

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

KNIGHT ENERGY HOLDINGS, LLC, *ET AL.*¹

DEBTORS

CASE NO. 17-51014

(JOINT ADMINISTRATION REQUESTED)

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

**MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING DEBTORS TO PAY OR HONOR
PREPETITION OBLIGATIONS TO CRITICAL VENDORS**

Knight Energy Holdings, LLC; Knight Oil Tools, LLC; Knight Manufacturing, LLC; KDCC, LLC, f/k/a Knight Well Services, LLC; Tri-Drill, LLC; Advanced Safety & Training Management, LLC; Knight Security, LLC; Knight Information Systems, LLC; El Caballero Ranch, Inc.; Rayne Properties, LLC; Knight Aviation, LLC; Knight Research & Development, LLC; Knight Research & Development, LLC; Knight Family Enterprises, LLC; HMC Leasing, LLC; and HMC Investments, LLC (collectively, the “Debtors”), as debtors-in-possession, file this *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay or Honor Prepetition Obligations to Critical Vendors* (the “Motion”), and in support respectfully submit the following:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Knight Energy Holdings, LLC (1930) (Case No. 17-51014); Knight Oil Tools, LLC (2667) (Case No. 17-51015); Knight Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knight Well Services, LLC (4156) (Case No. 17-51017); Tri-Drill, LLC (4957) (Case No. 17-51018); Advanced Safety & Training Management, LLC, (0510) (Case No. 17-51019); Knight Security, LLC (0923) (Case No. 17-51020); Knight Information Systems, LLC (0000) (Case No. 17-51021); El Caballero Ranch, Inc. (7345) (Case No. 17-51022); Rayne Properties, LLC (0000) (Case No. 17-51023); Knight Aviation, LLC (3329) (Case No. 17-51024); Knight Research & Development, LLC (3760) (Case No. 17-51025); Knight Family Enterprises, LLC (7190) (Case No. 17-51026); HMC Leasing, LLC (0814) (Case No. 17-51027) and HMC Investments, LLC (0000) (Case No. 17-51029). The Debtors' service address is 2272 SE Evangeline Thruway, Lafayette, Louisiana 70508 other than Knight Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knight Manufacturing, LLC's service address is 2810-A Melancon Road, Broussard, Louisiana 70518 and Advanced Safety & Training Management, LLC's service address is 1042 Forum Drive, Broussard, Louisiana 70518.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 363(b), and 541 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. On this date (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of title 11 of the U.S. Code (the “Bankruptcy Code”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

5. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 cases. Further, no trustee or examiner has been requested or appointed in any of these Chapter 11 cases.

6. The Debtors have filed with the Court the *Statement of Background Information and Declaration in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* (the “First Day Declaration”), which is incorporated by reference in this Motion.

7. The Debtors have filed with the Court the *Debtors’ Motion for an Order Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Post-Petition Financing, (C) Granting Security Interests and Superpriority Administrative Expense Status to the DIP Agent and the DIP Lenders, (D) Granting Adequate Protection to Existing Lienholders, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* (the “DIP Motion”) seeking entry of interim and final orders (the “DIP Orders”) which includes a Debtor-proposed 13-week budget (the

“Budget”). The terms of the DIP Motion, the DIP Orders, and the Budget are incorporated by reference in this Motion.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order (a) authorizing the Debtors to pay, in the reasonable exercise of their business judgment, certain pre-petition amounts owed to certain vendors that are critical to the Debtors’ business operations (the “Critical Vendors”) in an amount not to exceed \$1,409,000.00²; and (b) authorizing and directing the Debtors’ banks and other financial institutions to honor prepetition checks and electronic requests for payment on account of prepetition amounts sought to be paid to the Critical Vendors through this Motion (the “Obligations”) and honor postpetition checks and electronic requests for payment of the Obligations in the ordinary course of business.³ In addition, the Debtors request that the Court schedule a final hearing to consider approval of this Motion on a final basis.

