

**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 ADMINISTRATIVE ORDER UNDER BANKRUPTCY CODE
SECTIONS 105(a) AND 331 ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

Knicht Energy Holdings, LLC; Knicht Oil Tools, LLC; Knicht Manufacturing, LLC; KDCC, LLC, f/k/a Knicht Well Services, LLC; Tri-Drill, LLC; Advanced Safety & Training Management, LLC; Knicht Security, LLC; Knicht Information Systems, LLC; El Caballero Ranch, Inc.; Rayne Properties, LLC; Knicht Aviation, LLC; Knicht Research & Development, LLC; Knicht Family Enterprises, LLC; HMC Leasing, LLC; and HMC Investments, LLC (collectively, the “Debtors”), as debtors-in-possession, file this *Motion for Administrative Order under Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Knicht Energy Holdings, LLC (1930) (Case No. 17-51014); Knicht Oil Tools, LLC (2667) (Case No. 17-51015); Knicht Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knicht 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); Knicht Security, LLC (0923) (Case No. 17-51020); Knicht 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); Knicht Aviation, LLC (3329) (Case No. 17-51024); Knicht Research & Development, LLC (3760) (Case No. 17-51025); Knicht 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 Knicht Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knicht 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.

Compensation and Reimbursement of Expense for Professionals and in support thereof, respectfully represent as follows:

Jurisdiction, Venue, and Related Matters

1. The Court has jurisdiction over these cases and this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein is Bankruptcy Code §§ 105(a) and 331.

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.

8. The Debtors have filed an Application to Employ Heller, Draper, Patrick, Horn & Dabney, L.L.C. as Counsel for the Debtors.² The Debtors anticipate that they may (but have not determined to) seek authority to retain other professionals shortly and may also retain professionals as the need arises during these cases. In addition, the Debtors propose that the administrative order apply to any professionals for official committees and their members, if appointed (collectively, the “Professionals”).

Relief Requested

9. The Debtors request the Court enter an order authorizing and establishing certain procedures for compensating and reimbursing court approved Professionals on a monthly basis. The Debtors submit that such an order will permit the Court and all other parties to effectively monitor the professional fees incurred in these cases and further allow for interim payment with full reservation of rights to all parties regarding Court approval of fee applications, both interim and final.

10. Briefly stated, the requested procedures would require those Professionals seeking interim payment of compensation that will have to be applied for to the Court through fee applications to serve upon: (i) the Debtors and their counsel; (ii) the Office of the United States Trustee; (iii) Cantor Fitzgerald Securities; (iv) Clearlake Capital Group, LP (v) Iberia Bank; (vi)

² The Debtors have also filed an Application to Employ Opportune LP [as the Debtors Chief Restructuring Officer]. Opportune is not considered a “Professional” for purposes of this Application.

JPMorgan Chase Bank; (vii) counsel for Kelley Sobiesk, and (vii) any appointed official committees through their counsel (collectively, the “Service Parties”), a summary consisting of a brief statement as to the fees incurred and the costs incurred by each Professional for the prior month. Service can be made by e-mail, fax, or regular mail, and will be deemed given on the date of transmission. If there is no objection served upon the Professionals and the Service Parties within the ten (10) day period following the date of service of such monthly fee statement, the Professionals would be permitted to be paid one hundred percent (100%) of the fees and expenses incurred for the month. Each Professional would be required to hold in a client trust account and not disburse twenty (20%) percent of each payment received from the Debtors for payment of the fees portion of such fee statement until such holdback is approved for payment by the Court. These payments would be subject to the Court’s subsequent approval as part of the normal interim fee application process approximately every one hundred twenty days (120) days.

11. Specifically, the Debtors propose that the monthly payment of compensation and reimbursement of expenses of the Professionals be structured as follows:

- a. On or before the fifteenth (15th) day of the calendar month following the calendar month for which compensation is sought, the Professionals will submit a summary consisting of a brief statement as to the fees incurred and the costs incurred (a “Fee Summary”). Each such person receiving a Fee Summary will have ten (10) days after service as set forth above to review a Fee Summary. At the expiration of the ten (10) day period following service of a Fee Summary, if no objection (as described below) is made to a Fee Summary, the Debtors shall be authorized to pay one hundred percent (100%) of the fees and expenses requested in the Professional’s respective Fee Summary, subject to the holdback of an amount equal to twenty (20%) of the fees portion of the Fee Summary, which 20% holdback shall be held in the Professional’s client trust account pending Court approval for payment.
- b. In the event any of the Service Parties objects to the compensation or reimbursement sought in a particular Fee Summary, such Service Party shall, within the ten (10) day period following the date of service of the Fee Summary,

serve upon (i) the Professional whose Fee Summary is objected to, and (ii) except to the extent duplicative of the foregoing clause, the other Service Parties, a written “Notice of Objection to Fee Summary” with a statement setting forth the precise nature of the objection and the amount at issue. The Professional whose Fee Summary is objected to shall attempt to reach an agreement regarding the objection. If the parties are unable to reach an agreement on the objection(s) within ten (10) days after receipt of such objection(s), the Professional whose Fee Summary is objected to shall have the option of (i) filing the objection(s) together with a request for payment of the disputed amount with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection(s) if payment of the disputed amount is requested. The Debtors will be required to pay promptly any portion of the fees and disbursements requested that are not the subject of a Notice of Objection to Fee Summary.

