

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

COMES NOW Gateway Ethanol, L.L.C., as Debtor and Debtor in Possession (“Debtor”), and submits its Motion to Approve Standing Order No. 2 Establishing Procedures for Interim Compensation and Establishing Fee and Expense Guidelines (the “Motion”). In support of this Motion, the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. On even date herewith (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. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
4. Venue of this case and motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
5. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

### **BACKGROUND OF DEBTOR**

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

### **RETENTION OF PROFESSIONALS**

7. On even date herewith Debtor has filed applications for approval from the Court to employ Bryan Cave LLP (“Bryan Cave”) as bankruptcy counsel for the Debtor, and to employ the firm of William Blair & Company (“William Blair”) as investment banker and financial consultant to the Debtor. No orders have yet been entered on either of the applications. In addition, the Debtor anticipates 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 the Debtor or the Committee in these proceedings are hereinafter collectively referred to as the “Professionals.”

8. 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**

9. The Debtor asserts that in chapter 11 proceedings, the Court and all Professionals in the case 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 proceedings. Given the amount of fees and expenses anticipated at certain times during this case, waiting 120 days to file interim fee applications would be inequitable and burdensome to such Professionals.

## MONTHLY COMPENSATION

10. The Debtor requests 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 the case.

11. Specifically, the Debtor proposes 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 Ninth 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 twenty (20) days after service of a Monthly Fee Notice to object (the “Objection Deadline”). Upon the expiration of the Objection Deadline, each Professional shall file a certificate of no objection or a certificate of partial objection with the Court, whichever is applicable, after which the Debtor is 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 payments of fees and expenses will not constitute an interim or final approval of the Professional’s fees and expenses.

#### **INTERIM FEE APPLICATION**

12. Beginning with the period ending on December 31, 2008, 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 case, through and including December 31, 2008. 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.

(a) 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 case is assigned.

(b) 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.

(c) 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.

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

13. The Debtor further requests that the Court limit the service of Hearing Notices to consider Interim Fee Application Requests and final fee applications (collectively, the

“Applications”) to: (a) the Notice Parties; and (b) 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.

#### **COMMITTEE COMPENSATION**

14. The Debtor further requests that each member of the Committee be permitted to submit statements of expenses and supporting vouchers to counsel for the Committee, who will collect and submit such requests for reimbursement in accordance with the foregoing Compensation Procedures.

15. The Debtor 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.

#### **APPLICABLE AUTHORITY**

16. 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.

17. 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).

18. Similar procedures for compensating and reimbursing court-approved professionals have been established in other Chapter 11 cases in the Ninth Circuit. Such procedures are needed to avoid having professionals fund the reorganization case. 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. The Debtor submits that the procedures sought herein are appropriate, considering the above factors.

**WHEREFORE**, the Debtor respectfully requests 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.

Dated:

Respectfully submitted,

BRYAN CAVE LLP

By: /s/ Laurence M. Frazen

Laurence M. Frazen                      KS Fed. #70114

Tammee E. McVey                      KS #14972

3500 One Kansas City Place

1200 Main Street

Kansas City, Missouri 64105

Telephone: (816) 374-3200

Facsimile: (816) 374-3300

Attorneys for Debtor and Debtor in Possession

**EXHIBIT A**  
**NOTICE PARTIES**

Gateway Ethanol, LLC  
10333 NE 30th Street  
Pratt, KS 67124

Laurence M. Frazen  
Bryan Cave LLP  
1200 Main Street, Suite 3500  
Kansas City, MO 64015  
*Counsel to Debtor*

Office of the United States Trustee  
301 N. Main, Ste. 1150  
Wichita, KS 67202

Secured Lenders:

Dougherty Funding LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN 55402-4115

Lurgi PSI, Inc.  
1790 Kirby Pkwy.  
Memphis, TN 38138

Committee Counsel (yet to be named) or Creditors holding 20 largest unsecured claims if no committee is formed

All parties requesting notice