THE CRITICAL VENDORS

9. The Debtors, in consultation with their professional advisors, meticulously reviewed a list of approximately 2,272 vendors to determine which vendors were absolutely critical to their business operations. Among other criteria, the Debtors considered a vendor to be critical only if the goods and services provided by such vendor cannot be easily and efficiently replaced, which is often the case in remote locations where the pool of available vendors is limited, when a highly-skilled work force is involved, or, as is the case here, where alternatives are typically limited and even a short-term interruption of services or supplies is especially

² The Debtors reserve any and all right to seek authority to pay Critical Vendors for any prepetition obligations over and above \$1,409,000 by separate motion.

³ Nothing in this Motion shall constitute an admission of liability, a concession as to applicable law, or a waiver of any rights or defenses to the claims or potential claims of any creditor or party in interest. The Debtors expressly reserve all rights in that regard.

critical. Additionally, the Debtors considered the importance of the vendor to the Debtors' business operations, the likelihood that the vendor would discontinue service if not timely paid, the ability of the vendor to assert liens, and whether the vendor was a party to a to a contract with the Debtors and any terms thereof (*i.e.*, short-term termination rights).

10. The Critical Vendors provides goods and services that are critical to the Debtors' businesses (collectively, the "Critical Goods and Services"). The Debtors submit that (a) the Critical Vendors are of great necessity on a go-forward basis and cannot be easily and efficiently replaced and (b) the failure to pay the Critical Vendors for the Critical Goods and Services would (i) likely result in a severe disruption or cessation of certain of the Debtors' operations, and thus, would undermine the Debtors' ongoing production operations and the revenues derived therefrom, and (ii) give rise to, among other things, reclamation demands, mechanics' and materialmen's or other statutory liens, or administrative expense claims under section 503(b)(9) of the Bankruptcy Code, which amounts would likely be entitled to payment priority under a plan of reorganization.⁴ *See* 11 U.S.C. §§ 503(b)(9) & 1129(a)(9)(A).⁵

11. Even if the Debtors were able to convince the Critical Vendors to continue to supply the Critical Goods and Services to the Debtors absent payment of their prepetition claims, the Critical Vendors will likely agree to do so only on trade terms much less favorable than customary. If the Debtors can benefit from maintaining lower costs for the Critical Goods and Services purchased or provided during the post-petition period and avoid the severe disruption that might be caused by a cessation of the Critical Goods and Services, prudence dictates that the

⁴ Debtors reserve the right to pay any Critical Vendor through a plan of reorganization.

⁵ The Debtors believe that certain of the payments that would be made to the Critical Vendors pursuant to the relief requested herein would be on account of the Critical Goods and Services provided to the Debtors within the 20-day period prior to the Petition Date, and, therefore, would be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code. *See* 11 U.S.C. § 503(b)(9).

Debtors should have the authority to pay the Critical Vendors some or all of their prepetition claims.

12. The Debtors are mindful of their fiduciary obligations to seek to preserve and maximize the value of their bankruptcy estates. The importance of preserving key business relationships and minimizing the effects of the chapter 11 process on the Debtors' oil and gas activities cannot be understated, and are among management's primary goals as the Debtors transition into chapter 11.

13. For these reasons, the Debtors seek to minimize the adverse business effects, as well as the cash flow impact, arising from their chapter 11 filing and possible irreparable harm to the fullest extent possible by obtaining authority from this Court to pay certain of their vendors that may have lien rights and that are so essential to the Debtors' business operations that the loss of the goods and services provided by such vendors would cause immediate and irreparable harm to the going-concern value of the Debtors' estates.

BASIS FOR RELIEF

A. Payment of Prepetition Debt is Allowed in Certain Circumstances.

14. Section 363(b) of the Bankruptcy Code provides for the use of property of the estate outside the ordinary course of a debtor's business, after notice and a hearing, and section 503(b) of the Bankruptcy Code provides for administrative expense claims for "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. §§ 363(b) & 503(b). Under section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including 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. 487, 497 (Bankr. N.D. Tex. 2002)). Further, pursuant to 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 [title 11 of the Bankruptcy Code].” 11 U.S.C. § 105(a). Where the payment of trade creditors deemed to be critical preserves the going-concern value of the estate, which is the case here, the above-referenced sections of the Bankruptcy Code authorize such payment.

