

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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In re: : Chapter 11
: :
: : Case No. 08-62733
TRIAD RESOURCES, INC., :
: :
: : Judge C. Kathryn Preston
Debtor. :
-----x

In re: : Chapter 11
: :
: : Case No. 08-62744
TRIAD ENERGY CORPORATION, :
: :
: : Judge C. Kathryn Preston
Debtor. :
-----x

In re: : Chapter 11
: :
: : Case No. 08-62747
TRITEX ENERGY, L.L.C., :
: :
: : Judge C. Kathryn Preston
Debtor. :
-----x

In re: : Chapter 11
: :
: : Case No. 08-62749
TRITEX RESOURCES, L.L.C., :
: :
: : Judge C. Kathryn Preston
Debtor. :
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In re: : Chapter 11
: :
: : Case No. 08-62757
TRIAD OIL & GAS CO., LTD., :
: :
: : Judge C. Kathryn Preston
Debtor. :
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In re: : Chapter 11
: :
: : Case No. 08-62759
ALPHA DRILLING, LTD., :
: :
: : Judge C. Kathryn Preston
Debtor. :
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AN
ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Triad Resources, Inc. (“TRI”), Triad Energy Corporation (“TEC”), TriTex Energy, L.L.C. (“TEL”), TriTex Resources, L.L.C. (“TRL”), Triad Oil & Gas Co., Ltd. (“TOG”) and Alpha Drilling, Ltd. (“ADL”) (each a “Debtor” and debtor-in-possession and collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned Chapter 11 cases (the “Cases”), by and through their undersigned proposed counsel, hereby move (the “Motion”), pursuant to section 105(a) and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order establishing procedures for monthly compensation and reimbursement of expenses of professionals and committee members. In support of the Motion, the Debtors refer to and rely upon the Affidavit of James R. Bryden in Support of Chapter 11 Petitions and First-Day Motions (the “Bryden Affidavit”), filed concurrently herewith and respectfully states as follows:

BACKGROUND

1. On the date hereof (the “Petition Date”), Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors are continuing in possession of their properties and assets and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Cases.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Detailed facts regarding Debtors, the reasons for the commencement of these cases, and additional support for this Motion are set forth in the Bryden Affidavit, filed contemporaneously herewith.

5. The Debtors have filed applications to (a) retain Hahn Loeser & Parks LLP (“Hahn Loeser”) as bankruptcy attorneys, (b) BMC Group, Inc. (“BMC”) as Notice and Claims Agent and (c) RSM McGladrey (“RSM”) as financial advisor (each a “Professional” and collectively, the “Professionals”). As these Cases progress, the Debtors may petition this Court for the retention of additional Professionals. Likewise, a statutory committee (the “Committee”) may possibly be appointed in this case, and it is anticipated that any Committee may retain counsel to assist it in fulfilling its obligations in these cases.

6. To the best of the Debtors’ knowledge and based upon the Bankruptcy Rule 2014 affidavits filed by each Professional:

- (a) Each Professional is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code;
- (b) None of the Professionals hold or represent an interest adverse to the estates that would impair that Professional’s ability to objectively perform professional services for the Debtors, in accordance with section 327 of the Bankruptcy Code;
- (c) Each Professional’s connection with the creditors, any other party in interest, or their respective attorneys are disclosed in the respective Rule 2014 affidavit;
- (d) Each Professional’s partners and professionals working on this matter are not relatives of the United States Trustee of the Southern District of Ohio or any known employee in the office thereof, or any United States Bankruptcy Judge for the Southern District of Ohio;
- (e) None of the Professionals have provided or will provide professional services to any of the creditors, other parties in interest, or their attorneys with regard to any matter related to the Cases; and
- (f) The disclosures made by each Professional in its respective Rule 2014 affidavit regarding connections with the Debtors, their creditors, any other parties in interest in this case, its respective attorneys and accountants, the United States

Trustee or any person employed in the office of the United States Trustee satisfies the requirements of Bankruptcy Rule 2014.

7. Pursuant to section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement of expenses every one-hundred twenty (120) days, or more often if the Court permits.

