Appalachian Oil Company, Inc.: A Company's Journey After Running Out of Gas

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Appalachian Oil Company, Inc.: A Company’s Journey After Running Out of Gas

By: Allison S. Jackson, Raymond G. Lewallen, Jr., & Jennifer T. McGinn
Workouts & Reorganizations Research Paper
Prof. George Kuney – Spring 2010
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§ 1 – Introduction

When Appalachian Oil Company, Inc. filed for Chapter 11 protection on February 9, 2009, it marked the end of an era for a company with more than eighty-six years of experience in the petroleum products industry. The company’s failure was attributable to a couple of factors, including the worst financial crisis since the Great Depression and a parasitic parent company. The combination of a lack of operating income and access to credit rendered the company insolvent and unable to continue its operations. Appalachian Oil Company, Inc.’s journey through Chapter 11, however, was unique in that it never reemerged; rather, the company used the forum for liquidation in lieu of reorganizing or converting the case to one under Chapter 7. This case study investigates and chronicles the factors that induced Appalachian Oil Company, Inc. to file a Chapter 11 petition, the road through Chapter 11 to its eventual liquidation, and the effects of the process on the present-day company.

§ 1.1—Appalachian Oil Company, Inc.

§ 1.1.1—A Brief Company History

Appalachian Oil Company, Inc. was founded in 1923 when Jack W. Cummins, Sr., an auditor for Gulf Oil Corporation, became the Gulf commission agent for the Tri Cities, Tennessee area.¹ At that time, the company earned most of its revenue from the sale of kerosene oil, a combustible liquid derived from petroleum distillation.² Over the next fifty years, the company experienced significant growth.³ It became a Tennessee corporation under the name

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Jack W. Cummins, Inc. and acquired Kingsport Oil Company, which expanded its operations into Rogersville, Tennessee and Abingdon, Virginia. After realizing the inefficiencies of operating the companies separately, Jack W. Cummins, Inc. consolidated the plants and constructed a new corporate headquarters in Blountville, Tennessee.

Jack W. Cummins, Inc. continued to thrive, purchasing two East Tennessee petroleum distributors during the next seven years. The company, however, changed forever after acquiring Thomas Petroleum Corporation in 1982. The purchase included a Johnson City convenience store, which marked the beginning of a brand-new venture. Jack W. Cummins, Inc. then doubled in size when it bought Virginia-based Appalachian Oil Company, Inc. in 1984. The acquisition incorporated convenience stores, dealer locations, a large home heating base, and a commercial business. Finally, the company consolidated its operations with Appalachian Oil Company, Inc., retaining the name Appalachian Oil Company, Inc. and forming the enterprise that exists today.
§ 1.1.2--The Modern Company

Since 1985, Appalachian Oil Company, Inc. has been primarily engaged in constructing new convenience centers, remodeling outdated convenience centers, expanding direct dealer locations, and increasing commercial customers. The company merged with Big Stone Oil Company in 1993 and is now one of the largest oil companies in the United States, servicing individuals and businesses across five states: Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. Its diverse product line encompasses a variety of petroleum products, including gasoline, high-sulfur diesel, low-sulfur diesel, kerosene, aviation fuel, dyed products, and undyed products. Nevertheless, Blountville, Tennessee-based Appalachian Oil Company, Inc. is probably best known for operating a chain of over fifty convenience stores, which supply five major brands of fuel from more than twelve independent refineries.

In 2007, Titan Global Holdings, Inc., (“Titan”), based out of Texas, purchased 100% of the outstanding common stock of Appalachian Oil Company, Inc., funding the acquisition through an initial loan of $20.3 million from Greystone Business Credit (“Greystone”), $15


million from the sale of real estate assets, and $6 million in convertible debt from Yorkville Advisors.\footnote{16}

§ 1.2 – The Oil Industry

§ 1.2.1—Industry Basics

Crude oil is a naturally occurring substance that, when extracted from the ground and refined, renders numerous petroleum products, which are used around the globe today.\footnote{17} In fact, a single forty-two gallon barrel of crude oil produces roughly forty-four gallons of useable fuels.\footnote{18} The following chart illustrates the kinds and quantities of petroleum products that are produced from a single barrel:

\footnote{16} Titan Global Holdings Announces Milestone Acquisition of Appalachian Oil Company, \url{http://findarticles.com/p/articles/mi_m0EIN/is_2007_Sep_17/ai_n19522068/} (last visited Apr. 20, 2010).

\footnote{17} U.S. Energy Information Administration, Energy Explained, Nonrenewable Resources, Oil and Petroleum Products, \url{http://tonto.eia.doc.gov/energyexplained/index.cfm?page=oil_home} (last visited Apr. 18, 2010).


Because of its valuable renderings, crude oil is often said to be “the world economy’s most important source of energy.” It is a global commodity and, as such, is subject to worldwide supply and demand. This fact is significant because the market price of a barrel of crude oil, which is a reflection of underlying costs plus market conditions at all stages of production and distribution, has the single greatest impact on the prices paid for its derivative petroleum products. On the supply side, the Organization of Petroleum Exporting Countries (“OPEC”), an international cartel of oil-producing countries, largely influences crude oil prices by establishing production limits for organization members. Conversely, the greatest factor affecting demand for crude oil is worldwide economic growth.

Prices, however, are also influenced by other factors, including some that are unrelated to the oil market. For instance, changes in expectation regarding future crude oil prices affect prices through inventory build up or draw down, and natural disasters, environmental mandates, and regulatory requirements also play a role. It follows that oil companies are situated in an inherently tenuous position. They are extremely sensitive to increases in their underlying costs


but cannot allow petroleum product prices to exceed what the market will bear.\textsuperscript{26} Otherwise, consumers will make efforts to reduce their overall consumption.\textsuperscript{27}

\textbf{§ 1.2.2—An Economic Crisis: A Brief Look at Its Impact on the Oil Industry}

The precarious position in which oil companies are situated has been problematic as of late. In 2008, the United States began to experience the effects of the worst financial crisis since the Great Depression.\textsuperscript{28} Hundreds of billions of dollars in mortgage-related investments soured, causing long-standing financial institutions to collapse or reinvent themselves.\textsuperscript{29} Still, the government was forced to infuse others with capital in order to stave off failure.\textsuperscript{30} This series of unfortunate events affected the credit markets and halted the distribution of essential funds to businesses and consumers alike.\textsuperscript{31} In addition, the United States stock market plunged, affecting stock markets worldwide.\textsuperscript{32} Despite the Federal Reserve’s best efforts, credit markets were slow to rebound.\textsuperscript{33} Oil companies certainly were not immune from these constraints, and if these problems were not enough, the record-breaking oil prices reached over the summer plummeted

\begin{itemize}
\item \textsuperscript{26} U.S. Energy Information Administration, Petroleum, Prices, http://www.eia.doe.gov/pub/oil_gas/petroleum/analysis_publications/oil_market_basics/price_text.htm (last visited Apr. 18, 2010).
\item \textsuperscript{27} Kenneth Grant, David Ownby, & Steven R. Peterson, American Petroleum Institute, Understanding Today’s Crude Oil and Product Markets (2006), http://www.api.org/aboutoilgas/upload/OilPrimer.pdf.
\end{itemize}
due to the world economic outlook. Nevertheless, oil prices are projected to rise over the next twenty years because of the steady growth in demand for energy. This indicates that the prices for petroleum products will increase as well. The following graph reflects the anticipated trend:

![World oil prices in three cases, 1980-2030](image)

§ 2 – Filing the Chapter 11 Petition

§ 2.1—Introduction to the Chapter 11 Filing

On February 9, 2009, Appalachian Oil Company, Inc. (“Debtor”) filed a voluntary petition for Chapter 11 bankruptcy protection, and the case was assigned to Judge Marcia Phillips Parsons the following day. This petition for bankruptcy came less than two years after

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36 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Chapter 11 Voluntary Petition (Dkt. 1) p. 1 (Feb. 9, 2009).

37 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Case assigned to Judge Marcia Phillips Parsons (Dkt. 4) (Feb. 10, 2009). Glenn B. Rose and Craig v. Gabbert Jr. also filed a Notice of Appearance on behalf of Creditor Greystone Credit. See In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Notice of Appearance and Request for Notice Filed by Glenn B. Rose on behalf of Creditor Greystone Credit II, LLC (Dkt. 5) (Feb. 10, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Notice of Appearance and Request for Notice Filed by Glenn B. Rose on behalf of Creditor Greystone Credit II, LLC (Dkt. 6) (Feb. 10, 2009).
Titan purchased Debtor in September of 2007. When Titan purchased Debtor in 2007, the company had been operating profitably for years. After the sale to Titan, Debtor remained profitable, turning a “$24 million profit on operations from September 2007 through August 2008.” However, in spite of this $24 million profit, Debtor filed for Chapter 11 bankruptcy six months later.

This rather sudden turn of events has led to the development of various theories behind the cause of this Chapter 11 filing. In an attempt to explain the Chapter 11 filing, executives of Titan have pointed generically to Debtor’s liquidity issues. However, Debtor’s creditors and some economists have pointed to the company’s historic profitability and solid numbers leading up to its Chapter 11 filing, questioning whether Debtor and Titan executives gave an accurate portrayal of all of the events contributing to the lack of working capital which necessitated the Chapter 11 filing.

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§ 2.2—Reason for the Chapter 11 Filing: Debtor/Titan Executive Perspective

In an attempt to explain the Chapter 11 filing, Titan and Debtor executives pointed to liquidity issues caused by a variety of factors, including the leveraged buyout of Debtor, the transfer of funds to Titan, the overall economy, the recent credit crunch, fluctuating oil prices, and misfortune.\textsuperscript{43} To one media source, Debtor CEO Marty Anderson clearly stated that “[t]he reason we’re where we are at is not because of Titan.”\textsuperscript{44} However, Debtor’s Plan filed in the bankruptcy case explained the reason for the Chapter 11 filing, stating in part as follows:

\textit{Approximately $3,000,000 of [Debtor’s] cash was used to fund a portion of the purchase of the [Debtor] shares at closing. This created immediate cash-flow problems for [Debtor] which increasingly worsened over the following fifteen (15) month period. The amount of debt and lease obligations created by the Titan stock transaction left [Debtor] with insufficient capital to operate and this was essentially the case immediately after the closing of the stock transaction. In addition, during the following eighteen (18) month period, Titan caused [Debtor] to transfer for Titan’s benefit the sum of $4,951,673.23 which was a substantial drain on [Debtor’s] cash.} \textsuperscript{45}

Furthermore, Debtor CEO Anderson reasoned that the filing was the result of “a perfect storm of credit crises, the overall economy and a series of unfortunate events.”\textsuperscript{46}

Titan CEO Bryan Chance had an economy-based rationale focused on volatile gas prices


\textsuperscript{45} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) (February 8, 2010).

and financing difficulties.\textsuperscript{47} Chance explained that the primary reasons for the Chapter 11 filing were “the rapid drop in oil prices late last summer and how that affected [Debtor’s] relationship with Greystone,” Debtor’s senior financial lender.\textsuperscript{48} According to Chance, Debtor not only paid principal payments to Greystone, but was also required to pay $4.5 million in fees and interest over the course of several months.\textsuperscript{49} Chance explained that, “much of the collateral for [Debtor’s] loan with Greystone was based on the value of its gasoline holdings, a value that plummeted along with gas prices starting in the early fall.”\textsuperscript{50} According to Chance, this situation led to Greystone “holding part of [Debtor’s] receipts in a ‘lock box’ rather than returning them to the company, leaving [Debtor] with one-third less cash than it should have had.”\textsuperscript{51}


§ 2.3—Other Potential Reasons for the Chapter 11 Filing

When Titan purchased Debtor in 2007, Titan CEO Bryan Chance had “high hopes for [Debtor].”\(^\text{52}\) Chance claimed that Titan had access to capital that would “help [Debtor] grow and acquire other companies in surrounding markets.”\(^\text{53}\) Indeed, after the 2007 purchase, Debtor did continue to prosper, turning a “$24 million profit on operations from September 2007 through August 2008.”\(^\text{54}\) Even after the bankruptcy was filed, Chance described Debtor as being “at its core a profitable company.”\(^\text{55}\)

Such continued profitability caused some creditors to question what really happened to all of Debtor’s cash reserves.\(^\text{56}\) Some creditors and economists have suggested that Debtor’s executives may not have given a completely accurate portrayal of all events contributing to the lack of working capital that necessitated the Chapter 11 filing.\(^\text{57}\) Some have suggested that


Debtor’s liquidity problems may have been due to the transfers made from Debtor to Titan in amounts exceeding $3.5 million in the year preceding the bankruptcy filing.\(^5\) A clear rationale for these transfers has yet to emerge from Debtor or Titan CEOs.\(^5\) However, economist Bill Greer of Milligan College reportedly believes that Titan’s activities deserve some scrutiny.\(^6\) The *Kingsport Times-News* reported Greer’s explanation of how Debtor could have been used by Titan as its “cash cow.”\(^6\)

The article explained as follows:

[holding companies often have a portfolio of businesses that include stable ‘cash cows’ and other holdings that have good potential but need more cash to grow. Assets can be transferred from cash cows safely and effectively, or they can be used to continue acquiring companies in what essentially becomes a shell game ….

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of steam. You can’t continue to perpetuate it.’ When bankruptcy results in those types of cases … it crosses the line into being questionable in [Greer’s] view.62

In fact, by the beginning of 2009, Debtor was one of Titan’s only subsidiaries that had not “failed or been sold,”63 and Chance acknowledged that “once Titan's other companies failed, [Debtor’s] revenues accounted for ‘essentially 98%’ of Titan's available income, meaning [Debtor] ‘did bear the brunt of expenses for Titan.’”64 When Patricia Foster, the U.S. Trustee assigned to the Chapter 11 case, inquired into whether Debtor received any benefit from these transfers, Chance explained that “through its financing connections, Titan helped Debtor from defaulting on its debt.”65 However, the debt that Chance is referring to “did not exist until after Titan bought Debtor.”66 Furthermore, just “five months after Debtor declared bankruptcy, Titan


[was] essentially nonexistent ... with its stock worth less than a penny a share and all of its subsidiaries, including [Debtor], having liquidated or filed bankruptcy."

§ 2.4—Portrait of Debtor’s Assets and Liabilities at the Time of Filing Chapter 11

The filing of a “Chapter 11 case creates an estate that comprises all of a debtors’ legal and equitable interest as of the filing date.” As is typical of Chapter 11 cases, Appalachian Oil Company remained in control of its operations and assets, operating as the debtor-in-possession (DIP) for the Chapter 11 proceedings. At the time of filing the Chapter 11 bankruptcy petition, Debtor estimated that its pre-petition assets and liabilities were both in the range of $10,000,001 to $50 million, leading some to believe that all creditors would be paid in full.

