

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS**

<b>In re:</b>	)	<b>In Proceedings Under Chapter 11</b>
	)	
<b>GATEWAY ETHANOL, L.L.C.</b>	)	<b>Case No. 08-22579-DLS</b>
	)	
<b>Debtor.</b>	)	

**MOTION FOR ORDER AUTHORIZING RETENTION  
OF PROFESSIONALS UTILIZED BY DEBTOR  
IN THE ORDINARY COURSE OF BUSINESS**

**COME NOW** Gateway Ethanol, L.L.C., Debtor and Debtor in Possession (“Debtor”), and submits its Motion for Order Authorizing Retention of Professionals Utilized by Debtor in the Ordinary Course of Business (the “Motion”). In support of this Motion, Debtor relies on the Affidavit of Frederick S. Loomis in Support of First Day Applications and Motions (the “Loomis Affidavit”). In further support of this Motion, Debtor respectfully represents as follows:

**INTRODUCTION**

1. On even date with the filing of this Motion (the “Petition Date”), Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”). Debtor continues to operate its business and manage its properties as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed, and no official committee of creditors or equity interest holders has yet been established.

3. Debtor has filed this Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications (the “Hearing Motion”). Included within the Hearing Motion is this Motion.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND**

5. The background of this case may be found in the Loomis Affidavit.

#### **RELIEF REQUESTED**

6. Debtor customarily retains the services of certain professional persons (the “Ordinary Course Professionals”) to represent Debtor in matters arising in the ordinary course of business. A list of the current Ordinary Course Professionals is attached hereto as **Exhibit A**. Others may arise from time to time.

7. By this Motion, Debtor seeks authorization (i) to retain the Ordinary Course Professionals pursuant to Sections 105(a) and 327(e) of the Bankruptcy Code without the necessity of a formal retention application approved by this Court and (ii) to compensate the Ordinary Course Professionals for post-petition services rendered, subject to certain limits set forth below, without the necessity of court approval.

#### **BASIS FOR RELIEF**

8. Prior to filing its Chapter 11 petition, Debtor employed, from time to time, various accountants and attorneys in the ordinary course of its business to render accounting and audit services, and to provide legal advice and assistance with respect to litigation matters.

9. Debtor desires to continue to employ and retain the Ordinary Course Professionals to render services to its estate similar to those rendered prior to the commencement

of this Chapter 11 case. However, it will be impractical and inefficient for Debtor to submit individual applications and proposed retention orders to the Court for each such Ordinary Course Professional.

10. Therefore, Debtor requests that it be permitted to employ and retain the Ordinary Course Professionals, in respect of services actually rendered on terms substantially similar to those in effect prior to the Petition Date, subject to the terms described below.

**PAYMENT OF FEES AND EXPENSES**

11. Debtor proposes that it be permitted to pay, without formal application to the Court by any Ordinary Course Professional, 100% of the interim fees and disbursements to each of the Ordinary Course Professionals upon the submission to Debtor of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, provided that such interim fees and disbursements do not exceed a total of \$5,000 per month per Ordinary Course Professional, and no more than \$50,000 per Ordinary Course Professional for the entire case. Debtor proposes that all payments of compensation and reimbursement of expenses to any Ordinary Course Professional would become subject to approval upon application to the Court for an allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code if payments exceed \$5,000 per month or \$50,000 for the entire proceeding for that Ordinary Course Professional.

12. Moreover, Debtor proposes that Ordinary Course Professionals that are attorneys will be required to file verified statements under Federal Rule of Bankruptcy Procedure 2014.

13. Debtor further proposes that approximately every 120 days, or such other period as the Court shall order, Debtor file a statement with the Court and serve such statement on the DIP Lender, the United States Trustee and any official committees appointed in this case

that includes the following information for each Ordinary Course Professional: (a) the name of such Ordinary Course Professional, (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the 120 days, and (c) a general description of the services rendered by each Ordinary Course Professional. Those parties will have 10 days after service to request further information from Debtor and 25 days after service to file an objection to any Ordinary Course Professional's fees. If no such objection is filed, the fees will be deemed finally approved without need for any further action by Debtor other than submission to the Court of a standard order providing for such final approval.

14. In the event any Ordinary Course Professional exceeds the \$5,000 per month or \$50,000 case limitations provided for in this Motion, Debtor proposes that solely to the extent of such excess, such Ordinary Course Professional be governed by the fee application guidelines established by this Court in the Standing Order addressing professionals' fee applications entered in these proceedings.

15. Debtor further proposes that the Standing Order only apply to said Ordinary Course Professional from the time of the excess and not act retroactively to revisit any amounts previously paid to that Ordinary Course Professional under the process described in this Motion.

#### **APPLICABLE AUTHORITY**

16. Because the Ordinary Course Professionals will not be involved in the administration of this Chapter 11 case, Debtor does not believe that the Ordinary Course Professionals are "professionals" under Section 327 of the Bankruptcy Code whose retention must be approved by the Court. See, e.g., In re Riker Indus., Inc., 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (Section 327 approval unnecessary for fees of management and consulting firm

that performed only “routine administrative functions” and whose “services were not central to [the] bankruptcy case”); In re D’Lites of America, Inc., 108 B.R. 352, 355 (Bankr. N.D. Ga. 1989) (Section 327 approval unnecessary for “one who provides services to debtor that are necessary regardless of whether petition was filed”).

17. Nevertheless, out of an abundance of caution, Debtor seeks the relief requested in this Motion to avoid any later controversy regarding Debtor’s employment and payment of the Ordinary Course Professionals during the pendency of this Chapter 11 case. Debtor shall seek specific Court authority under Section 327 to employ any other professionals involved in the actual administration of this Chapter 11 case.

18. Debtor submits that the retention of the Ordinary Course Professionals and the payment of interim compensation and reimbursement of expenses to them on the basis set forth herein is in the best interest of its estate and other parties in interest. While generally the Ordinary Course Professionals with whom Debtor has previously dealt wish to represent Debtor on an ongoing basis, many might be unwilling to do so if they are unable to be paid on a regular basis without the need for a cumbersome, formal application process. Moreover, if the expertise and background knowledge of certain of these Ordinary Course Professionals with respect to the particular areas and matters for which they are responsible prior to the Petition Date is lost, the estate undoubtedly will incur additional and unnecessary expenses as other professionals without such background and expertise will have to be retained. It is therefore in the best interest of the Debtor’s estate to avoid any disruption in the professional services required in the day-to-day operation of the Business.

**WHEREFORE**, Debtor respectfully requests that this Court enter an order (i) granting the relief requested herein; and (ii) granting such other and further relief as is just and proper.

Respectfully submitted,

BRYAN CAVE LLP

By:     /s/ Laurence M. Frazen      
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Attorneys for Debtor and Debtor in Possession

**EXHIBIT A**

**(Address List of Ordinary Course of Business Professionals)**

<b>Name and Address:</b>	<b>Type of Services Rendered:</b>
Grant Thornton 8300 Thorn Drive, #300 Suite 300 Wichita, KS 67226	Accounting
Morison Cogon 150 Monument, Suite 500 Bala Cynwyd, PA 19004	Audit
Stull Law Office 1320 E. 1 <sup>st</sup> Street Pratt, KS 67124	Legal services