RELIEF REQUESTED

8. The Debtors request the establishment of procedures for the compensation and reimbursement of court-approved professionals on a monthly basis similar to those established in other Chapter 11 cases in this District. *See, e.g., In re Techneglas, Inc.*, No. 04-63788 (Bankr. S.D. Ohio Sept. 13, 2004); *In re National Century Financial Enterprises, Inc.*, No. 02-65235 (Bankr. S.D. Ohio Nov. 28, 2001); *In re Cooker Restaurant Corp.*, No. 01-56156 (Bankr. S.D. Ohio July 31, 2001); *In re Federated Department Stores, Inc.*, No. 1-90-00130 (Bankr. S.D. Ohio Mar. 28, 1990). Such an order will, among other things, permit the Court and parties in interest to more effectively monitor the professional fees incurred in these Cases.

9. In accordance with Local Bankruptcy Rule 2016-1(F) and the U.S. Trustee's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330 (Appendix A to 28 C.F.R. §58) (the "Guidelines"), the Debtors request issuance of an order establishing procedures for monthly compensation and reimbursement of expenses of professionals, and pursuant to sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2014.

10. Briefly stated, the requested procedures would require each Professional to submit to the Debtors, the United States Trustee, any secured lenders, and the Committee (once appointed) a detailed statement of services rendered and expenses incurred by the Professional for the prior month. If there is no timely objection, the Debtors would pay eighty percent (80%)

of the amount of fees incurred for the month, with a twenty percent (20%) holdback, and one hundred percent (100%) of expenses for the month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process, approximately every one-hundred and twenty (120) days.

11. Specifically, the Debtors propose that, any Professional specifically retained pursuant to an order of the Court, other than in the ordinary course, in these cases be permitted to seek interim payment of compensation and reimbursement of expenses in accordance with the following procedures (collectively, the "Reimbursement Procedures"):

- (a) On or before the 20th day of each month following the month for which compensation is sought (a "Request Date"), each Professional seeking interim compensation must submit an itemized monthly fee and expense statement (a "Fee Statement") to the following parties: (i) the Debtors, Triad Resources, Inc., 27724 Route 7, Marietta, Ohio 45750, (Attention: James R. Bryden); (ii) counsel to the Debtors, Hahn Loeser & Parks LLP, 200 Public Square, Suite 2800, Cleveland, Ohio 44114 (Attention: Daniel A. DeMarco); (iii) counsel to any Committees appointed in the Debtors' chapter 11 cases; (iv) the United States Trustee for the Southern District of Ohio; and (v) counsel for Capital One, as Agent for the Secured Lenders, (collectively, the "Notice Parties").
- (b) The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding bankruptcy judge's chambers because this Motion is not intended to alter the fee application requirements outlined in sections 330 and 331 of the Bankruptcy Code and because professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules;
- (c) For those Professionals who bill based on time, each monthly fee statement must contain a list of the individuals and their respective titles (*e.g.*, attorney, accountant or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (no Professional should seek reimbursement of an expense which would otherwise not be allowed pursuant to the Guidelines), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour;
- (d) Each person receiving a statement may review it and, in the event that he or she has an objection to the compensation or reimbursement sought in a particular statement, he or she shall, by no later than the thirty-fifth (35th) day following the

end of the month for which compensation is sought, serve upon the Professional whose statement is objected to, and the Notice Parties, a written "Notice of Objection to Fee Statement" setting forth the nature of the objection and the amount of fees or expenses at issue;

- (e) At the expiration of the thirty-five (35) day period, the Debtors shall promptly pay eighty percent (80%) of the undisputed fees and one hundred percent (100%) of the undisputed expenses identified in each monthly statement to which no objection has been served in accordance with paragraph (d);
- (f) If the Debtors receive an objection to a particular fee statement, they shall withhold payment on that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and expenses in the percentages set forth in paragraph (e);
- (g) Similarly, if the parties to an objection are able to resolve their dispute following the service of Notice of Objection to Fee Statement and if the party whose statement was objected to serves the Notice Parties a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the fee statement which is no longer subject to an objection;
- (h) All objections that are not resolved by the parties, shall be preserved and presented to the Court at the next interim or final fee application hearing to be held by the Court (*see* sub-paragraph (j) below);
- (i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;
- (j) Approximately every 120 days, but no more than every 150 days, each of the Professionals shall serve and file with the Court, in accordance with the Guidelines, an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;
- (k) Any Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Motion when due shall (i) be ineligible to receive further monthly payments of fees or expenses as provided herein until further order of the Court and (ii) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;

- (l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;
- (m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein, shall have any effect on the Court's interim or final allowance of compensation and reimbursement of any Professional; and
- (n) The attorneys for the Committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of Professionals, collect and submit statements of expenses; provided, however, that such Committee attorneys ensure that these reimbursement requests comply with the Guidelines.