Greystone Credit II, LLC (“Greystone”), Debtor’s senior lender and largest secured creditor at the time of filing for Chapter 11 protection, was owed over $11 million. This debt


70 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Chapter 11 Voluntary Petition (Dkt. 1) p. 1 (Feb. 9, 2009).


to Greystone was secured by an interest in all of Debtor’s assets. Additionally, Debtor owed a total of over $11 million to its twenty largest unsecured creditors. The majority of unsecured debt owed at the time of filing for Chapter 11 protection was fuel-related debt, with Debtor owing over $8.4 million in fuel-related debt to its twenty largest unsecured creditors. This fuel-related debt constituted 72% of the total debt owed to Debtor’s twenty largest unsecured creditors.

![20 Largest Unsecured Debts (By Type of Debt)](chart.png)


74 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009).

75 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009).

76 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009); See also “Chart_20 Largest Unsecured Debts.xls”.

77 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009); See also “Chart_20 Largest Unsecured Debts.xls”.
The main unsecured fuel creditors were Amoco/BP, Crescent Oil Company, Citgo Petroleum, Marathon Ashland Petroleum, Valero Marketing & Supply, Conoco-Phillips, and Regal Petroleum Terminal.\textsuperscript{78}

\textbf{Largest Unsecured Fuel Creditors}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Chart of Largest Unsecured Fuel Creditors}
\end{figure}

\textsuperscript{78} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (\textit{Dkt. 3}) (Feb. 9, 2009).

\textsuperscript{79} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (\textit{Dkt. 3}) (Feb. 9, 2009); See also “\textit{Chart: Largest Unsecured Fuel Creditors}”. 

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The remaining of the largest unsecured creditors were each owed less than $500,000 with the exception of LP Shanks, a grocery/tobacco supplier, which was owed over $1.4 million at the time of the Chapter 11 filing.⁸⁰

![Other Largest Unsecured Creditors](image)

§ 3 – Post Petition Financing and Repositioning Efforts

§ 3.1 – February 2009

Cash Collateral and Post-Petition Financing

During the initial stages of this case, there were a series of cash collateral orders authorizing Debtor to use Greystone’s cash collateral on an interim basis, primarily to pay pre-petition and post-petition employee salaries and other operating expenses. On February 12,

⁸⁰ In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009).

⁸¹ In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, 20 Largest Unsecured Creditors (Dkt. 3) (Feb. 9, 2009); See also “Chart Other Largest Unsecured Creditors”.
2009, Debtor moved for an interim and final order authorizing its use of cash collateral from its current payroll account to make pre-petition wages, salary, and other compensation payments.\textsuperscript{82} At this time, Debtor employed 375 people and owed pre-petition employment compensation in the amount of $132,734.87.\textsuperscript{83} Debtor moved the court, pursuant to Bankruptcy Rule 6003 to grant it relief to pay its pre-petition claims within twenty days of the petition date, because failure to do so would result in immediate and irreparable harm to the operation of its workforce.\textsuperscript{84} On February 13, 2009, Greystone filed an objection to Debtor’s motion.\textsuperscript{85} Greystone did not consent to Debtor’s use of cash collateral and asserted that the court should grant Greystone a post-petition security interest in and lien upon all of Debtor’s assets of the same type that Greystone held a pre-petition security interest or lien.\textsuperscript{86} On February 13, 2009, \

\begin{itemize}
\item \textsuperscript{82} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 13) p. 2, ¶ 4 (Feb. 12, 2009).
\item \textsuperscript{83} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 13) p. 2, ¶ 4 (Feb. 12, 2009).
\item \textsuperscript{84} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 13) p. 5, ¶ 12 (Feb. 12, 2009).
\item \textsuperscript{85} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 14) (Feb. 13, 2009).
\end{itemize}
the court set a hearing on Debtor’s final motion for March 10, 2009, overruled Greystone’s objection, and granted Debtor’s interim motion authorizing the use cash collateral in its payroll account to pay $75,245.15 in pre-petition wages to hourly employees and $57,489.72 in pre-petition wages to salaried employees.\(^87\) The court also granted Greystone a replacement post-petition security interest in and lien upon all of Debtor’s assets of the same type in which Greystone had a pre-petition security interest.\(^88\)

On February 19, Debtor filed a Second Motion for Interim and Final Orders for use of cash collateral pursuant to § 363. Debtor sought to use $145,390 of cash collateral to pay one day of pre-petition wages and six days of post-petition wages of its hourly employees.\(^89\) As justification, Debtor stated that it wanted to continue to honor its employee wages and benefit obligations and wished to maintain the morale of its employees and prevent potential extreme hardship and financial difficulty if its hourly employees were not paid.\(^90\) Without any objection, the court granted Debtor’s interim motion to compensate its employees consistent with §

\(^87\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order (Dkt. 18) ¶ 9 (Feb. 12, 2009).

\(^88\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order (Dkt. 18) ¶ 1-4 (Feb. 12, 2009).

\(^89\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 27) ¶ 4 (Feb. 19, 2009).

\(^90\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Motion for Interim and Final Orders (a) Authorizing the Debtor’s Limited Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (b) Authorizing the Debtor to Pay Certain Pre-Petition Wages, Salaries and other Compensation; (c) to Make Deductions and Withholdings from Employee Paychecks; (d) Authorizing the Debtor to Utilize its Current Payroll Account to Make Such Payments; and (e) Authorizing and Directing the Bank on which the Checks are Drawn to Pay all such Checks Made by the Debtor Relative to Such Payments (Dkt. 27) ¶ 10 (Feb. 19, 2009).
The court also granted Greystone replacement, post-petition liens and priority as adequate protection for Greystone. \(^92\)

Debtor then filed a Third Motion for Interim and Final Orders Authorizing Debtor’s Limited Use of Cash Collateral on February 25, 2009. \(^93\) According to this motion, Debtor wanted to use $70,055.70 of cash collateral to pay one week of hourly wages to its employees and $24,625.07 of cash collateral to pay its salaried management personnel for February 14 through 28. \(^94\) The projected disbursements for management personnel was as follows:

![APPCO Employee Compensation chart](chart.png)

Debtor also sought to use $45,504.55 of cash collateral to pay the salaries of the following Titan employees from February 14 to February 29. The breakdown of said disbursements was as follows:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin Anderson</td>
<td>4,166.92</td>
</tr>
<tr>
<td>Jeffrey Benedict</td>
<td>2,285.97</td>
</tr>
<tr>
<td>Ernestine Clark</td>
<td>1,629.38</td>
</tr>
<tr>
<td>Dale Greer</td>
<td>4,650.00</td>
</tr>
<tr>
<td>Donald Guffey</td>
<td>50.00</td>
</tr>
<tr>
<td>Louis Harden</td>
<td>4,166.91</td>
</tr>
<tr>
<td>Echol Head</td>
<td>1,622.06</td>
</tr>
<tr>
<td>George Jones</td>
<td>1,962.03</td>
</tr>
<tr>
<td>James Maclean</td>
<td>2,291.80</td>
</tr>
</tbody>
</table>

\(^91\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order (Dkt. 35) ¶ 2-5 (Feb. 20, 2009).

\(^92\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order (Dkt. 35) ¶ 10 (Feb. 20, 2009).

\(^93\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 44) (Feb. 25, 2009).

\(^94\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 44) (Feb. 25, 2009).
Then, on February 26, 2009, Debtor filed a Motion for Interim and Final Orders Authorizing Debtor to Obtain Post-Petition Financing. Pursuant to § 364(c), Debtor sought post-petition financing through a Motor Fuels Sale Agreement with PM Terminals, Inc. and through a Petroleum Products Supply Agreement with Mountain Express Oil Co. Debtor also wanted the court to grant PM Terminals, Inc. a super-priority administrative claim for the petroleum products supplied under the Agreement. Debtor stated that, while all of its gasoline and convenience stores were open and operating, most of its stores were out of gasoline, and the ability to resume selling petroleum products was vital to its ability to reorganize. Debtor also

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asserted that Greystone retained approximately sixty percent of Debtor’s cash flow prior to filing Chapter 11, and Debtor was unable to restructure its revolving line of credit with Greystone.99 Because of this, Debtor averred that it lacked the unencumbered cash to finance its purchase of the petroleum necessary to keep its stores open.100 Debtor also had been unable to obtain financing as an unsecured creditor under § 364(a) or (b), as an administrative expense under § 503(b)(1), or as a secured creditor under § 364(c).101 Therefore, Debtor proposed to assign all of its existing credit card agreements to PM Terminals, Inc. as direct payment for the petroleum products.102 Conversely, to finance the agreement with Mountain Express Oil Co., Debtor proposed using Mountain Express Oil Co.’s credit card network, whereby Mountain Express would credit Debtor’s account for purchases with credit card sales.103 The Mountain Express Agreement was also contingent on a $70,000 letter of credit of cash deposit by Debtor, and


Mountain Express Oil Co.’s retention of all credit card accounts collected while the agreement was in effect.\textsuperscript{104}

On the same day, Greystone filed an Objection to the Third Motion for Interim and Final Orders Authorizing Debtor’s Limited Use of Cash Collateral.\textsuperscript{105} Greystone asserted that it did not have adequate protection on the basis of its replacement liens, because those liens covered the same collateral as Greystone’s pre-petition liens, and Debtor had not received any replacement collateral, thus giving Greystone no benefit from the replacement liens.\textsuperscript{106} Greystone also argued that Debtor’s motion should be denied because this motion attempted to use cash collateral to pay salaries while post-petition rent and utility deposits were due on 58 store locations in the first week of March.\textsuperscript{107} Greystone also alleged that any additional replacement liens would be worthless because there was a total lack of inventory in Debtor’s stores, additional payroll obligations continued to accrue, and Debtor had no viable prospect of continuing its business operations while in Chapter 11, and little chance of reorganizing.\textsuperscript{108} Greystone also found it particularly troubling that Debtor’s motion called for $45,000 of cash collateral to be used to pay employees of Titan, Debtor’s parent corporation, which Greystone

\textsuperscript{104}In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Interim and Final Orders Authorizing the Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 and for Expedited Hearing (Dkt. 45) ¶ 12 (Feb. 26, 2009).

\textsuperscript{105}In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 46) (Feb. 26, 2009).

\textsuperscript{106}In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 46) ¶ 1 (Feb. 26, 2009).

\textsuperscript{107}In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 46) ¶ 2 (Feb. 26, 2009).

\textsuperscript{108}In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 46) ¶ 2 (Feb. 26, 2009).
argued was not “actual, necessary costs and expenses of preserving the estate” as required by § 503(b). Therefore, Greystone moved that the court deny Debtor’s motion for use of cash collateral.

Debtor’s motions for use of cash collateral attempted to maintain employee compensation through cash collateral until it was able to get gas flowing and shelves stocked in its 58 convenience stores. Debtor ostensibly attempted to use post-petition financing to get some revenue coming in, so Debtor could pay rent, utilities, and other obligations from revenue and not from cash collateral. However, in the interim period when no revenues were coming in, Debtor exhausted a great deal of cash collateral solely on payroll. This appeared to be somewhat shortsighted, failing to focus on maintaining cash collateral for reorganizational purposes later on. Through these motions for use of cash collateral, at such an early stage in this Chapter 11 proceeding, Debtor exhausted a substantial amount of cash collateral solely on employee compensation, while failing to recognize that cash on hand was an essential component of any potential reorganization effort. Therefore, Debtor’s proposed post-petition financing plan became essential to Debtor’s reorganization scheme because Debtor used substantial cash collateral in the first few weeks after filing Chapter 11.

It was also particularly telling that Debtor wanted to use $45,000 in cash collateral to pay the salaries of Titan executives. At the initial stages of this bankruptcy, Debtor’s strategy for reorganization seemed very shortsighted and more concerned with keeping current on the compensation of Titan executives than with preserving cash on hand to maintain the viability of a reorganization plan. The salaries of Debtor’s parent company should not be considered

109 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to the Third Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 46) ¶ 11 (Feb. 26, 2009).
“actual, necessary costs and expenses of preserving the estate” under § 503(b), and the fact that Debtor would include in its motion such compensation clearly indicates that the Titan executives viewed Debtor as a conduit of incoming cash for Titan, and not as a separate company with prospects of coming out of Chapter 11 with a successful, stream-lined company.

**Executory Contracts and Leases**

As of the Petition date, Debtor’s convenience stores were located on properties in which Debtor was the lessee or sublessee. These lease agreements were unexpired leases of non-residential real property that were covered by the provisions of § 365 with respect to their assumption or rejection.

On February 21, 2009, Debtor filed a Motion to Assume and Assign Executory Contracts pursuant to § 365(a). Debtor desired to assume its Ethanol Purchase Agreement with Tate & Lyle Ingredients and assign its rights to 250,000 gallons of denatured ethanol to Strategic Bio Energy for March 2009.110 Debtor also noted that, while Greystone had a Loan and Security Agreement over a revolving line of credit to Debtor, the loan agreement did not require Greystone’s express consent to assume and assign this contract.111 Furthermore, under § 365(a), the business judgment of Debtor to assume and assign this contract would generate $206,725 for the bankruptcy estate with no cost outlay for Debtor.112 Debtor additionally sought waiver of the ten-day stay requirement of Bankruptcy Rule 6006(d) because Strategic Bio Energy had

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110 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Assume and Assign Executory Contract and for Authority to Pay Commission (Dkt. 36) ¶ 6 (Feb. 21, 2009).

111 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Assume and Assign Executory Contract and for Authority to Pay Commission (Dkt. 36) ¶ 9-10 (Feb. 21, 2009).

112 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Assume and Assign Executory Contract and for Authority to Pay Commission (Dkt. 36) ¶ 9-10 (Feb. 21, 2009).
indicated that, absent waiver of the stay, it would seek the ethanol from a different supplier.\textsuperscript{113} Along with this motion, Debtor also filed a Motion to Reduce Time and Limit Parties Receiving Notice to limit notice to Tate & Lyle Ingredients, the U.S. Trustee, Greystone, the twenty largest unsecured creditors, and any other parties requesting notice.\textsuperscript{114}

On February 23, the Committee of Unsecured Creditors met for the first time and appointed William Kaye as its Chairman.\textsuperscript{115} Then, on the 24, the court waived the ten-day stay requirement of Bankruptcy Rule 6006(d) and granted Debtor’s Motion to Assume and Assign Executory Contract, authorizing Debtor to assume the Ethanol Purchase Agreement for January, February, and March, and assign its rights to Strategic Bio Energy.\textsuperscript{116} The court also ordered that all pre-petition liens on the Ethanol Purchase Agreement would attach to the proceeds of the assumption and assignment.\textsuperscript{117}

\textit{Orders of Employment}

On February 16, 2009, Debtor filed an Application to employ Mark S. Dessauer\textsuperscript{118} of Hunter, Smith & Davis\textsuperscript{119} as its counsel.\textsuperscript{120} Counsel would charge Debtor the following rates for

\textsuperscript{113} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Assume and Assign Executory Contract and for Authority to Pay Commission (Dkt. 36) ¶ 11 (Feb. 21, 2009).

