. 22, 2018) (authorizing the debtors to continue the employee compensation and benefits programs on a postpetition basis); *In re GenOn Energy, Inc.*, No. 17-33695 (DJR) (Bankr. S.D. Tex. June 15, 2017) (same); *In re Seadrill Ltd.*, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 10, 2017) (same);

In re SandRidge Energy, Inc., No. 16-32488 (DRJ) (Bankr. S.D. Tex. June 30, 2016) (same); *In re Linn Energy, LLC*, No. 16-60040 (DRJ) (Bankr. S.D. Tex. May 13, 2016) (same).[4] Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Compensation and Benefits and Non-Employee Workforce Obligations in the ordinary course of business and consistent with past practice on a final basis from the outset of these cases.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Program Is Appropriate in this Case.

48. Section 362(a)(1) of the Bankruptcy Code operates to stay:

> [T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." 11 U.S.C. § 362(d)(1).

49. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. Cause exists to modify the automatic stay because staying the Employee's workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a significant disruption in the Debtors' business to the detriment of all stakeholders. In addition, as noted above, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors

[4] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Debtors' Workers' Compensation Program to proceed.

Emergency Consideration

50. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." As set forth in this motion, the Debtors believe an orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 25 days of these chapter 11 cases could disrupt the Debtors' operations as this critical juncture and potentially imperil the Debtors' restructuring. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this motion on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

51. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

52. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any

other party in interest's rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay prepetition claims; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

Notice

53. The Debtors will provide notice of this motion to: (a) the Office of the U.S. Trustee for the Southern District of Texas; (b) the holders of the 20 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to Ares Management LLC and its affiliated funds; (d) the United States Attorney's Office for the Southern District of Texas; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (h) the state attorneys general for states in which the Debtors conduct business; (i) the Employees; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 31, 2018

/s/ Matthew D. Cavenaugh

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Certificate of Service

I certify that on October 31, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavenaugh
Matthew D. Cavenaugh

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
GASTAR EXPLORATION INC., *et al.*,[1]	§	Case No. 18-36057 (MI)
Debtors.	§	(Jointly Administered)
	§	**Re: Docket No. __**

ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) authorizing the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gastar Exploration, Inc. (1640), and Northwest Property Ventures LLC (8685). The location of the Debtors' service address is: 1331 Lamar Street, Suite 650, Houston, Texas 77010.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.

2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits, including those paid through and provided by Insperity, and the Non-Employee Workforce Obligations and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the Debtors' agreements with Insperity. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Order should be construed as authorizing any payments on account of the Employee Compensation and Benefits and the Non-Employee Workforce Obligations that are outside the ordinary course of business without prior Court approval.

3. Notwithstanding the foregoing, the Debtors are authorized, but not directed, in their discretion, to pay and honor all prepetition amounts related to the Employee Compensation and Benefits and the Non-Employee Workforce Obligations.

4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall

prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program provided through Insperity, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

6. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay prepetition claims; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, including but not limited to any employment agreement; or (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Employee Compensation and Benefits programs and Non-Employee Workforce Obligations.

9. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder shall be subject to the terms, conditions, requirements and budgets imposed on the Debtors under the Debtors' postpetition financing documents (the "DIP Documents") and any order governing the Debtors' use of cash collateral and entry into the DIP Documents.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to renew or enter into replacement agreements for the Insperity CSA on the same or better terms as existed as of the Petition Date and take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2018
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE