UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO

In re:	:	Chapter 11 – Jointly Administered
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TRIAD RESOURCES, INC., *et al*	:	Case No. 08-62733
	:	
	:	
Debtors.	:	Judge C. Kathryn Preston

OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION TO AMEND FINAL ORDER AUTHORIZING SECURED POSTPETITION FINANCING ON A SUPERPRIORITY BASIS AND FOR RELATED RELIEF

NOW COMES the duly appointed Official Committee of Unsecured Creditors (the "Committee") in this case, by the undersigned counsel, and hereby objects to the Motion to Amend Final Order Authorizing Secured Postpetition Financing on a Superpriority Basis and for Related Relief (the "Motion") [Dkt. No. 245]. In support of this Objection, the Committee states as follows:

I. INTRODUCTION

1. From the moment these cases were filed on December 31, 2008, (the "Petition Date") for all practical purposes they have been directed by Capital One, National Association, Allied Irish Banks, P.L.C. and Citibank, N.A. (collectively, the "Senior Lenders"). The Senior Lenders want to force a quick sale of substantially all of Debtors' assets. Because Senior Lenders control the purse strings, Debtors have little if any leverage to challenge the Senior Lenders' agenda for this case.

2. The Committee has the fiduciary responsibility to protect the interests of unsecured creditors. To that end, the Committee has continuously questioned the wisdom and necessity of

forcing a sale of Debtors' assets given the condition of the oil and gas markets. Nothing that has occurred in this case to date, or in the market place, remotely suggests that the Committee should change its position. In fact, the ongoing costs of this Chapter 11 proceeding have exacerbated an already difficult situation and has put unsecured creditors in a worse position than existed at the Petition Date.

3. Not surprisingly, Senior Lenders are willing to fund the ongoing losses being suffered by Debtors' estate. That is because if forced to liquidate their collateral (including approximately 2,500 wells located in 5 states) under state law, the costs would be significant. It is to the Senior Lenders' advantage to take advantage of the asset disposition procedures contained in the Bankruptcy Code. There would be nothing wrong with this strategy if creditors other than Senior Lenders were benefited and if it were not being implemented on the backs of unsecured creditors.

4. As noted in the Committee's previous filings and in statements made before the Court, the Committee has identified assets that, to the best of the Committee's knowledge, were not subject to the liens of the Senior Lenders on the Petition Date. Debtors are operating at a loss. Although the losses are being funded by the DIP Financing provided by Senior Lenders, the actual burden of the losses are being borne by unsecured creditors. The longer this case pends the greater the erosion of asset value which could fund a distribution to unsecured creditors. The budget projections filed by Debtors indicate that Debtors' estate will continue to lose significant money, thus diminishing the value of Debtors' estate. Accordingly, the Committee in addition to filing this Objection, will file a motion seeking the conversion or dismissal of the Triad related cases.

5. To date, no meaningful discussions have occurred between the Committee and Senior Lenders regarding a potential recovery for the benefit of unsecured creditors. While nothing in the Bankruptcy Code mandates that Senior Lenders be concerned much less protect the interests of unsecured creditors, the Senior Lender's use of the Bankruptcy Court as their personal auctioneer to liquidate their collateral should not be countenanced when there is no prospect of a reorganization or recovery by other creditors.

II. THE DIP FINANCING

A. Additional DIP Financing is Not Currently Needed

6. The Court has previously approved DIP financing totaling $2,800,000. The most recent approved financing was interim financing in the amount of $1,500,000, intended to fund Debtors' operations through April 15, 2009. The Committee filed its Conditional Objection of Official Committee of Unsecured Creditors to Emergency Motion to Amend Final Order Authorizing Secured Postpetition Financing on a Superpriority Basis and for Related Relief (the "Conditional Objection") to the interim financing.[1] The Motion seeks to increase the authorized DIP financing by $2,200,000, for a total authorized availability of $5,000,000.

7. Attached as Exhibit B to the Motion is the budget submitted to support the additional DIP Financing (the "Budget"). The Budget covers the period from March 30, 2009 through June 29, 2009 and reflects the projected DIP loan balances outstanding for each week during the Budget period. For the week beginning April 13, 2009 through the week beginning May 25, 2009, the outstanding DIP loan balance is projected to be between $2,400,000 and $2,700,000. Accordingly, the current authorized DIP financing--$2,800,000, is sufficient to meet Debtors' projected operating needs.

[1] The Committee incorporates herein the statements contained in the Conditional Objection.

8. The proposed final order authorizing the additional financing makes a condition of default Debtors' failure to obtain Court approval of sale procedures by April 29, Court approval of a sale of substantially all of Debtors' assets by May 20 and the consummation of such sale by May 29. If Debtors' meet these deadlines, the Court and parties will know what assets have been approved for sale and at what price before there is the need for additional DIP financing beyond $2,800,000. The Committee does not believe the sale price will exceed Debtors' obligations to the Senior Lenders. At the very least, the results of the sale process will impact the amount of DIP financing Debtors require. Moreover, if as the Committee believes, only the Senior Lenders will benefit from the sale brought before this Court for approval, the grant of additional liens on unencumbered assets would clearly be inappropriate.

9. Because Debtors have not demonstrated the current need for additional DIP financing, the Court should deny Debtors' request for additional DIP financing. Alternatively, given that the details of the sale of Debtors' assets may be known prior to Debtors need for additional DIP financing, the Court should delay consideration of Debtors' request. Finally, the Committee believes that whether any proposed sale benefits creditors other than the Senior Lenders should impact whether additional financing is approved or liens upon unencumbered assets are granted.

B. Senior Lenders Should Not Be Granted Further Liens on Unencumbered Assets

10. If the Court authorizes additional DIP financing, Senior Lenders should not be granted additional liens on unencumbered assets. Debtors' have taken the position that the claims of Senior Lenders are substantially oversecured. At the April 2, 2009 hearing on the latest request for interim DIP financing, a representative of Debtors' financial advisor testified that the reserve report recently completed by Cawley Gillespie confirms that the claims of Senior Lenders are over secured. In fact, since the market value of oil and gas have both increased

from their levels on the Petition Date, the value of Senior Lenders' collateral has increased since the Petition Date even accounting for the additional production that has occurred. Additional liens are not necessary to preserve the going concern value of Debtors' estate.

11. That Senior Lenders take the position that they are over secured is evident when reviewing the Budget. During the Budget period, Debtors are scheduled to pay Senior Lenders $510,000 to reimburse Senior Lenders' attorneys' fees. These payments are in addition to the $911,596 which Debtors paid Senior Lenders in the weeks prior to the beginning of the current Budget period.[2]

12. The Senior Lenders have determined that an auction sale under §363 is the best way to liquidate their collateral. Having made that decision, they have committed to fund Debtors' operations through the sale date. In fact, Senior Lenders required that Debtors obtain Court approval to retain Cawley Gillespie, RBC Capital Markets Corporation and Barrier Advisors, Inc. to facilitate the sale process they have demanded. Further, Senior Lenders have mandated that certain sale related deadlines be met leading to the ultimate sale by no later than May 29, 2009. If Debtors fail to meet any of these deadlines, Senior Lenders can terminate financing. Having achieved the very sale process they have insisted upon, Senior Lenders now threaten not to provide further DIP financing unless granted liens on assets not encumbered on the Petition Date. In the context of this case, the threats of Senior Lenders are irrational and not to be believed, particularly when $2,800,000 of the DIP financing has been secured by additional assets.[3]

[2] As will be noted in the Committee's motion to dismiss or convert, in the Triad cases, on a combined basis, Debtors are operating a loss even without including restructuring fees.

[3] In discussions with the Committee, Senior Lenders have suggested that without knowing for certain the value of unencumbered assets, it is difficult to discuss a possible carve out for the benefit of unsecured creditors. However, Senior Lenders have also suggested to the Court that approval of the

13. Should the Court determine that additional DIP financing is appropriate, any lien granted to Senior Lenders should be limited to prepetition collateral. Senior Lenders hold the existing liens on such collateral and obviously can agree to Debtors granting a priming or junior lien on such collateral. Likewise, given the Senior Lenders knowledge of the value of the prepetition collateral as established by the Cawley Gillespie reserve report, they are aware that sufficient value exists in the encumbered assets to secure the additional requested DIP financing.

C. The Court Has the Discretion to Deny the Grant of Additional Liens

14. In order to obtain credit on a secured basis under §364(c), a debtor in possession bears the burden of proving: "(1) the debtor cannot obtain credit unencumbered by super-priority status [or by a junior lien]; (2) the credit transaction is necessary to preserve assets of the estate; and (3) the terms of the agreement are fair, reasonable, and adequate. *In re Barbara K. Enters., Inc.*, 2008 WL 2439649, *8 (Bankr. S.D.N.Y. 2008) (quoting *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987).

15. Even if Debtors meet the standard to obtain further credit on a secured basis, the Court has the discretion to limit the lien securing such credit. If the Court finds that Senior Lenders are secured in assets having sufficient value, the Court is not required to acquiesce in the request that Senior Lenders receive a lien on all assets of Debtors.

WHEREFORE, the Committee respectfully requests that Debtors request for additional DIP financing be denied unless Debtors demonstrate the current need for such financing. In the event such financing is approved, the Committee requests that any liens granted to Senior Lenders be limited to collateral subject to the liens of Senior Lenders as of the Petition Date.

DIP financing by their internal credit committees could not be achieved unless the unencumbered assets are liened. The only conclusion to be reached by these two positions is that the DIP financing has been approved without reference to the value of the unencumbered assets.

Dated: April 13, 2009

Respectfully submitted,

/s/Reginald W. Jackson_________________

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the preceding Objection of Official Committee of Unsecured Creditors to Emergency Motion to Amend Final Order Authorizing Postpetition Financing on a Superpriority Basis and for Related Relief was electronically filed through the Court's ECF system, served by hand delivery upon Daniel A. DeMarco, Hahn Loeser & Parks LLP, 65 East State Street, Suite 1400, Columbus, Ohio; served by hand delivery upon Larry Hackett, U.S. Trustee, Region 9, 170 N. High Street, Suite 200, Columbus, Ohio 43215; served by electronic mail service upon Daniel DeMarco at dademarco@hahnlaw.com, William Wallender at bwallander@velaw.com and Clayton T. Hufft at chufft@velaw.com; and served by first class U.S. Mail, postage prepaid upon the persons listed on the attached service lists this 13th day of April 2009.

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