12. The Debtors further request that each member of any Committee be permitted to obtain reimbursement for reasonable out-of-pocket expenses incurred in connection with committee membership as follows:

- (a) Each Committee member will submit statements of expenses and supporting vouchers and receipts (the "Expense Statements") to Committee counsel, who will collect and based thereon submit a comprehensive request for reimbursement to the Debtors and the U.S. Trustee and any secured pre or post petition lenders. Committee counsel will not be permitted to submit a request for reimbursement more frequently than once every thirty (30) days.
- (b) At the expiration of the fifteen (15) day objection period after receipt of a request from Committee counsel, the Debtors shall promptly pay for expenses, except with respect to any expense to which the Debtors object.
- (c) In the event of an objection, the Debtors, the Committee member to whose expense objection is made, Committee counsel, and any other objecting party shall attempt to resolve any such objection, but in the absence of a resolution, the Debtors shall issue a reimbursement check with respect to any expense subject to objection only pursuant to an order of the Court obtained by the applicable Committee member upon motion on notice to the Debtors and their counsel, the U.S. Trustee and any pre and postpetition secured lenders.
- (d) Committee member expenses need not be approved pursuant to any interim or final application process, unless necessary to resolve any pending objection to a reimbursement request.
- (e) Notwithstanding the failure to object to any reimbursement request, and notwithstanding payment pursuant to any reimbursement request, the Debtors and

other parties in interest shall have the right, at any time during the Cases, upon motion and following notice and a hearing, to seek disgorgement of any amounts paid to any Committee member.

13. The procedure suggested herein will enable all parties to closely monitor the costs of administration of these Cases, and will enable the Debtors to maintain an appropriate level of cash flow availability.

14. The Debtors further request that the Court limit the notice of hearings to consider interim applications to the following parties: (a) the Office of the United States Trustee, (b) Capital One National Association, as Administrative Agent for the Secured Lenders, (c) the Debtors' consolidated thirty (30) largest unsecured creditors, (d) WesBanco Bank, Peoples Bank, CNH Capital, Caterpillar Financial, Chrysler Financial and Ford Motor Credit Company and (e) all parties in interest who properly filed a notice of appearance in accordance with this Court's Case Management and Procedures Order.

15. Section 331 of the Bankruptcy Code provides, in relevant part, 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 or 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.

16. Thus, section 331 of the Bankruptcy Code, which generally permits professionals to file fee applications every 120 days expressly contemplates that professionals may be compensated more frequently "if the court permits." The reality is that "when counsel must wait an extended period for payment, counsel is essentially compelled to finance the reorganization. This result is improper and may discourage qualified practitioners from participating in bankruptcy cases; a result that is clearly contrary to Congressional intent." *In re Knudsen Corp.*,

84 B.R. 668, 672 (9th Cir. B.A.P. 1988) (note omitted). Instead, “Congress relieved retained professionals of the burden of financing lengthy bankruptcy proceedings by permitting the professionals to submit interim requests for compensation.” *In re Child World*, 185 B.R. 14, 17 (Bankr. S.D.N.Y. 1995) (internal marks omitted).

17. The Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules . . .

11 U.S.C. §105(a).

18. As noted above, procedures for the payment of professional compensation and disbursements have been adopted in other Chapter 11 cases in this and other circuits and this District. In fact, Local Bankruptcy Rule 2016-1(F) specifically contemplates monthly compensation and reimbursement of expenses. Among the relevant factors considered in connection with such procedures are “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 providing services necessary to achieve a successful reorganization of the debtors.” *In re Int’l Horizons, Inc.*, 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981). The Debtors submit that the procedures sought herein are appropriate considering the above factors, and comply with the Local Bankruptcy Rules.

NOTICE

19. Notice of this Motion has been given to (a) the Office of the United States Trustee, (b) Capital One National Association, as Administrative Agent for the Secured Lenders, (c) the Debtors’ consolidated thirty (30) largest unsecured creditors, (d) WesBanco Bank,

Peoples Bank, CNH Capital, Caterpillar Financial, Chrysler Financial and Ford Motor Credit Company and (e) all parties in interest who properly filed a notice of appearance in accordance with this Court's Case Management and Procedures Order. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: December 31, 2008
Cleveland, Ohio

Respectfully submitted by:

/s/ Rocco I. Debitetto

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