15. In a long and well-established line of cases, courts have consistently authorized debtors to pay certain creditors’ prepetition claims where necessary or appropriate to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing debtor prior to plan stage of case to pay pre-petition wages, salaries, business expenses, and benefits); *In re CoServ*, 273 B.R. at 497 (noting that “it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate”); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (authorizing payment of prepetition wages, benefits, and expenses to “safeguard against loss of going-concern values”).

16. Furthermore, courts have long recognized that paying some categories of prepetition obligations outside the plan of reorganization is often necessary to realize the paramount purpose of chapter 11, which is to prevent the forced liquidation of the debtor and preserve its potential for financial rehabilitation. *See In re Lehigh & New England Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the doctrine of necessity permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Boston*

& *ME. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor's continued operation); *In re CoServ*, 273 B.R. at 497 (applying a form of the doctrine of necessity in noting that payment of unsecured prepetition claims is appropriate where such payment is the "only means to effect a substantial enhancement of the estate"). As one court noted, "a per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).

17. This Court and other courts have authorized payment of critical vendors where necessary for a debtor's reorganization or survival. *See, e.g., In re Harvest Oil & Gas, LLC*, 15-50478 (Bankr. W.D.La. Aug. 24, 2015); *In re Piccadilly Restaurants, LLC, et al.*, 12-51127 (Bankr. W.D.La. Dec. 19, 2012); *In re Louisiana Riverboat Gaming Partnership, et al.*, 12-12013 (Bankr. W.D.La. Aug. 3, 2012); *In re ATP Oil and Gas Corp.*, No. 12-36187 (Bankr. S.D. Tex. Aug. 21, 2012).

B. The Critical Vendors are Essential to the Continuation of the Debtors' Businesses.

18. Courts in the Fifth Circuit have set out a three-part test to determine whether a prepetition claim of a "critical vendor" may be paid outside of the plan process on a postpetition basis:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

In re CoServ, L.L.P., 273 B.R. at 498; *In re Mirant Corp.*, 296 B.R. at 429-30.

19. The Critical Vendors fall within the categories discussed in *CoServ* and *Mirant*. The ability of the Debtors to procure alternate vendors would be very difficult, if not impossible. Should any of the Critical Vendors delay or cease providing the Critical Goods and Services, even on a temporary basis, the Debtors' operations would be significantly disrupted and impaired. Aside from allowing payment to the Critical Vendors, no practical, cost efficient, and timely alternative exists by which the Debtors can protect the value of their bankruptcy estates. Therefore, the Debtors must immediately and proactively provide payment to all Critical Vendors on account of the prepetition Critical Goods and Services to avoid economic harm and allow the Debtors to proceed efficiently in chapter 11.

20. It is indisputable that the Critical Vendors are essential to the continuation of Debtors' businesses. Indeed, without the provision of the Critical Goods and Services, the Debtors' ability to generate revenue would be materially diminished. This potential loss of economic value to the Debtors' estates is highly disproportionate to the limited prepetition amounts to be paid on account of the Critical Goods and Services. Moreover, it would be very difficult, and in certain instances, impossible, for the Debtors to select alternative vendors, and doing so would cost the Debtors valuable time trying to retain or source new vendors to provide the Critical Goods and Services to their operations. The time and expense inherent in obtaining alternative vendors would, of course, be in addition to the increased costs and fees likely associated with doing business with alternate vendors on a post-petition basis.

21. By way of example, Knight manufactures its own line of best-in-class jars, which it uses exclusively for its own rental business. Without certain parts from specific vendors, Knight will be unable to continue to manufacture the jars which will be materially impact Knight's manufacturing business.

22. Additionally, there are a number of vendors with unpaid prepetition balances who currently have possession of valuable equipment belonging to the Debtors. To prevent any risk or delay of reobtaining this equipment the Debtors would like to pay these balances.

23. Regardless of the rationale adopted by this Court, the Debtors do not seek through this Motion to pay all vendors the amounts owed for prepetition services rendered and goods sold. Rather, the Debtors seek authority to pay only those vendors that they have determined in their business judgment to be truly critical to their production operations in the Debtors' accounts payable system.