\textsuperscript{114} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reduce Time and Limit Parties Receiving Notice (Dkt. 37) p. 1 (Feb. 21, 2009).

\textsuperscript{115} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Notice of Appointment of Committee of Unsecured Creditors (Dkt. 41) p. 2 (Feb. 24, 2009). The Committee is made up of Robert Ross, Credit Manager for BP Products North America Inc.; Jeff Bednar; John Locker, Wholesale Credit Manager; Scot Shanks, CEO of L.P. Shanks Company; and William Kaye, Sr. Bankruptcy Advisor for Coca-Cola Enterprises, Inc.

\textsuperscript{116} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 36) ¶ 1-5 & 8 (Feb. 24, 2009).

\textsuperscript{117} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 36) ¶ 1-5 & 8 (Feb. 24, 2009).

\textsuperscript{118} Mark Dessauer practices banking, bankruptcy, and commercial litigation with Hunter, Smith, & Davis. He received his J.D. in 1983 from the University of Tennessee.

\textsuperscript{119} Hunter, Smith, & Davis was established in 1916 and is comprised of twenty-five attorneys. It has an office in Kingsport and Johnson City, Tennessee.
services: $300 for partners; $140 - $225 for associates; and $125 for paralegals.\textsuperscript{121} Debtor also advanced $75,000 to Hunter, Smith & Davis prior to filing its Chapter 11 petition as a retainer for its services.\textsuperscript{122}

\textit{§ 3.2 – March 2009}

\textit{Cash Collateral and Post-Petition Financing}

The court held a hearing on Debtor’s Third Motion for Conditional Use of Cash Collateral, and on March 4, 2009, the court entered an Interim Order authorizing Debtor to compensate its hourly employees in accordance with its motion and denying Debtor’s request to use $45,504.55 to compensate some of Titan’s salaried employees.\textsuperscript{123}

On March 3, 2009, Debtor moved the court to allow it to abandon some assets pledged by former petroleum dealers of Debtor.\textsuperscript{124} Prior to filing its Chapter 11 petition, Debtor had twenty-two supply agreements to supply fuel to dealers, upon which Debtor had security interests in various assets.\textsuperscript{125} As a result of Debtor’s inability to provide fuel to the dealers prior to filing Chapter 11, these supply agreements were canceled, and Debtor lost its rights as a secured party

\textsuperscript{120} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor and Debtor-in-Possession for Authority to Employ Bankruptcy Counsel (Dkt. 24) (Feb. 16, 2009).

\textsuperscript{121} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor and Debtor-in-Possession for Authority to Employ Bankruptcy Counsel (Dkt. 24) ¶ (Feb. 16, 2009).

\textsuperscript{122} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor and Debtor-in-Possession for Authority to Employ Bankruptcy Counsel (Dkt. 24) ¶ (Feb. 16, 2009)

\textsuperscript{123} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order (Dkt. 59) (Mar. 4, 2009).

\textsuperscript{124} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Abandon Property of the Estate in the Form of Rights as Secured Party or Beneficiary in Certain Assets Pledged by Former Dealers (Dkt. 55) (Mar. 3, 2009).

\textsuperscript{125} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Abandon Property of the Estate in the Form of Rights as Secured Party or Beneficiary in Certain Assets Pledged by Former Dealers (Dkt. 55) (Mar. 3, 2009).
in the dealers’ assets.\textsuperscript{126} Thus, Debtor requested the court to authorize Debtor to abandon its security interest in the letters of credit and deeds of trust related to the supply agreements because said security interests were of inconsequential value and of no benefit to the bankruptcy estate.\textsuperscript{127}

Then, on March 4, 2009, the court entered an interim order authorizing Debtor to enter into and operate under the Motor Fuels Sale Agreement with PM Terminals, Inc. and the Petroleum Products Supply Agreement with Mountain Express Oil Co.\textsuperscript{128} The interim order gave PM Terminals and Mountain Express Oil Co. a first priority, post-petition security interest in the proceeds resulting from these sales, and also granted Greystone a replacement, post-petition security interest in all of the product supplied pursuant to these agreements as adequate protection for its pre-petition claims against Debtor.\textsuperscript{129}

On March 6, Debtor filed a fourth motion to use cash collateral to pay post-petition wages of employees and pay for utility services at its convenience stores.\textsuperscript{130} In this motion, Debtor sought to use $236,290.91 of cash collateral to pay one week’s worth of wages to its hourly employees, and an additional $14,472.88 to pay the employees of its sister company

\textsuperscript{126} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Abandon Property of the Estate in the Form of Rights as Secured Party or Beneficiary in Certain Assets Pledged by Former Dealers (Dkt. 55) (Mar. 3, 2009).

\textsuperscript{127} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Abandon Property of the Estate in the Form of Rights as Secured Party or Beneficiary in Certain Assets Pledged by Former Dealers (Dkt. 55) (Mar. 3, 2009).

\textsuperscript{128} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order Regarding Fuel Supply Agreements (Dkt. 60) (Mar. 4, 2009).

\textsuperscript{129} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Interim Order Regarding Fuel Supply Agreements (Dkt. 60) (Mar. 4, 2009).

\textsuperscript{130} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash collateral (Dkt. 81) (Mar. 6, 2009).
Furthermore, Debtor requested the court’s authorization to use up to $145,000.00 of cash collateral for post-petition utility deposits and $48,411.40 to pay the February premiums on its employees’ group health insurance plan from Blue Cross. It is interesting that Debtor included a request for the use of cash collateral to pay the employees of its sister company, but in the prayer for relief, Debtor left this request out. Therefore, on March 10, 2009, the court granted Debtor’s fourth motion to use cash collateral, authorizing Debtor to pay its hourly and salaried employees, authorizing it to pay Blue Cross Blue Shield and authorizing it to pay post-petition utility deposits. However, there is no mention of Debtor’s request to use over $14,000 of cash collateral to pay the employees of Crescent Fuels, Inc.

On March 12, Debtor filed its fifth motion for authorization to use cash collateral to pay $71,951.00 in post-petition wages of its employees for the period of March 2 through March 8. On March 13, 2009, the court granted Debtor’s fifth motion, authorizing its use of cash collateral to pay its hourly and salaried employees, and granting Greystone a replacement, post-petition security lien.

Additionally, on March 12, 2009, Debtor and the Official Committee of Unsecured Creditors filed an Emergency Joint Motion for approval of post-petition trade credit financing.

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131 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 81) (Mar. 6, 2009).

132 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 81) (Mar. 6, 2009).


134 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fifth Motion for Interim and Final Orders Authorizing the Debtor’s Limited Use of Cash Collateral (Dkt. 100) (Mar. 12, 2009).

under § 364(c) and (d). The motion stated that at the request of the Committee, L.P. Shanks Co. and CITGO Petroleum Corporation have agreed to extend post-petition credit to Debtor through a new line of credit. Debtor and Committee assert that the change in the cost of petroleum in the months preceding the Chapter 11 filing, and the limitations placed on Debtor by Greystone have forced Debtor to operate without any working capital. The motion asserts that Debtor will not be able to continue its business operations as a going concern without immediately addressing its cash flow shortage, and that the implementation of this post-petition trade credit will alleviate Debtor’s short-term need for working capital. Under this agreement, L.P. Shanks Co. will extend a maximum loan amount of $1,500,000 for a trade term of 21 days; CITGO Petroleum Corp. will extend up to $600,000 for a term of 6 days; and other petroleum suppliers will extend a maximum of $900,000 for a trade term of 6 days. In exchange for the extension of this new credit, the vendors will receive a super-priority administrative expense claim and a first priority security interest in all inventory supplied by the vendors.


It is interesting that Debtor claims to be in such dire need of working capital after expending so much of its cash on hand in the prior weeks to pay weekly employee salaries. Moreover, it is also noteworthy that § 364(c) suggests that L.P. Shanks and CITGO could obtain either a super-priority administrative expense or a post-petition lien, but this motion requests both for the proposed post-petition lenders.

Greystone filed an objection to the Emergency Joint Motion, claiming that the joint motion provided essentially no notice to Greystone, and that there is no emergency for fuel because Debtor had fuel supply agreements in place since February 27. Greystone also asserted that there was no emergency for groceries because Debtor had the past two weeks to arrange grocery supplies with L.P. Shanks Company, and had not done so; therefore, Debtor should not be able to use its own delay to create a legitimate emergency in this instance. Greystone’s main complaint was that Debtor had already spent $800,000 in Greystone’s cash collateral, and the motion contemplated using the proceeds of the remaining $1.3 million of inventory that was subject to Greystone’s liens, meaning that the motion would result in subordinating Greystone’s existing lien position by a total of more than $4 million and leave Greystone with nothing more than junior replacement liens. Therefore, Greystone argued that

142 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Setting Preliminary Hearing on Emergency Joint Motion by the Debtor and Official Committee of Unsecured Creditors for Interim and Final Orders Approving Terms of Post-Petition Trade Credit Financing by Critical Vendors and Substantive Objection to that Motion Filed by Greystone Credit, II, LLC (Dkt. 103) (Mar. 12, 2009).

143 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Setting Preliminary Hearing on Emergency Joint Motion by the Debtor and Official Committee of Unsecured Creditors for Interim and Final Orders Approving Terms of Post-Petition Trade Credit Financing by Critical Vendors and Substantive Objection to that Motion Filed by Greystone Credit, II, LLC (Dkt. 103) (Mar. 12, 2009).

144 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Setting Preliminary Hearing on Emergency Joint Motion by the Debtor and Official Committee of Unsecured Creditors for Interim and Final Orders Approving Terms of Post-Petition Trade Credit Financing by Critical Vendors and Substantive Objection to that Motion Filed by Greystone Credit, II, LLC (Dkt. 103) (Mar. 12, 2009).
Debtor should not be allowed to “on the one hand say that Greystone’s security interests and the use of $2 million in cash collateral are adequately protected by junior, subordinated replacement liens, but insist that the proposed suppliers must be given priming liens, liens on unencumbered assets and numerous additional claim benefits.”

The Emergency Joint Motion was heard on March 13, and the court determined that Greystone had not received adequate notice prior to the hearing. While the hearing was adjourned, the parties announced to the court that they had an agreed order for interim financing and use of cash collateral. Subsequently, the court authorized Greystone to extend credit up to $500,000 to Debtor and certain product vendors to provide products to Debtor on credit, granting the products vendors a first priority, post-petition security interest in the products supplied. The court also specified that Greystone and the products vendors had no obligation or responsibility to monitor Debtor’s use of these loans or products supplied on credit, and may rely upon Debtor’s representations made at the time of the extension of credit.

Typically, pre-petition lenders such as Greystone also serve as the post-petition lender to Debtor. In light of Greystone’s objections to Debtor’s Emergency Joint Motion, the question is raised as to whether Debtor merely used this joint motion to coerce Greystone into agreeing to Debtor’s use of more cash collateral, and if the agreed order actually freed up any new advance

145 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Setting Preliminary Hearing on Emergency Joint Motion by the Debtor and Official Committee of Unsecured Creditors for Interim and Final Orders Approving Terms of Post-Petition Trade Credit Financing by Critical Vendors and Substantive Objection to that Motion Filed by Greystone Credit, II, LLC (Dkt. 103) (Mar. 12, 2009).

146 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 120) (Mar. 17, 2009).

147 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 120) (Mar. 17, 2009).

of funds to Debtor, or if Greystone merely permitted Debtor to use more of its cash collateral. Even though the agreed order combined the request to use cash collateral with the request to incur post-petition financing, it appears that the order separated the $500,000 DIP Loan from Greystone with Greystone’s authorization to Debtor to use additional cash collateral in accordance with the budget established by the agreed order. Therefore, it appears that Greystone reacted to the threat of having its pre-petition claims subordinated to a post-petition lender by serving as Debtor’s post-petition lender and extending the use of more cash collateral in accordance with Debtor’s budget.

**Executory Contracts and Leases**

On March 31, 2009, the court entered an Order granting Debtor’s Motion to Abandon Property of the Estate in the Form of Rights as Secured Party or Beneficiary in Certain Assets Pledged by Former Dealers, authorizing Debtor to abandon its rights as a secured party under the specified assets or letters of credit of former dealers.¹⁴⁹

And, on March 31, Debtor filed a Motion to Reject Lease or Executory Contract and responded to Sara MacLean and the Linda R. MacLean Irrevocable Trust’s Motion for Relief from Stay, arguing that the motion should be denied because Debtor had sought to reject the lease, so the motion was moot.¹⁵⁰

**Applications for Relief from Automatic Stay**

On March 12, 2009, McDonald’s Corporation filed a Motion for Relief from Automatic Stay, for Adequate Protection, and/or for Assumption or Rejection of Lease, involving a Ground

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¹⁵⁰ In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response to Sara G. MacLean and the Linda R. MacLean Irrevocable Trust’s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 145) (Mar. 31, 2009).
Lease and Operating Agreement for property located at 3100 Browns Mill Road in Johnson City, Tennessee. McDonald’s operated a restaurant along with Debtor’s gas station at this location. McDonald’s claimed that at least a month before Debtor’s bankruptcy filing, Debtor was in violation of the lease by failing to operate a fuel facility at set hours and failing to operate a convenience store that provided cigarettes, lottery tickets, and inventory levels standard in the convenience store industry. McDonald’s alleged that, as of the bankruptcy filing, Debtor was past due on rent payments for January, February, and March 2009, and that Debtor was indebted to McDonald’s in the amount of $13,676.393 for taxes, utilities, trash, common area costs, and accrued interest. McDonald’s motion sought relief from automatic stay so that it could obtain possession of the leased premises at 3100 Browns Mill Road and re-let the premises. McDonald’s filed this motion pursuant to § 362(d)(1), arguing that Debtor had not given adequate protection to McDonald’s because the gas station was not selling gas and the convenience store did not have properly stocked shelves.