- c. The first Fee Summary shall be submitted to the Service Parties on or before the 15th day of the first full month following the Petition Date and shall cover the period from the commencement of the cases through the end of the month in which the cases were filed. Thereafter, each Fee Summary will be due by the 15th of the month following the month in which the services were rendered.
- d. Approximately every four (4) months (*i.e.*, every 120 days), or such time as the Court may prescribe, each of the Professionals shall file with the Court and serve an application for interim (or final) court approval and allowance, pursuant to Bankruptcy Code § 331, of the compensation and reimbursement of expenses requested for the prior four (4) months that incorporates the unfiled Fee Summaries. The first such application shall include the partial month in which the cases are filed together with the next four (4) months, and shall be filed no later than the fifteenth (15th) day of the month following the four full months to be dealt with. Each subsequent application will be at four (4) month intervals.
- e. The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Fee Summary shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, for later periods not covered by any such application or Fee Summary.
- f. Neither the payment of, nor the failure to pay, in whole or in part, monthly interim compensation and reimbursement as provided herein shall bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of any Professionals.

12. Certain of the Professionals retained by the Debtors have received advance payments or retainers for services to be rendered by each such Professional on behalf of the

Debtors. In light of the fact that the Debtors have minimal funds with which to operate post-petition, the Debtors believe it is appropriate and reasonable for these Professionals to be able to keep their advance payment and retainer amounts (and not be compelled to apply them to fees and expenses during these cases) to be applied to their final applications for payment of fees and expenses in these cases. Such a retainer is commonly known as an “evergreen” retainer and has been accepted in other jurisdictions. *See In re Insilco Technologies, Inc.*, 291 B.R. 628 (Bankr. D. Del. 2003) (approving “evergreen” retainers where professional fee carve-out was \$1.8 million and requiring proper disclosure in the employment application, including language that the applicant intends to hold the retainer until the end of the case). As such, by this Motion, the Debtors are requesting that the Court permit the Debtors’ Professionals to be paid pursuant to the procedures outlined herein without the application of any advance payment or retainer amounts until such time as a Professional requests final payment for its representation of the Debtors in these cases, or such Professional advises the Court that payment from such retainer is necessary, given the financial condition of the Debtors.

Applicable Law

13. Bankruptcy Code section 331 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 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.

14. Bankruptcy Code § 105(a) provides, in relevant part, that “[t]he 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).

15. Procedures for compensating and reimbursing court-approved professionals have been established in other Chapter 11 cases. Such procedures are necessary to avoid having professionals fund the chapter 11 cases. *See, e.g., In re A&B Valve and Piping Systems, L.L.C.*, Case No. 15-51336 (Bankr. W.D. La. Oct. 16, 2015); *In re Piccadilly Restaurants, LLC, et al.*, 12-51127 (Bankr. W.D. La. Oct. 22, 2012); *In re Harvest Oil & Gas, LLC, jointly administered with Saratoga Resources, Inc., The Harvest, Group, LLC, LOBO Operating Inc., and LOBO Resources, Inc.*, 09-50397 through 09-50401 (Bank. W.D. La. April 17, 2009); *In re La. Riverboat Gaming P'ship*, 08-10824 (Bankr. W.D. La. Mar. 11, 2008); *In re Communications Corp. of Am.*, 06-50410 (Bankr. W.D. La. June 7, 2006); *In re OCA, Inc.*, 06-10179 (Bankr. E.D. La. Mar. 14, 2006); *In re Entergy New Orleans, Inc.*, 05-17697 (Bankr. E.D. La. Sept. 23, 2005); *In re Torch Offshore, Inc.*, 05-10137 (Bankr. E.D. La. Jan. 1, 2005). Such procedures are needed to avoid having professionals fund the reorganization case. *See In re Int'l Horizons, Inc.*, 10 B.R. 895, 897 (Bank. N.D. Ga. 1981) (court established procedures for monthly interim compensations). Appropriate factors to consider when deciding whether to approve interim compensation procedures such as those proposed here 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. Here, this case is complex and the Professionals have devoted, and likely will continue to devote, a significant amount of time to achieving a consensual sale process

designed to preserve the going concern value of the Debtors' estates, jobs, and future operations as opposed to liquidation.

16. The Debtors submit that the efficient administration of these chapter 11 cases will not be adversely affected by the relief requested herein, and that much work will be required of the Professionals to accomplish the hoped-for result. Also, the ongoing payment of Professionals' fees and expenses is provided for within the cash collateral budget being presented to the Court as part of the motion seeking approval to use cash collateral and of DIP financing. Therefore, the DIP loan proceeds have already been earmarked for use (in part) in ongoing payment of Professionals.

Subject to DIP Orders

17. 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

18. 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.

WHEREFORE, the Debtors request that the Court (a) enter of an order authorizing certain procedures for compensating and reimbursing court approved Professionals on a monthly basis be established; and (b) grant such further relief as the facts may warrant and justice so requires.

Dated: August 8, 2017.

Respectfully submitted,

/s/ William H. Patrick, III

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