C. The Debtors' Banks Should be Authorized to Honor Checks, Wire Transfers, and Electronic Funds Transfers.

24. The Debtors have sufficient liquidity to pay Critical Vendors in the ordinary course of business by virtue of expected cash flows from ongoing business operations, anticipated access to cash collateral and debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks, wire transfers, or electronic fund transfer requests as relating to an authorized payment in respect of the payments of the Obligations. Accordingly, the Debtors believe that checks, wire transfers, and electronic transfer requests, other than those relating to authorized payments, will not be honored inadvertently. The Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, wire transfers, or electronic fund transfer requests in respect of the relief requested in this Motion. Further, the Debtors also seek authority to issue new postpetition checks, wire transfers, or electronic funds transfer requests to replace any prepetition checks, wire transfers, or electronic funds transfers that may be dishonored or rejected as a result of the commencement of these chapter 11 cases.

REQUEST FOR IMMEDIATE RELIEF

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. For the reasons discussed herein, authorizing the Debtors to, among other things, pay the prepetition Obligations, as well as granting the other relief requested herein, is critical to enabling the Debtors to effectively transition to operating as chapter 11 debtors and to preserve their business operations. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations and significantly impact the Debtors’ ability to reorganize swiftly and efficiently. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

26. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

27. The Debtors expressly reserve, and do not waive, any and all rights with respect to the relief requested in this Motion, including, but not limited to: (a) an admission as to the validity of any claim or the right to dispute the amount, validity, or priority of any and all liens, claims, or causes of action asserted against their respective estates on any basis; and (b) the right

to assert that any postpetition actions taken by any creditor or party in interest are in violation of any laws or provisions of the Bankruptcy Code, specifically including section 362 of the Bankruptcy Code. In addition, nothing in this Motion or the relief requested herein should be interpreted as the assumption or rejection of any executory contract or unexpired lease under section 365 of the Bankruptcy Code.

SUBJECT TO DIP ORDERS

28. Notwithstanding any provision herein to the contrary, this Motion and all relief sought hereby shall be subject in all respects to the DIP Orders, the Budget, and any other cash collateral order financing orders granted in the Cases.

NOTICE

29. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtors and their counsel; (iii) Clearlake Capital Group, L.P. and/or its counsel; (iv) Cantor Fitzgerald Securities and/or its counsel; (v) Whitney National Bank and/or its counsel; (vi) JP Morgan Chase Bank and/or its counsel; (vii) Iberia Bank and/or its counsel; (viii) all other secured creditors, (ix) any party whose interests are directly affected by this specific pleading; (x) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (xi) counsel for and the members of any official committees appointed by this Court; (xii) the consolidated 30 largest unsecured creditors of the Debtors; and (xiii) all governmental agencies having a regulatory or statutory interest in these cases. No other or further notice need be provided.

NO PRIOR REQUEST

30. No prior requests for the relief sought herein have been made to this or any other court.

WHEREFORE, the Debtors respectfully requests that, after due notice and such hearing as this court deem proper (a) authorizing the Debtors to pay, in the reasonable exercise of their business judgment, certain pre-petition amounts owed to the Critical Vendors in an amount not to exceed \$1,409,000.00; and (b) authorizing and directing the Debtors' banks and other financial institutions to honor prepetition checks and electronic requests for payment on account of the prepetition Obligations and honor postpetition checks and electronic requests for payment of the Obligations in the ordinary course of business, and (c) granting such other and further relief as this Court deems appropriate.

Dated: August 8, 2017.

Respectfully submitted,

/s/ William H. Patrick, III

Douglas S. Draper (LA #5073)

William H. Patrick, III (LA #10359)

Tristan E. Manthey (LA #24539)

Cherie D. Nobles (LA #30476)

Heller, Draper, Patrick, Horn & Dabney, L.L.C.

650 Poydras Street, Suite 2500

New Orleans, Louisiana 70130

Telephone: 504.299.3300

Facsimile: 504.299.3399

Email: ddraper@hellerdraper.com

Email: wpatrick@hellerdraper.com

PROPOSED COUNSEL FOR DEBTORS