Pursuant to § 362(d)(2), McDonald’s averred that Debtor did not have any equity in the premises at 3100 Browns Mill Road, and it was not necessary for Debtor to effectively

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151 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

152 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

153 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

154 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

155 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).
reorganize. McDonald’s also alleged that Debtor was not performing all of its obligations pursuant to § 362(d)(3) because it was not making rental payments, was not paying costs due under the lease, and was not operating the gas station and convenience store in a manner consistent with the terms and provisions of the Lease. If the court decided not to grant the motion, McDonald’s requested adequate protection by having the court require Debtor to bring current and maintain all monthly lease payments, which amounted to $8,346.60, to pay $13,676.39 for taxes, utilities, trash, common area costs, and interest to McDonald’s, and to operate the gas station and convenience store in compliance with the lease.

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156 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

157 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).

158 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of McDonald’s Corporation for Relief from Automatic Stays, for Adequate Protection, and/or for Assumption or Rejection of Lease (Dkt. 101) (Mar. 12, 2009).
On March 13, 2009, Kenneth R. Shaw filed an Application for Relief from Automatic Stay, requesting that Debtor abandon the property and that Debtor pay its lease obligations.\textsuperscript{159} On May 1, 2004, Shaw leased non-residential property located at 6135 Jonesbridge Road in Greenville, Tennessee to Debtor at an annual rental rate of $36,000. Debtor had not paid Shaw rent since January 31, 2009, owing Shaw $5,142.86. Shaw requested relief from automatic stay because Debtor had not timely performed its obligations under the lease as required by § 365(d)(3) of the Bankruptcy Code.\textsuperscript{160} Shaw also requested that Debtor abandon the lease agreement and the property, because the property was burdensome to Debtor’s estate and of inconsequential value to the estate.\textsuperscript{161}

On March 25, 2009, Management Properties, Inc., et al. filed a Motion to Shorten Time to Hear from twenty days to fourteen days and all separately filed a Motion for Relief from Stay.\textsuperscript{162} The parties entered into a lease with Debtor involving two parcels of property, and Debtor had defaulted on the leases’ March and anticipated April lease payments totaling $16,000 and failed to pay 2008 real property taxes on the leased properties.\textsuperscript{163} These parties also stated that, while Debtor obtained post-petition financing on March 17, 2009 with $150,000 allocated

\textsuperscript{159} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 106) (Mar. 13, 2009).

\textsuperscript{160} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 106) (Mar. 13, 2009).

\textsuperscript{161} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 106) (Mar. 13, 2009).


\textsuperscript{163} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 129) (Mar. 25, 2009).
to make rental payments, no such payments had been made. Thus, the parties moved for relief from stay to terminate the lease agreements, or, alternatively, for adequate protection by Debtor.\textsuperscript{164}

Moreover, Sara MacLean and the Linda R. MacLean Irrevocable Trust moved for relief from automatic stay to terminate another real property lease with Debtor over APPCO Store No. 20.\textsuperscript{165} The motion stated that Debtor was $13,428.00 behind on post-petition rent, and that such failure to comply with the lease agreement has caused the movants to lack adequate protection.\textsuperscript{166}

MacLean, Inc. also filed a motion for relief from automatic stay on March 25. Under this motion, Debtor owed MacLean, Inc. $48,250.00 in total lease defaults, which includes post-petition lease payments for March and April 2009.\textsuperscript{167} MacLean, Inc. averred that Debtor’s failure to comply with the lease agreement lacked adequate protection for MacLean, Inc., and the court should either grant relief from automatic stay, or require Debtor to supply adequate protection pursuant to § 363(e) and § 361.

Also, Management Properties, Inc. filed a motion for relief from automatic stay, because Debtor owed a total lease default of $338,017.00 for rent payments in March and April.\textsuperscript{168}

\textsuperscript{164} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 129) (Mar. 25, 2009).

\textsuperscript{165} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Sara G. MacLean and the Linda R. MacLean Irrevocable Trust’s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 131) (Mar. 25, 2009).

\textsuperscript{166} In re: Appalachian Oil Company, Inc. Case No. 2:09-bk-50259, Sara G. MacLean and the Linda R. MacLean Irrevocable Trust’s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 131) (Mar. 25, 2009).

\textsuperscript{167} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, MacLean, Inc.’s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 133) (Mar. 25, 2009).

\textsuperscript{168} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Management Properties, Inc.’s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 135) (Mar. 25, 2009).
According to this motion, Debtor used $75,000.00 of its post-petition financing to pay Management Properties, Inc. on March 20, but Debtor has still failed to comply with the lease agreement, and Management Properties, Inc. should be granted relief from automatic stay.  

Agnes C. Davis also moved the court for relief from stay. In her motion, Davis asserted that Debtor failed to pay rent in January 2009, and Davis gave Debtor notice of default, thus, Davis requested relief from stay and eviction of Debtor. Somewhat surprisingly, Ms. Davis waited until May 13 to file a Memorandum in Support of her motion, arguing that Debtor was in default of the lease in question before it filed for bankruptcy, so it owed rent for January and February and cannot assume the lease under § 365(c)(3).

It is interesting that these creditors filed Applications for Relief from Automatic Stay when dealing with these lease payments instead of filing a Motion to Compel Assumption or Rejection. According to § 365(d)(2), Debtor may assume or reject an executory contract at any time before the confirmation of a plan, however, the court may order Debtor to assume or reject a contract or lease within a specific period if so requested by any party to the contract. Specifically, § 365(d)(4) states that Debtor must assume or reject a non-residential real property lease within 120 days after the entry of an order for relief or the date of confirmation of the plan, with a potential ninety-day extension. Therefore, if a creditor is tired of waiting on Debtor to assume or reject, then it may ask the court to compel an earlier determination by Debtor. Perhaps these landlords had grown impatient of having to live up to their end of these executory

169 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Management Properties, Inc.‘s Motion for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (Dkt. 135) (Mar. 25, 2009).

170 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 138) (Mar. 26, 2009).

171 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Memorandum in Support of Motion for Relief from Stay (Dkt. 317) p. 4 (May 13, 2009).
contracts without being promptly paid monthly rent, and they assumed that it was too early in the
Chapter 11 proceedings to compel Debtor to assume or reject these leases. Or, perhaps the
landlords did not want to give Debtor the choice of assuming these leases because of fear Debtor
would assume and continue with its non-payment, or the landlords wanted the ability to turn
around and re-lease the properties at a higher rate. But, for whatever reason, these creditors
decided to move for relief from automatic stay to terminate the leases and re-lease the premises
instead of moving to compel Debtor to assume or reject these leases. Debtor subsequently
responded to these motions for relief from stay, clearly adopting the strategy of treating these
leases as more appropriately falling into the category of executory contracts that should be
assumed or rejected.

Schedules

On March 5, Debtor filed a series of Schedule Forms with the court. Debtor first
indicated that it had no legal, equitable, or future interest in any real property.\(^\text{172}\) Debtor also
indicated that, as of March 5, it had the following personal property on hand.\(^\text{173}\)

\(^{172}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule A (Dkt. 63) (Mar. 5, 2009).

\(^{173}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule B (Dkt. 64) (Mar. 5, 2009).
Debtor also filed a Schedule D Form indicating the following creditors as holding secured claims:\footnote{174}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule D \textit{(Dkt. 65)} (Mar. 5, 2009).}

![Graph showing creditors and liens.]

Additionally, Debtor filed a Schedule E Form, which showed $623,554.69 in liabilities to creditors holding unsecured priority claims.\footnote{175}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Summary of Schedules \textit{(Dkt. 70)} (Mar. 5, 2009).} And, Debtor filed a Schedule F Form to specify that it had creditors holding unsecured nonpriority claims totaling $7,189,924.51.\footnote{176}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule F \textit{(Dkt. 67)} (Mar. 5, 2009).} Debtor also included a list of executory contracts and unexpired leases, which primarily involved convenient store locations, transport trucks, office systems, and software support.\footnote{177}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule G \textit{(Dkt. 68)} (Mar. 5, 2009).} Under Schedule H, Debtor listed that it had no codebtors.\footnote{178}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Schedule H \textit{(Dkt. 69)} (Mar. 5, 2009).} Therefore, Debtor listed total assets in the amount of $15,678,011.49 and total liabilities in the amount of $19,440,338.22.\footnote{179}{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Summary of Schedules \textit{(Dkt. 70)} (Mar. 5, 2009).}
Then, Debtor filed an Amended Schedule G Form to show a total of $690,322.28 in outstanding executory contracts and unexpired leases. Debtor also filed an Amended Schedule E Form listing its creditors holding unsecured priority claims, including PTO time (wages) in the amount of $180,192.23; employee benefits in the amount of $48,411.40; and taxes in the amount of $394,951.06. The entirety of all of these claims was entitled to priority. Therefore, Debtor listed $623,554.69 as the total amount of secured claims and the entire amount was entitled to priority.

Orders of Employment

On March 6, 2009, the Official Committee of Unsecured Creditors filed three applications, one to employ Frost Brown Todd as its co-counsel, one to employ Whiteford, Taylor & Preston as attorneys, and another to employ Protiviti, Inc. as its financial advisors. On April 10, 2009, the court authorized the Official Committee of Unsecured Creditors to retain

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183 Frost Brown Todd is a law firm with over 475 attorneys, operating out of nine offices in Kentucky, Ohio, Indiana, Tennessee, and West Virginia.

184 Whiteford, Taylor & Preston is a business service law firm headquartered in Baltimore, Maryland with an extensive bankruptcy practice, including Chapter 11 reorganizations, but primarily representing debtors-in-possession in restructuring and reorganization efforts.

185 Protiviti, Inc. offers independent internal auditing and risk consulting services to corporate clients. It is headquartered in Menlo Park, California.
Douglas L. Lutz\textsuperscript{186} of Frost, Brown, Todd;\textsuperscript{187} Brent C. Strickland\textsuperscript{188} of Whiteford, Taylor & Preston;\textsuperscript{189} and Michael L. Atkinson of Protiviti, Inc.\textsuperscript{190}

§ 3.3 – April 2009

Cash Collateral and Post-Petition Financing

On the April 2, the court entered a final order granting Debtor’s motion to use cash collateral that was filed on February 12, which allowed Debtor to pay pre-petition wages of its employees.\textsuperscript{191} The court made no ruling as to Debtor’s authority to pay pre-petition wages of Titan, and held that the use of cash collateral did not preclude any creditor from recovering any funds paid by Debtor to Titan prior to this final order.\textsuperscript{192} The court also granted Debtor’s second motion for use of cash collateral to compensate its employees that was filed on February 19, but ruled that Debtor could not pay funds to any of its employees who performed administrative services for Crescent Fuel, Inc.\textsuperscript{193}

\textsuperscript{186} Douglas Lutz is a Member of Frost Brown Todd, and works in the firm’s Cincinnati office. He is Chair of the firm’s Bankruptcy and Restructuring Group. He got his J.D. from the University of Toledo in 1991 and focuses his practice on financial and restructuring in bankruptcy.


\textsuperscript{188} Brent Strickland is a Partner at Whiteford, Taylor & Preston, in the firm’s Baltimore office. He has experience representing a wide variety of parties in both Chapter 11 and Chapter 7 bankruptcy proceedings. He had a J.D. from American University, Washington College of Law, graduating in 1993.


\textsuperscript{191} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Final Order (Dkt. 157) (Apr. 2, 2009).

\textsuperscript{192} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Final Order (Dkt. 157) p. 2, ¶ 3 (Apr. 2, 2009).

Additionally, the court entered a final order regarding Debtor’s third motion for use of cash collateral, authorizing Debtor to pay its hourly and management employees, but not authorizing Debtor to use $45,504.55 of cash collateral to pay the salaries of Titan employees.\textsuperscript{194}

On April 5, Debtor moved the court to compel Greystone to fund Debtor the sum of $185,000 – the balance of the DIP Facility – in accordance with the court’s Interim Agreement for DIP Financing.\textsuperscript{195} Debtor stated that it made oral and written requests to Greystone for funding of the remainder of the DIP Facility, and that it needed said funds to meet its post-petition obligations to its landlords, but Greystone had refused to fund the $185,000 balance to Debtor and had failed to comply with the automatic stay by charging Debtor with default of the agreement, which Debtor alleged was an attempt to collect a pre-petition claim.\textsuperscript{196} Greystone objected to this motion to compel, stating that it had no obligation to provide the balance financing because Debtor failed to generate the $4,968,000 sales projected by its budget upon which the interim financing was based, only having actual sales of $1,569,856.\textsuperscript{197} Greystone also alleged that it had given Debtor $230,000 as a rebate for the sale of ethanol during the fourth quarter of 2008, which Greystone ostensibly characterized as cash collateral. So, Greystone argued that it had no obligation to advance any more funds to Debtor because it had already

\textsuperscript{194} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Final Order (Dkt. 159) p. 2, ¶ 2 (Apr. 2, 2009).

\textsuperscript{195} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Compel Compliance with Agreed Interim Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 172) p. 1 (Apr. 5, 2009).

\textsuperscript{196} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Compel Compliance with Agreed Interim Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 172) p. 1 (Apr. 5, 2009).

\textsuperscript{197} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to Motion to Compel Compliance with Agreed Interim Order Authorizing debtor in Possession Financing and Use of Cash Collateral (Dkt. 190) (Apr. 7, 2009).
authorized Debtor to use more than the $500,000 contemplated in the Interim Order. On April 14, Debtor withdrew its motion to compel Greystone.

On February 26, Debtor filed a Motion to Obtain Post-Petition Financing under § 364. On April 6, 2009, the court entered a Final Order Regarding Fuel Supply Agreements, authorizing Debtor to enter into a Motor Fuels Sale Agreement with PM Terminals, Inc. and a Petroleum Products Supply Agreement with Mountain Express Oil Co., and granting PM Terminals and Mountain Express Oil Co. a first priority, post-petition security interest.

On April 14, the court granted Debtor’s fourth motion to use cash collateral, allowing Debtor to pay $236,290.91 to its hourly and salaried employees; $48,411.40 to Blue Cross Blue Shield for group health insurance premiums; and $145,000 for post-petition utility deposits to Debtor’s convenience store utility service providers.

The court also granted the March 12th Emergency Joint Motion for approval of post-petition trade credit financing under § 364(c) and (d), which included authorizing up to $2,000,000 in DIP Loans from Greystone, allowing LP Shanks or an alternative grocery supplier to extend credit to Debtor so that it could obtain necessary grocery products, and allowing Product Vendors to extend credit so that Debtor could obtain fuel on credit.

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198 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection Filed by Greystone Credit II, LLC to Motion to Compel Compliance with Agreed Interim Order Authorizing debtor in Possession Financing and Use of Cash Collateral (Dkt. 190) p. 2 (Apr. 7, 2009).

199 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Withdrawing Motion to Compel (Dkt. 238) (Apr. 14, 2009).

200 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Final Order Regarding Fuel Supply Agreements (Dkt. 177) (Apr. 6, 2009).


ordered that P.A. Weber would be employed by Debtor as a Chief Restructuring Officer to oversee all operational and financial matters of Debtor, and would act in an independent capacity in the best interest of Debtor, not Debtor’s Board of Directors or Titan. This order then stated that “[u]pon entry of this Order, all members of Debtor’s Board of Directors will be deemed to have resigned, and P.A. Weber shall become at that time Debtor’s sole director.” Additionally, the court ordered as a condition of the DIP Loans that Debtor retain NRC Realty Advisors, LLC, which also employed Mr. Weber, for services related to the marketing and sale of Debtor’s assets and business. The order also included a discussion of an event of default by Debtor if: (1) it failed to generate weekly sales equal to the proposed budget; (2) it failed to collect weekly receipts equal to the proposed budget; (3) the Chief Restructuring Officer resigned or is removed; (4) it failed to perform its obligations under this Order; (5) this case is dismissed or converted to a Chapter 7 case; and (5) if it files any motion to use Greystone’s cash collateral for any purpose not authorized by the proposed budget or to grant anyone a lien with equal or greater priority than the DIP Liens.

Therefore, this order appears to have taken control of Debtor out of the hands of Titan and placed P. A. Weber in charge of all operational and financial matters of the company, with

P.A. Weber is a Senior Vice President with NRC Realty & Capital Advisors, LLC, which focuses on structured sales of commercial and residential real estate. Mr. Weber has an undergraduate degree from the University of Texas and an M.B.A. from Rice University. He specializes in financial engineering, capital raises, and distressed/restructuring advising in the convenience retail and gasoline distribution industry.


Mr. Weber’s company, NRC, retained to facilitate a sale of the company and its assets, because Titan was merely buying time and making it all the more unlikely that Debtor’s efforts to reorganize would fail.

On April 17, Debtor wanted to resume selling lottery tickets in its Virginia, Tennessee, and Kentucky stores as a means of increasing business in its convenience store locations. Debtor moved the court under § 364(d)(1) to reestablish this credit relationship with the lottery commissions, arguing that Greystone was adequately protected and that no outlay of cash was required.

**Executory Contracts and Sales Free and Clear**

On March 31, in response to Sara MacLean and the Linda R. MacLean Irrevocable Trust’s Motion for Relief from Stay, Debtor moved the court to reject the lease agreement at issue. This motion to reject was granted by the court on April 24, 2009. On the 24, Debtor also moved to reject the lease agreement between Gordon C. Brown, Judy C. Brown, and Brown’s Pantry, Inc. involving property in Abingdon, Virginia. The court granted this motion on May 18.

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208 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Order Authorizing Debtor to Obtain Post-Petition Financing Arrangement with State Lottery Commissions ([Dkt. 256](#)) (Apr. 17, 2009).

209 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Order Authorizing Debtor to Obtain Post-Petition Financing Arrangement with State Lottery Commissions ([Dkt. 256](#)) p. 3 (Apr. 17, 2009).

210 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease ([Dkt. 144](#)) (Mar. 31, 2009).


212 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property ([Dkt. 263](#)) (Apr. 24, 2009).

On April 24, Debtor moved the court for authorization to sell eleven used petroleum tankers free and clear of liens and other encumbrances to Littlejohn Tank & Equipment, Inc. for $237,500.\textsuperscript{214} Debtor alleged that this was excess equipment serving no specific purpose to Debtor, and Greystone had consented to the proposed sale, providing the statutory basis for the court to approve the sale under § 363(f)(2).\textsuperscript{215} Debtor moved to shorten the time for notice for its motion to sell free and clear to seven days,\textsuperscript{216} and the court granted the motion on April 27.\textsuperscript{217}

On the 28, Debtor also sought an additional ninety days to assume or reject thirty-three leases, which had yet to be assumed or rejected, because the newly-appointed Chief Restructuring Officer, Mr. P. A. Weber, needed additional time to negotiate with landlords for rent reductions and prepare Debtor’s assets for marketing and sale.\textsuperscript{218} On May 21, the court granted this motion, allowing Debtor until September 7, 2009 to assume or reject the applicable leases.\textsuperscript{219}

Moreover, Debtor moved to reject multiple leases with Management Properties, Inc. effective April 30, 2009, and to modify the retained lease agreement to reduce rent due under the lease to monthly payments of $104,667.\textsuperscript{220} Debtor also sought to reject the lease for APPCO No.

\begin{itemize}
\item \textsuperscript{214} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 264) (Apr. 24, 2009).
\item \textsuperscript{215} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 264) p. 4 (Apr. 24, 2009).
\item \textsuperscript{216} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Shorten Time for Notice of Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 265) (Apr. 24, 2009).
\item \textsuperscript{217} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 267) (Apr. 27, 2009).
\item \textsuperscript{218} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Additional Time toAssume or Reject Leases of Non-Residential Real Property (Dkt. 268) p. 4 (Apr. 28, 2009).
\item \textsuperscript{219} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 375) p. 2 (May 21, 2009).
\item \textsuperscript{220} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Portions of Properties Covered by Unexpired Lease of Non-Residential Real Property (Dkt. 275) p. 9 (Apr. 30, 2009).
\end{itemize}
and sought to retain APPCO No. 7 (shown below) at a reduced rental rate of $3,500 per month.\textsuperscript{221}

Debtor also moved to reject APPCO NO. 35 and the Bloomingdale location leased by MacLean, Inc., both in Kingsport, Tennessee, and sought to retain APPCO No. 2, APPCO No. 26, APPCO No. 27, and Blountville Bulk Plant with an aggregate monthly rent of $20,483.33.\textsuperscript{222} Then, Debtor moved the court to reject the leases with YA Landholdings, LLC for the property known as APPCO No. 43 in Scott County, Virginia;\textsuperscript{223} APPCO No. 78 in Clay County, Kentucky;\textsuperscript{224} APPCO No. 45 in Scott County, Virginia;\textsuperscript{225} and APPCO No. 41 in Lee County, Virginia.\textsuperscript{226}

\textsuperscript{221} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Portion of Properties Covered by Unexpired Lease of Non-Residential Real Property (\textit{Dkt. 276}) p. 8 (Apr. 30, 2009).

\textsuperscript{222} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Portions of Properties Covered by Unexpired Lease of Non-Residential Real Property (\textit{Dkt. 277}) p. 8 (Apr. 30, 2009).

\textsuperscript{223} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (\textit{Dkt. 278}) (Apr. 30, 2009).
Applications for Relief from Automatic Stay

On April 1, 2009, YA Landholdings filed a motion to compel Debtor to pay its lease obligations or reject the lease and surrender the premises.\textsuperscript{227} YA Landholdings simultaneously filed an application for relief from stay regarding the same leases. The unexpired lease agreements are as follows:

<table>
<thead>
<tr>
<th>Lease No.</th>
<th>Premises Location</th>
<th>Monthly Base Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPCO 41</td>
<td>Lee County, VA</td>
<td>$5,416.67</td>
</tr>
<tr>
<td>APPCO 42</td>
<td>Wise County, VA</td>
<td>$5,416.67</td>
</tr>
<tr>
<td>APPCO 43</td>
<td>Scott County, VA</td>
<td>$5,416.67</td>
</tr>
<tr>
<td>APPCO 45</td>
<td>Scott County, VA</td>
<td>$10,416.67</td>
</tr>
<tr>
<td>APPCO 57</td>
<td>Hawkins County, TN</td>
<td>$3,333.33</td>
</tr>
<tr>
<td>APPCO 69</td>
<td>Unicoi County, TN</td>
<td>$14,583.33</td>
</tr>
<tr>
<td>APPCO 70</td>
<td>Magoffin County, TN</td>
<td>$18,750.00</td>
</tr>
<tr>
<td>APPCO 73</td>
<td>Booneville, KY</td>
<td>$8,333.33</td>
</tr>
<tr>
<td>APPCO 75</td>
<td>Lee County, KY</td>
<td>$8,333.33</td>
</tr>
<tr>
<td>APPCO 78</td>
<td>Clay County, KY</td>
<td>$7,500.00</td>
</tr>
<tr>
<td>APPCO 79</td>
<td>Lawrence County, KY</td>
<td>$20,833.33</td>
</tr>
<tr>
<td>APPCO 80</td>
<td>Carter County, KY</td>
<td>$14,583.33</td>
</tr>
<tr>
<td>APPCO 81</td>
<td>Johnson County, KY</td>
<td>$14,583.33</td>
</tr>
<tr>
<td>4 Leases by Assignment</td>
<td>Various Locations</td>
<td>$3,800.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$141,299.99</strong></td>
</tr>
</tbody>
</table>

Additionally, § 365(d)(3) requires Debtor to perform its obligations under unexpired, nonresidential leases until such leases are assumed or rejected, and Debtor had failed to pay rent.

\textsuperscript{224} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 279) (Apr. 30, 2009).

\textsuperscript{225} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 280) (Apr. 30, 2009).

\textsuperscript{226} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 281) (Apr. 30, 2009).

\textsuperscript{227} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of YA Landholdings, LLC and YA Landholdings 7, LLC to (i) Compel Payment of Lease Obligations (ii) Compel Surrender of the Premises and Deem Lease Rejected in the Event Debtor Fails to Pay Such Amounts, and (iii) Require Abandonment of the Premises (Dkt. 148) (Apr. 1, 2009).
on these properties since November 1, 2008. Therefore, YA Landholdings moved that the court grant it an administrative claim for all unpaid post-petition loan obligations, and deem the leases rejected if Debtor failed to pay all of its obligations on an ongoing basis.

Simultaneous with its motion to compel payment, YA Landholdings filed an application for relief from stay stating that, under the leases, Debtor owed monthly rent in the amount of $141,299.99, and Debtor had not paid this rent since November 1, 2008, and YA Landholdings claimed that it had “cause” under § 362(d)(1) to be granted relief from automatic stay so that it could re-let the premises.

In addition to its motion to compel payment and application for relief from stay filed on April 1, YA Landholdings should have filed a motion to compel Debtor to assume or reject these lease agreements. By framing this as an issue of relief from stay for failure to make post-petition rent payments, YA Landholdings allowed Debtor to make the argument that it was not in default for failure to pay rent, and that YA Landholdings did not have “cause” to be granted relief from automatic stay. Filing a motion to compel Debtor to assume or reject would have limited the court’s analysis to only whether YA Landholdings had sufficient justification for reducing the 120-day period for Debtor to decide whether to assume or reject the leases. This would have been a more suitable appeal to the court by YA Landholdings, and would be more likely to be granted by the court, because it would appear to give Debtor wide discretion on whether to

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228 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of YA Landholdings, LLC and YA Landholdings 7, LLC to (i) Compel Payment of Lease Obligations (ii) Compel Surrender of the Premises and Deem Lease Rejected in the Event Debtor Fails to Pay Such Amounts, and (iii) Require Abandonment of the Premises (Dkt. 148) p. 3, ¶ 4 (Apr. 1, 2009).

229 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of YA Landholdings, LLC and YA Landholdings 7, LLC to (i) Compel Payment of Lease Obligations (ii) Compel Surrender of the Premises and Deem Lease Rejected in the Event Debtor Fails to Pay Such Amounts, and (iii) Require Abandonment of the Premises (Dkt. 148) p. 5, ¶ A-E (Apr. 1, 2009).

230 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion and Application of YA Landholdings, LLC and YA Landholdings 7, LLC for Relief from the Automatic Stay (Dkt. 150) p. 4, ¶ 8 (Apr. 1, 2009).
assume or reject the lease, and would appear like a less severe response than an application for relief from stay which would unequivocally result in termination of the lease.

On April 2, 2009, Debtor requested that the court extend its time to pay its post-petition rental obligations on a majority of its leased premises from MacLean, Inc, Management Properties, Inc., YA Landholdings, LLC, and YA Landholdings 7, LLC, contending that its fifty-eight stores were fully operational and would start generating revenues, and it would utilize the remaining $200,000.00 of court-approved DIP financing to make rent payments. The creditors involved filed a response, claiming that rent for the remainder of February was a post-petition obligation and not a pre-petition claim according to In re: Travel 2000, Inc., 264 B.R. 444 (Bankr. W.D. Mich. 2001) (emphasis in Response), and that Debtor should have to pay pro-rated February rent for the 9 (the day of Chapter 11 filing) through the 28. These creditors asserted that they were due post-petition rent in the amount of $447,291, and Debtor’s motion to extend its lease obligations was unfounded and should not be granted. However, the court entered an order granting Debtor additional time until April 30, 2009 to perform its post-petition rental obligations under these leases.

On April 2, Debtor responded to Kenneth Shaw’s motion for relief from automatic stay that was filed on March 13, asserting that it would still be in compliance with the lease as long as it paid rent for March by the hearing date set for April 7 (even though it owed February and

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234 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 217) (Apr. 9, 2009).
Debtor argued that the February rent was not due under § 365(d)(3) because it was due before Debtor filed Chapter 11, so it was a pre-petition obligation and must be paid only if Debtor elected to assume the lease. Debtor also averred that it intended to pay rent for March and April prior to the April 7 hearing date. Debtor tendered $6,000 to Kenneth Shaw for March and April rent on April 3, but Kenneth Shaw filed a reply to Debtor’s response to his motion for relief from stay on April 7, arguing that he was entitled to relief from automatic stay and that he should receive $2,142.86 for rent incurred between February 9 and February 28. On April 9, 2009, the court denied Kenneth Shaw’s motion for relief from automatic stay.

Debtor also responded to McDonald’s motion for relief from stay, contending that it had a 120 day period to assume or reject the lease in question, and that McDonald’s had not provided any basis for the court to reduce this time period. Debtor also contended that its failure to pay pre-petition charges did not give rise to a basis for the court to lift the automatic stay, and that it

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235 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 160) p. 2 (Apr. 2, 2009).

236 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 160) p. 3 (Apr. 2, 2009).

237 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion and Application of Kenneth R. Shaw for Relief from Automatic Stay, to Require Property to be Abandoned, and for Payment of Lease Obligations (Dkt. 160) p. 7 (Apr. 2, 2009).


239 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Denying Motion for Relief From Stay and Abandonment (Dkt. 215) (Apr. 9, 2009).

240 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion of McDonald’s Corporation for Relief from Automatic Stays [sic], for Adequate Protection and/or for Assumption or Rejection of Lease (Dkt. 161) p. 3 (Apr. 2, 2009).
would meet its § 365(d)(3) obligations by paying the March and April rent by the hearing on
McDonald’s motion set for April 7, 2009.\textsuperscript{241}

On April 5, Debtor filed a response in opposition to the Cummins, MacLean, and
Management Properties’ motions for relief from automatic stay.\textsuperscript{242} The three leases involved a
total of $182,680.00 due by Debtor each month.\textsuperscript{243} Debtor argued that its motion for additional
time to meet these loan obligations made these motions for relief from stay premature, and that it
was not required to pay rent for February 10 through 28 because the entire month of February
was pre-petition rent and not a post-petition arrearage.\textsuperscript{244} In response to each motion for relief
from stay, Debtor essentially admitted that it has not met its § 365(d)(3) obligations and stated
that it intended to provide each lessor with adequate protection.\textsuperscript{245}

On April 9, the court entered an order granting Sara G. MacLean and the Linda R.
MacLean Irrevocable Trust relief from automatic stay, allowing them to terminate their leases
and recover possession of the real estate.\textsuperscript{246}

On April 29, Travelers Casualty and Surety Company moved the court for relief from
automatic stay for various bonds that were issued at the request of and on behalf of Debtor.\textsuperscript{247}

\textsuperscript{241} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion of
McDonald’s Corporation for Relief from Automatic Stays [sic], for Adequate Protection and/or for Assumption or

\textsuperscript{242} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motions for Relief
from Automatic Stay or, in the Alternative, for Adequate Protection (\textit{Dkt. 171}) (Apr. 5, 2009).

\textsuperscript{243} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motions for Relief
from Automatic Stay or, in the Alternative, for Adequate Protection (\textit{Dkt. 171}) p. 5 (Apr. 5, 2009).

\textsuperscript{244} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motions for Relief
from Automatic Stay or, in the Alternative, for Adequate Protection (\textit{Dkt. 171}) p. 5 (Apr. 5, 2009).

\textsuperscript{245} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motions for Relief
from Automatic Stay or, in the Alternative, for Adequate Protection (\textit{Dkt. 171}) (Apr. 5, 2009).

\textsuperscript{246} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Granting Relief from the Automatic Stay
in Favor of Sara G. MacLean and the Linda R. MacLean Irrevocable Trust (\textit{Dkt. 216}) (Apr. 9, 2009).
As part of the issuance of these bonds, Debtor pledged a security interest in all of the funds in its cash securities account, which Travelers Casualty and Surety sought relief from stay, so it could liquidate the account and pay existing and future penal claims arising from the issuance of these bonds. 248

Fee Applications

On April 1, 2009, the Hunter, Smith, & Davis, 249 attorneys for Debtor, filed an application for compensation for services rendered from February 9 through March 25. 250 During this time period, Mark Dessauer 251 billed 144.90 hours at $275 an hour for a total of $39,847.50; and Rachel Ralston 252 billed 51.80 hours at $150 an hour for a total of $7,731.00. 253 Hunter, Smith & Davis also had paralegal billables of $977.50 and expenses in the amount of $11,385.32 for total fees and expenses of $59,941.32. 254 Interestingly, on April 15, Ron Hamblin, the sole owner of Wizard Inc, which runs a regional newspaper called the KY

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247 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Travelers Casualty and Surety Company of America’s Motion for Relief from the Automatic Stay (Dkt. 271) (Apr. 29, 2009).

248 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Travelers Casualty and Surety Company of America’s Motion for Relief from the Automatic Stay (Dkt. 271) p. 5 (Apr. 29, 2009).

249 Hunter, Smith, & Davis was established in 1916 and is comprised of twenty-five attorneys. It has an office in Kingsport and Johnson City, Tennessee.


251 Mark Dessauer practices banking, bankruptcy, and commercial litigation with Hunter, Smith, & Davis. He received his J.D. in 1983 from the University of Tennessee.

252 Rachel Ralston is an associate attorney at Hunter, Smith, & Davis. She graduated from the University of Tennessee College of Law with a joint J.D./M.B.A. in 2007. She joined the firm after clerking for the Honorable Marcia Parsons, United States Bankruptcy Judge for the Eastern District of Tennessee, who presided over this case. She practices corporate and bankruptcy law.


Mountain News, filed a letter via regular mail to the clerk of court objecting to the motion for compensation to Hunter, Smith & Davis, asserting that Debtor owed the KY Mountain News money from selling newspapers and should pay its bill before compensating its attorneys.\(^\text{255}\)

\textbf{Section 3.4 – May 2009}

\textit{Cash Collateral and Post-Petition Financing}

On May 4, the court approved the extension of credit by the Virginia, Kentucky, and Tennessee Lottery Commissions to Debtor, and it provided that each Commission was granted a first priority, post-petition security interest and lien upon the sales conducted by Debtor and the lottery equipment located and installed in Debtor’s stores in each respective state.\(^\text{256}\)

Additionally, on May 29, Debtor filed a motion moving the court to extend the exclusivity period set forth in § 1121(b) for an additional 120 days for Debtor to file a plan of reorganization.\(^\text{257}\)

\textit{Executory Contracts and Sales Free and Clear}

On May 1, the court granted Debtor’s motion to sell its excess equipment to Littlejohn Tank & Equipment for $241,000 and to use the proceeds as cash collateral for expenditures set forth in the DIP Financing Final Order.\(^\text{258}\)

On May 6, Debtor moved to reject the lease for APPCO No. 51 in Abingdon, Virginia.\(^\text{259}\)

On May 26, GEC LLC objected to Debtor’s motion to reject the APPCO No. 51 lease, arguing

\(^{255}\text{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Interim Application for Compensation to Hunter, Smith & Davis, LLP (Dkt. 247) (Apr. 15, 2009).}\)

\(^{256}\text{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Authorizing Credit Relationship with Virginia, Kentucky and Tennessee Lottery Commissions (Dkt. 295) (May 4, 2009).}\)

\(^{257}\text{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Extension of Exclusivity Period to File Reorganization Plan (Dkt. 397) (May 29, 2009).}\)

\(^{258}\text{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 284) p. 2 (May 1, 2009).}\)
that Debtor modified and accepted this lease on March 1 and April 9, through the authority of
Martin Anderson, Debtor’s CEO.\textsuperscript{260}

Moreover, on May 8, Debtor sought to establish sale procedures to sell and transfer its
leasehold interests in certain real property and personal property from various convenience
stores, which constituted substantially all of the assets of Debtor.\textsuperscript{261} The proposed sale
procedures set up a bidding structure for prospective bidders that had been approved by
Greystone and had not been objected to by the Committee of Unsecured Creditors.\textsuperscript{262} The
proposed procedures covered leasehold interests in real estate, personal property, and other
tangible assets on the properties, excluding the “Appco” name and trademarks, funds in deposit,
inventory, accounts receivable, any claims or causes of action, and any of Debtor’s books or
records.\textsuperscript{263} On the 20\textsuperscript{th}, the court authorized Debtor to implement sale procedures.\textsuperscript{264}

At the time of its voluntary Chapter 11 filing, Debtor, as tenant or lessee, was a party to
certain master leases with Management Properties, MacLean, Inc. and the Cummins. On the 8 of
May, Debtor filed a Motion for Approval of Compromise and Settlement with Management
Irrevocable Trust for the Children of Jack W. Cummins, Jr., Sara G. MacLean, Inc. and Linda R.

\textsuperscript{259} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 298) (May 6, 2009).

\textsuperscript{260} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, GEC LLC’s Objection to Debtor’s Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 392) p. 2 (May 26, 2009).

\textsuperscript{261} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval to Implement Sale Procedures (Dkt. 302) p. 1 (May 8, 2009).

\textsuperscript{262} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval to Implement Sale Procedures (Dkt. 302) p. 5 (May 8, 2009).

\textsuperscript{263} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval to Implement Sale Procedures (Dkt. 302) p. 7 (May 8, 2009).

\textsuperscript{264} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 364) (May 20, 2009).
MacLean Irrevocable Trust. In its motion, Debtor proposed to release its claim to $1,000,000 that was deposited in escrow at BB&T and give a blanket release to the involved parties, in exchange for the parties agreeing to sever its lease agreements. Debtor also moved to shorten the time for notice on this motion to eleven days so Debtor could begin marketing and selling its assets. This matter was not ultimately decided until June 10, 2009.

The Committee of Unsecured Creditors objected to the Motion of Compromise and Settlement, arguing that the proposed settlement would release the most significant assets available for distributions to the unsecured creditors. The Committee did not, however, file an objection to the settlement motion. The Unsecured Creditors also asserted that the leveraged buy-out of Debtor by Titan in 2007 resulted in $30 million of Debtor’s money being paid to the former shareholders and Debtor receiving nothing, which constituted a fraudulent conveyance. The Unsecured Creditors also claimed that limiting notice on Debtor’s motion to only eight days before the hearing would prejudice them by leaving them insufficient time to prepare for a contested evidentiary hearing.

265 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) (May 8, 2009).

266 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) p. 5 (May 8, 2009).

267 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 305) (May 8, 2009).

268 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection of Official Committee of Unsecured Creditors to Debtor’s Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 306) (May 11, 2009).

269 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection of Official Committee of Unsecured Creditors to Debtor’s Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 306) p. 3 (May 11, 2009).

270 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection of Official Committee of Unsecured Creditors to Debtor’s Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 306) p. 4 (May 11, 2009).
Debtor subsequently responded to the Committee’s Objection, asserting that the purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burden of litigating contested claims, and that the certainty of this compromise and settlement outweighed the uncertainties and expenses of pursuing a fraudulent transfer claim against the former shareholders over $1,000,000 in an escrow account. 271

The Official Committee of Unsecured Creditors subsequently filed a Precautionary Objection to Debtor’s Motion for Approval of Compromise and Settlement, merely stating that it objected based on the reasons already set forth in its Objection to Debtor’s Motion to Shorten Time for Notice. 272 It appears that the Committee had previously overlooked this Objection and filed this to procedurally rectify the docket as a means of solidifying its argument.

YA Landholdings also objected to Debtor’s Motion for Approval of Compromise and Settlement, alleging that Debtor failed to outline the basis of its alleged claims, the possible defenses, and the difficulties involved in prosecuting the claims that would justify this settlement. 273

On May 14, the Committee of Unsecured Creditors filed a Supplement to its Objection, to notify the court that Debtor was not being cooperative to requests to schedule depositions or requests to expedited discovery plans. 274 Therefore, the Committee argued that Debtor’s

271 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Memorandum in Support of Motion for Approval of Compromise and Settlement (Dkt. 395) (May 27, 2009).

272 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Committee’s Precautionary Objection to Debtor’s Motion for Approval of Compromise and Settlement (Dkt. 396) (May 29, 2009).

273 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Debtor’s Motion for Approval of Proposed Compromise and Settlement (Dkt. 399) (May 29, 2009).

274 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Supplement to Objection of Official Committee of Unsecured Creditors to Debtor’s Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 323) p. 4 (May 14, 2009).
inability to provide any expedited discovery to the Committee confirmed that it was ill conceived to schedule this hearing for May 19.\textsuperscript{275}

The court held a telephonic hearing on May 15, and on May 18 entered an order denying Debtor’s request to shorten time for notice of hearing and granting its request to limit the parties to receive notice on its Motion for Approval of Compromise and Settlement.\textsuperscript{276}

On May 19, Debtor moved the court to authorize Debtor to sell real property located in Big Stone Gap, Virginia free and clear of liens to TAAL for $60,000.\textsuperscript{277} Debtor asserted that it owned this property free and clear of liens with the exception of property taxes, and the property was not intended to be used as part of its reorganization, therefore, the court had a statutory basis under § 363(f)(1) to approve the sale of this property.\textsuperscript{278} Moreover, Debtor requested to sell free and clear twelve used vehicles and miscellaneous equipment to twelve of its employees who had bid a total of $55,600 for the vehicles and equipment.\textsuperscript{279} While Greystone had liens on the vehicles at issue, Greystone had consented to the proposed sale.\textsuperscript{280} Debtor also moved the court to use the cash collateral generated from these sales in accordance with the DIP Financing Final

\begin{footnotesize}
\begin{itemize}
\item[275] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Supplement to Objection of Official Committee of Unsecured Creditors to Debtor’s Motion to Shorten Time for Notice of Motion for Approval of Compromise and Settlement and to Limit the Parties Required to Receive Notice of Motion (Dkt. 323) p. 4 (May 14, 2009).
\item[276] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 337) (May 18, 2009).
\item[277] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) p. 2 (May 19, 2009).
\item[278] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) p. 2 (May 19, 2009).
\item[279] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 345) p. 3 (May 19, 2009).
\item[280] In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 345) p. 3 (May 19, 2009).
\end{itemize}
\end{footnotesize}
Debtor then moved to sell its fifty percent membership interest in Appalachian Barnette, LLC, which owned and operated a convenience store of Debtor in Coeburn, Virginia. Appalachian Barnette had not operated profitably since its inception and it was indebted to Powell Valley National Bank for $338,000, of which $169,000 was guaranteed by Debtor. Thus, Debtor requests authorization from the court to sell its interest to Double T, LLC in consideration of the assumption of Debtor’s guaranty obligation to Powell Valley National Bank.

On April 30, Debtor filed various motions to reject leases primarily related to APPCO No. 43, APPCO No. 78, APPCO No. 45, and APPCO No. 41. In response to these motions, YA Landholdings argued that Debtor was using these motions to continue to use the properties without timely performing its obligations under the unexpired leases as required by § 365(d)(3). Therefore, YA Landholdings requested the court to order Debtor to pay its May rent and to remove all of its assets and vacate the properties within five days of the court’s order to reject the leases.

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281 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with Final Order (Dkt. 345) p. 5 (May 19, 2009).

282 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) (May 19, 2009).

283 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) May 19, 2009).

284 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) (May 19, 2009).

285 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, YA Landholdings, LLC and YA Landholdings 7, LLC Response to Debtor’s Motions to Reject Leases (Dkt. 369) p. 3 (May 20, 2009).

286 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, YA Landholdings, LLC and YA Landholdings 7, LLC Response to Debtor’s Motions to Reject Leases (Dkt. 369) p. 5 (May 20, 2009).
Debtor also moved to reject the unexpired lease for APPCO No. 80 in Olive Hill, Kentucky.  

**Applications for Relief from Automatic Stay**

On May 1, Premium Financing Specialists, Inc. moved the court for relief from stay for the balance of insurance premiums that Premium Financing Specialists had financed for Debtor. As security for the loan balance, Debtor assigned all unearned premiums payable under the policies to Premium Financing Specialists. Premium Financing Services continued to provide these insurance premium payments for Debtor after Debtor filed for Chapter 11, and as of April 22, Debtor had an unpaid balance of $21,461.15. Therefore, Premium Financing Services sought relief from the automatic stay so that it could exercise its rights as a secured creditor and cancel the policies scheduled after Debtor filed Chapter 11 and collect the unearned return premiums and apply them to the amount owed under the financing agreement. Premium Financing Specialists also alleged that Debtor had not given it adequate protection and asserted that if the unearned premiums were insufficient to pay Debtor’s debt, then Premium Financing Specialists was entitled to a super priority administrative claim under § 507(b).

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287 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 398) (May 29, 2009).

288 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Premium Financing Specialists, Inc. for Relief from Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 286) p. 2 (May 1, 2009).

289 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Premium Financing Specialists, Inc. for Relief from Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 286) p. 2 (May 1, 2009).

290 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Premium Financing Specialists, Inc. for Relief from Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 286) p. 3 (May 1, 2009).

291 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Premium Financing Specialists, Inc. for Relief from Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 286) p. 3 (May 1, 2009).

292 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Premium Financing Specialists, Inc. for Relief from Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 286) p. 2 (May 1, 2009).
On the 13th, Debtor responded to Premium Financing Specialists’ motion, stating that it would cooperate with Premium Financing Specialist’s efforts to cancel the applicable policies and premiums retroactive to February 9, the date of Debtor’s filing its voluntary bankruptcy petition. Debtor also did not object to Travelers Casualty and Surety Company’s April 29 motion for relief from automatic stay, but did request that Travelers use the funds to reduce the principal balance on any pending tax claim and not put them toward penalties due on fuel taxes. On May 19, the court granted Travelers Casualty and Surety Company’s motion for relief from stay, allowing it to take possession of the Funds Account.

Orders of Employment

On May 11, Debtor moved to employ NRC Realty Advisors, LLC to serve as its real estate and sales agent and financial advisor. The court granted this motion on May 20.

Fee Applications

Additionally, on May 20, the court granted Hunter, Smith & Davis’ Application for Interim Compensation for $48,556 in fees and $11,385.32 in expenses.

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293 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response to Motion of Premium Financing Specialists, Inc. for Relief from the Automatic Stay or, Alternatively, for Adequate Protection (Dkt. 315) (May 13, 2009).

294 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response to Travelers Casualty and Surety Company of America’s Motion for Relief from the Automatic Stay (Dkt. 316) (May 13, 2009).

295 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Granting Motion for Relief from Stay Filed by Travelers Casualty and Insurance Company of America (Dkt. 360) (May 19, 2009).

296 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor for Authority to Employ Real Estate and Financial Advisor and Sales Agent (Dkt. 308) (May 11, 2009).


§ 3.5 — June 2009

Post-Petition Financing

The bankruptcy court dealt briefly with debtor-in-possession financing in June. On June 1, 2009, the court amended the order authorizing debtor-in-possession financing and use of cash collateral that it entered on April 14, 2009.\footnote{299 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amendment to Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (\textit{Dkt. 418}) (June 1, 2009).} The amended order was the result of an agreement between Debtor and Greystone to increase the aggregate amount of the post-petition revolving credit facility from which Debtor could obtain financing.\footnote{300 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amendment to Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (\textit{Dkt. 418}) p. 1 (June 1, 2009).} Specifically, the order provided for “an increase in the amount of the DIP Facility from Two Million Dollars ($2,000,000) to Two Million Four Hundred Thousand Dollars ($2,400,000), and (ii) an extension of the maturity date of the DIP Facility from May 29, 2009 until June 10, 2009[.]”\footnote{301 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amendment to Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (\textit{Dkt. 418}) p. 2, ¶ 2 (June 1, 2009).} However, the parties later agreed to a larger sum, and the court entered an order reflecting the amendment.\footnote{302 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (\textit{Dkt. 473}) (June 12, 2009).} The order increased the amount of the credit facility to $3,150,000.00 and extended the maturity date of thereof until July 26, 2009.”\footnote{303 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (\textit{Dkt. 473}) p. 2, ¶ 2 (June 12, 2009).}

The amendment was a direct result of the cash-strapped position in which Debtor found itself. Without access to operating income, Debtor could not continue to operate the company or maintain its value as an ongoing concern. Greystone, therefore, acquiesced to Debtor’s need for
credit because it guaranteed Greystone’s pre-petition investment in Debtor by maintaining ongoing concern value, and it was profitable for Greystone to lend post-petition funds to Debtor.

*Executory Contracts and Leases*

Moreover, the court considered issues regarding the acceptance and rejection of executory contracts and unexpired leases this month. On May 8, 2009, Debtor filed a Motion for Approval of Compromise and Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019(a). In its motion, Debtor sought approval for a compromise and settlement among Debtor, Management Properties, Inc., MacLean, Inc., the Jack W. Cummins Sr. Irrevocable Trust for the Children of Jack W. Cummins, Sr., Sara G. MacLean, Inc., and the Linda R. MacLean Irrevocable Trust. Debtor wanted to relinquish its interest in the $1,000,000 that was being held in escrow and to sever leases to which some of the aforementioned parties were bound by accepting some properties and rejecting others that were covered thereby. The parties initially disputed debtor’s ability to sever the terms of the leases in this manner but were ultimately able to reach an agreement.

The bankruptcy court held a hearing on the motion and granted it in Debtor’s favor on June 10, 2009. The court set forth the manner in which monies were to be released and

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304 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) (May 8, 2009).

305 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) p. 1 (May 8, 2009).

306 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) p. 3-4, ¶ 11 (May 8, 2009).

307 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Approval of Compromise and Settlement (Dkt. 304) p. 3-4, ¶ 7-10 (May 8, 2009).

dispersed pursuant to the Escrow Agreement dated September 7, 2007, released the agent from liability, and made clear that the $750,000.00 distribution to the Unsecured Creditors Committee should “be segregated and held by counsel for the Committee to be used solely for distributions to general unsecured creditors and payment of approved fees and expenses of the Committee’s professionals[.]” 309 Upon the occurrence of the distribution, the court mandated that Debtor, Debtor’s Estate, and the Committee execute a blanket release in favor of “the Former Shareholders, the Landlords, James R. MacLean, Linda R. MacLean and their respective officers, directors, employees, attorneys[,] and agents.” 310 The court also stated that “the Landlords and the Former Shareholders shall not be permitted to recover on any of their claims against the Debtor or the Debtor’s estate from the $750,000 disbursed or released to the Committee from the Escrow Fund.” 311 The court then ordered that $25,000.00 of the $750,000.00 disbursed to the Committee be used to pay professional fees and expenses and capped Greystone’s share of any distribution from the $750,000.00 at seventeen percent. 312 The bankruptcy court made clear,

[U]pon the closing of the Settlement Agreement as modified herein, and the execution of all documents and agreements necessary for the closing of the Settlement Agreement as modified by this Order, Greystone’s liens on all of the

309 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 3-7 (June 10, 2009).


Debtor’s assets . . . shall be deemed first priority (except to the limited extent liens were granted to vendors in the DIP Order), valid[,] and unavoidable.  

However, the court “carved out from Greystone’s liens and claims to the net sale proceeds from the sale of the assets of the Debtor’s estate for the benefit of general unsecured creditors,” the following amounts:

A. $250,000 of the first proceeds in excess of $4 million of the net sale proceeds paid to Greystone;
B. 5% of all net sale proceeds in excess of $4,250,000 until net sale proceeds of $8 million are reached;
C. 10% of all net sale proceeds in excess of $8 million until net sale proceeds of $10 million are reached; and
D. 5% of all net sale proceeds in excess of $10 million[].

The court also required that the net sale proceeds be paid toward Greystone’s priority and secured claims until they were paid in full in the same manner as any other unsecured claimant and ordered Debtor, Debtor’s Estate, and mandated that the Committee “execute and deliver to Greystone a blanket release of all claims against Greystone, its officers, directors, employees, attorneys[,] and financial advisors employed with regard to this chapter 11 case and any of its affiliates that are or were participants in providing financing to the Debtor.” As for the sale proceeds carved out of Greystone’s liens and claims, the court required that the sum be “paid to

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315 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 5-6 (June 10, 2009).
counsel for the Committee and used solely for distribution to general unsecured creditors and payment of allowed fees and expenses of the Committee’s professionals.”\textsuperscript{316}

Finally, the court permitted Debtor to execute and deliver the revised leases according to the terms set forth in the Settlement Agreement and granted the various landlords relief from the automatic stay pursuant to § 362(d)(1) to take possession of any rejected property or any accepted property on which Debtor’s rent was thirty days past due.\textsuperscript{317} They were also entitled to administrative expense claims for any leases, including the restructured ones, where Debtor was also in possession of the leased premises.\textsuperscript{318} However, the court indicated that any of their other claims were merely entitled to unsecured, non-priority status.\textsuperscript{319} With regard to the restructured leases, however, the court deemed them assumed for purposes of § 365, making clear that the amounts and property taxes due under the agreements would be calculated based upon the new lease terms.\textsuperscript{320} The court concluded by stating that its order would survive a dismissal or conversion to Chapter 7 and that it would become effective immediately.\textsuperscript{321}

\textsuperscript{316} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 6 (June 10, 2009).

\textsuperscript{317} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 6 (June 10, 2009).

\textsuperscript{318} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 7 (June 10, 2009).

\textsuperscript{319} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 7 (June 10, 2009).

\textsuperscript{320} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 7 (June 10, 2009).

\textsuperscript{321} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Approving Compromise and Settlement By and Among Debtor, Official Committee of Unsecured Creditors, Greystone Business Credit II, L.L.C., Former Shareholders, and Landlords (Dkt. 461) p. 7-8 (June 10, 2009).
At first glance, Debtor’s Motion for Approval of Compromise and Settlement seems to stand in direct contravention to the law applicable to executory contracts, which requires the debtor-in-possession to assume or reject such contracts “in toto.”\(^\text{322}\) In its motion, Debtor sought to accept and reject unexpired leases in a piecemeal fashion by assuming some properties and rejecting others covered by a single lease agreement. Nevertheless, the bankruptcy court approved the motion because the parties reached an agreement, allowing the court to avoid the dilemma of determining whether Debtor’s motion was, in fact, proper. If the parties had failed to reach a compromise, the court’s decision may have been different.

In addition, Debtor moved to reject a Land and Building Lease Agreement that covered certain non-residential real property located in Olive Hill, Kentucky pursuant to § 365(a) and Federal Rule of Bankruptcy Procedure 6006.\(^\text{323}\) Debtor sought to reject the lease as of May 31, 2009, but “reserve[d] the right to withdraw its motion if it . . . reach[ed] a satisfactory re-negotiation of the rent” with its landlord.\(^\text{324}\) The court entered the order granting Debtor’s motion on June 22, 2009.\(^\text{325}\) This result was proper because Debtor timely and appropriately sought to reject the unexpired lease, and there were no objections to Debtor’s motion, which enabled the court to easily decide the motion in favor of Debtor.


\(^{323}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 398) (June 10, 2009).

\(^{324}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 398) (June 10, 2009).

\(^{325}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 503) (June 22, 2009).
Sales Free and Clear

An important issue before the court in June concerned Debtor’s desire to sell property outside the ordinary course of business free and clear of all liens and encumbrances and its related interest in utilizing the cash collateral generated by the sale to pay authorized expenditures. On May 19, 2009, Debtor filed a Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with the Final Order pursuant to §§ 363(b)(1), 363(c)(2), 363(f), and Federal Rule of Bankruptcy Procedure 6004(a).326 In the motion, Debtor discussed its bidding process, which identified twelve employees who were interested in purchasing twelve used vehicles and miscellaneous equipment for a sum of $55,600.00.327 Debtor averred that the aforementioned property was not in use and stated that the equipment was not necessary for Debtor’s effective reorganization.328 Further, Greystone, the only secured party with respect to the vehicles and equipment, consented to the proposed sale and Debtor’s use of the cash collateral.329 The court heard Debtor’s motion on June 2, 2009, and subsequently entered an order granting the motion in Debtor’s favor.330 The order authorized the proposed sale, stating that the purchasers were good faith purchasers under § 363(m), that the sale could not be avoided under § 363(n), that all claims of liens and encumbrances would attach.

326 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with the Final Order (Dkt. 345) (May 19, 2009).

327 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with the Final Order (Dkt. 345) p. 3, ¶ 6 (May 19, 2009).

328 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with the Final Order (Dkt. 345) p. 3, ¶ 7 (May 19, 2009).

329 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral in Accordance with the Final Order (Dkt. 345) p. 4, ¶ 9 (May 19, 2009).

330 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 435) (June 2, 2009).
to the sale proceeds, that the property shall be deemed sold free and clear of all liens and encumbrances, and that the transaction shall take place immediately.\textsuperscript{331} The court also said,

\begin{quote}
[N]otwithstanding anything . . . above to the contrary, the proceeds generated by the sale of the Vehicles and miscellaneous equipment constitute cash collateral under 11 U.S.C. § 363(a) and the debtor is authorized to use such cash collateral for the expenditures set forth in the Budget attached as Exhibit A to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral [Docket No. 242] subject to the superpriority claims, rights[,] and security interests of Greystone Credit II, LLC therein.\textsuperscript{332}
\end{quote}

Debtor filed an additional Motion to Sell Property Free and Clear of Liens and Encumbrances on May 19, 2009, pursuant to §§ 363(b)(1), 363(f) and Federal Rule of Bankruptcy Procedure 6004(a).\textsuperscript{333} In its motion, Debtor moved for permission to sell its fifty percent interest in Appalachian Barnette, LLC because the company was in a dire financial position and had previously guaranteed $169,000.00 worth of Appalachian Barnette, LLC’s debt.\textsuperscript{334} Debtor averred that it received an offer from Double T, LLC to purchase its interest, that the sale was in its best interest, and that there were no objections.\textsuperscript{335} The court held a hearing on Debtor’s motion on June 2, 2009, and granted it in favor of Debtor on the same grounds as the aforementioned motion.\textsuperscript{336}

\\textsuperscript{331} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 435) p. 2, ¶ 4 (June 2, 2009).

\textsuperscript{332} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 435) p. 3, ¶ 5 (June 2, 2009).

\textsuperscript{333} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) (May 19, 2009).

\textsuperscript{334} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) p. 2, ¶ 4 (May 19, 2009).

\textsuperscript{335} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 347) p. 2, ¶ 5 (May 19, 2009).

\textsuperscript{336} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 436) p. 2, ¶ 4 (June 2, 2009).
On June 8, 2009, Debtor filed a Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral pursuant to §§ 363(b)(1), 363(c)(2), 363(f), and Federal Rule of Bankruptcy Procedure 6004(a). In support thereof, Debtor stated that it formerly serviced a dealer location in Big Stone Gap, Virginia but that it subsequently sold the real property and assigned its leasehold interest to another party. As a result, Debtor averred that the transaction left it with an amount of excess equipment that was not necessary to Debtor’s effective reorganization. Debtor, therefore, sought the court’s permission to sell the following property for $20,000.00: a safe, a telecheck, ice machines, a coffee counter, a credit card swipe system, a Pionex computer, a heat pump, tanks, pumps, a camera system, a card rack, an econ monitor, dumpster, signs, two canopies, and other items of personal property. Further, Debtor noted that Greystone, the only party with a security interest in the equipment, consented to the proposed sale and to Debtor’s use of the cash collateral. After holding a hearing on the motion on June 16, 2009, the court entered an order granting the motion in Debtor’s favor, holding that the purchaser was a good faith purchaser under § 363(m), that the sale could not be avoided under § 363(n), that all claims of liens and encumbrances would attach to the sale proceeds, that the property shall be deemed sold free and clear of all liens and encumbrances, and that the

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337 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 445) (June 8, 2009).

338 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 445). 3, ¶ 5 (June 8, 2009).

339 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 445) p. 9, ¶ 3 (June 8, 2009).

340 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 445) p. 9, ¶ 3 (June 8, 2009).

341 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 445) p. 4, ¶ 11 (June 8, 2009).
transaction shall take place immediately. The court also authorized Debtor to use the cash collateral rendered from the sale “for the expenditures set forth in the Budget . . . subject to the superpriority claims, rights[,] and security interests of Greystone . . . therein.”

Debtor filed another Motion to Sell Property Free and Clear of Liens and Encumbrances in which Debtor moved, pursuant to §§ 363(b), 363(f), and Federal Rule of Bankruptcy Procedure 6004(a) to sell real property and the improvements thereon located at 460 Orby Cantrell Highway, Big Stone Gap, Virginia 24219 outside the ordinary course of business. In its motion, Debtor alleged that the unimproved property was excess property, which was not essential to Debtor’s effective reorganization. Further, Debtor averred that the property’s current lessee, TAAL, was the most suitable purchaser for the lot and argued that the lessee’s $60,000.00 offer should be approved. Debtor intended to put the sale proceeds toward its post-petition operating expenses. After holding a hearing on Debtor’s motion on June 2, 2009, the court found no objections to the proposed sale and granted the motion. The court authorized Debtor to sell the aforementioned parcel by private sale to its current lessee for the sum of $60,000.00 and set forth its usual findings with regard to the sale.

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342 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 495) p. 2, ¶ 4 (June 18, 2009).
343 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 495) p. 3, ¶ 5 (June 18, 2009).
344 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) (May 19, 2009).
345 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) p. 2, ¶ 5 (May 19, 2009).
346 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) p. 2, ¶ 4-5 (May 19, 2009).
347 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances (Dkt. 343) p. 2, ¶ 5 (May 19, 2009).
Debtor’s to use the cash collateral rendered from the sale subject to Greystone’s interests, of course.  

On June 10, 2009, Debtor filed a Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral pursuant to §§ 363(b)(1), 363(c)(2), 363(f), and Federal Rule of Bankruptcy Procedure 6004(a). Specifically, Debtor averred that it had “certain used vehicles and trailers which are in various stages of disrepair” and said that these vehicles were “taken out of service because of the need for repair to be serviceable.” However, Debtor stated that it identified potential purchasers for the disabled vehicles through an employee bidding process under which Debtor would receive a sum of $24,225.00. The surplus vehicles were not being used by Debtor and were not necessary to Debtor’s effective reorganization. Further, Debtor contended that the amount offered was fair and could not be exceeded through liquidation. The only secured party that Debtor listed with respect to the personal property was Greystone, and it consented to the proposed sale and Debtor’s use of the cash collateral.

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351 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) (June 10, 2009).
352 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) p. 3, ¶ 5 (June 10, 2009).
353 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) p. 3, ¶ 6 (June 10, 2009).
354 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) p. 3, ¶ 7 (June 10, 2009).
355 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) p. 3, ¶ 7 (June 10, 2009).
356 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) p. 5, ¶ 12 (June 10, 2009).
Debtor’s desire to sell real and personal property free and clear of interests caused it to propose such sales prior to plan confirmation process. This method of selling property out of the ordinary course of business was far more expeditious for Debtor than engaging in the expensive, time-consuming plan confirmation process. The § 363 sale process is much less cumbersome because it “require[s] much less in the way of notice, disclosure, or opportunities for objectors or alternative bidders to actually be heard.”

Applications for Relief from Automatic Stay

One issue that arose during the month of June concerned relief from stay or, in the alternative, adequate protection. On May 4, 2009, Premium Financing Specialists, Inc. filed an amended motion pursuant to § 362(d)(1), which requested relief from stay or, in the alternative, adequate protection. In its motion, Premium Financing Specialists, Inc., an insurance premium finance company, averred that its interest in the collateral, the unearned premiums payable, was not adequately protected and contended that the collateral continued to diminish in value by $88.70 per day. For that reason, Premium Financing Specialists, Inc. asked the court to allow it “to exercise its rights under the finance agreement.” The bankruptcy court held a hearing on the motion on May 19, 2009, and entered an order in favor of Premium Financing


358 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Motion of Premium Financing Specialists, Inc. for Relief From Automatic Stay Or, Alternatively, For Adequate Protection (Dkt. 296) (May 4, 2009).


360 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Motion of Premium Financing Specialists, Inc. for Relief From Automatic Stay Or, Alternatively, For Adequate Protection (Dkt. 296) p. 3, ¶ 17 (May 4, 2009).
Specialists, Inc. on June 1, 2009.\textsuperscript{361} In its order, the bankruptcy court allowed Premium Financing Specialists, Inc. to terminate Debtor’s insurance policies as of the bankruptcy filing date and apply the same to Debtor’s obligations under the agreement, including attorneys fees.\textsuperscript{362} In addition, the court mandated that Premium Financing Specialists, Inc. file an affidavit and proposed order concerning attorneys fees within ten days of its order.\textsuperscript{363}

The court also considered Debtor’s response that was filed in opposition to Agnes C. Davis’s Motion for Relief from Stay. As was previously discussed, Davis’s motion alleged that “just cause exist[ed] to lift the automatic stay for [her] to proceed in state court to evict . . . Debtor” because the company defaulted under the terms of its lease agreement and failed to cure its default within the prescribed period of time after receiving the requisite notice.\textsuperscript{364} Debtor admitted that it defaulted under the terms of the lease agreement.\textsuperscript{365} However, the company averred that Davis’s letter was not an effective termination of the lease because it did not specify the nature of the breach or indicate a period for cure, if any.\textsuperscript{366} Debtor argued that Davis bore the burden of proving that “cause” existed for granting relief from stay under § 362(d)(1) and subsequently opined that no “cause” existed within the meaning of the aforementioned

\textsuperscript{361} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) (June 1, 2009).

\textsuperscript{362} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 2 (June 1, 2009).

\textsuperscript{363} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 2 (June 1, 2009).

\textsuperscript{364} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 138) p. 2, ¶ 4 (Mar. 26, 2009).

\textsuperscript{365} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 1, ¶ 2 (June 1, 2009).

\textsuperscript{366} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 2, ¶ 3 (June 1, 2009).
Debtor also noted that it paid all post-petition rent, excluding the month of February, and argued that an adverse ruling would be inconsistent with Debtor’s extension of time to assume or reject the lease, which the court granted on a prior occasion.368

Clearly, it was imperative for Premium Financing Specialists, Inc. to file its motion because the value of its collateral was diminishing by $88.70 per day. Thus, Premium Financing Specialists, Inc. merely sought to protect its interest before the collateral substantially depreciated in value. This was not the case with regard to Davis’s motion. Davis filed her Motion for Relief from Stay just over a month after Debtor filed its Chapter 11 petition—a period in the case in which the bankruptcy court is generally more concerned with Debtor’s rights. Not to mention, Debtor still had time to assume or reject the lease. Davis, thus, may have had a greater chance of success if she had filed a motion to compel instead. For these reasons, Debtor’s response to Davis’s motion was more likely to prevail at this point in the bankruptcy.

Fee Applications

Earlier this month, the court entered an order granting Premium Financing Specialists, Inc. relief from the automatic stay.369 The court’s order mandated an affidavit and a proposed order relating to attorneys fees be filed within ten days of the entry.370 Maurice K. Guinn filed the requisite documents on June 11 on behalf of Gentry, Tipton & McLemore, P.C., asking for

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367 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 3, ¶ 4 (June 1, 2009).

368 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order Granting Amended Motion of Premium Financing Specialists, Inc. For Relief from Automatic Stay (Dkt. 405) p. 3, ¶ 5 (June 1, 2009).

369 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 405) (June 1, 2009).

370 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 405) p. 2 (June 1, 2009).
$1,481.33 in attorneys fees and $230.47 in miscellaneous expenses.\textsuperscript{371} The court entered an order on June 22 adding these amounts to Premium Financing Specialists’ total claim.\textsuperscript{372}

Subsequently, Whiteford, Taylor & Preston, L.L.P. filed its First Application for Allowance of Interim Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period February 26, 2009 and May 31, 2009, pursuant to §§ 327, 330, and 331 and Federal Rule of Bankruptcy Procedure 2016.\textsuperscript{373} In particular, Whiteford, Taylor & Preston, L.L.P. sought interim compensation in the amount of $170,681.00 and reimbursements totaling $8,735.16 for its legal representation of the Unsecured Creditors Committee.\textsuperscript{374} Whiteford, Taylor, & Preston, L.L.C. averred that the Retention Order the court entered in February stipulated that the firm was “to be compensated on an hourly basis and to be reimbursed for actual and necessary out-of-pocket expenses.”\textsuperscript{375} Whiteford, Taylor & Preston, L.L.P., therefore, included a detailed breakdown of the hours and services for which it sought compensation.\textsuperscript{376}

\textsuperscript{371} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Affidavit of Maurice K. Guinn (Dkt. 469) p. 2 (June 11, 2009); Maurice K. Guinn practices business, commercial, and bankruptcy litigation with Gentry, Tipton & McLemore, P.C. He received his J.D. in 1977 from the University of Memphis School of Law. Gentry, Tipton & McLemore, P.C. was founded in 1976 and is comprised of fifteen attorneys. The firm has offices in Knoxville and Sevierville, Tennessee.

\textsuperscript{372} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order as to Inclusion of Attorney Fees and Expenses in Claim of Premium Financing Specialists, Inc. (Dkt. 504) p. 2 (June 22, 2009).

\textsuperscript{373} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, First Application of Whiteford, Taylor & Preston, L.L.P. for Allowance of Interim Compensation for Services Rendered and Reimbursement of the Expenses Incurred for the Period February 26, 2009 Through May 31, 2009 (Dkt. 496) (June 18, 2009).


The listed charges and services for Whiteford, Taylor & Preston, L.L.P. are summarized below:

**Chart of Charges**

<table>
<thead>
<tr>
<th>Name</th>
<th>Hours</th>
<th>Hourly Rate</th>
<th>Fees Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brent C. Strickland</td>
<td>54.8</td>
<td>$430</td>
<td>$23,564</td>
</tr>
<tr>
<td>John F. Carlton</td>
<td>188</td>
<td>$460</td>
<td>$86,480</td>
</tr>
<tr>
<td>Stephen B. Gerald</td>
<td>118.6</td>
<td>$390</td>
<td>$46,254</td>
</tr>
<tr>
<td>Kenneth Oestreicher</td>
<td>3</td>
<td>$510</td>
<td>$1,530</td>
</tr>
<tr>
<td>Scott D. Freed</td>
<td>9.9</td>
<td>$460</td>
<td>$4,554</td>
</tr>
<tr>
<td>Susan J. Roberts</td>
<td>2.6</td>
<td>$370</td>
<td>$962</td>
</tr>
<tr>
<td>Todd M. Brooks</td>
<td>25.3</td>
<td>$290</td>
<td>$7,337</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>402.2</td>
<td></td>
<td><strong>$170,681</strong></td>
</tr>
</tbody>
</table>

**Chart of Services**

<table>
<thead>
<tr>
<th>Hours</th>
<th>Fees Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Case Administration, Debtor Pleadings &amp; Motions</td>
<td>42.1</td>
</tr>
<tr>
<td>2. Secured Lender Issues</td>
<td>155.8</td>
</tr>
<tr>
<td>3. Unsecured Creditor Issues</td>
<td>58.1</td>
</tr>
<tr>
<td>4. Operational Issues</td>
<td>4.5</td>
</tr>
<tr>
<td>5. Sale of Assets</td>
<td>9.7</td>
</tr>
<tr>
<td>6. Avoidance Actions &amp; Affirmative Claims</td>
<td>121.6</td>
</tr>
<tr>
<td>7. Professionals</td>
<td>7</td>
</tr>
<tr>
<td>8. Plan &amp; Disclosure Statement</td>
<td>0.2</td>
</tr>
<tr>
<td>9. Regulatory/Securities</td>
<td>0</td>
</tr>
<tr>
<td>10. Schedules, Statements &amp; Monthly Reports</td>
<td>3.2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>402.2</td>
</tr>
</tbody>
</table>

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Protiviti, Inc. also filed a First Application for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009, which sought to recover “$91,378.00 as compensation and $119.24 as reimbursement of actual and necessary expenses” for its services as financial advisors to the Unsecured Creditors Committee.\textsuperscript{379} In support of its application, Protiviti, Inc. listed the following charges and services for which it requested compensation:

\textit{Chart of Charges}\textsuperscript{380}

<table>
<thead>
<tr>
<th>Name</th>
<th>Hours</th>
<th>Hourly Rate</th>
<th>Fees Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael L. Atkinson</td>
<td>110.2</td>
<td>$470</td>
<td>$51,794</td>
</tr>
<tr>
<td>Jason N. Crockett</td>
<td>86</td>
<td>$330</td>
<td>$28,380</td>
</tr>
<tr>
<td>Andrew M. Frisvold</td>
<td>18.2</td>
<td>$220</td>
<td>$4,004</td>
</tr>
<tr>
<td>Camillia A. Johnson</td>
<td>6</td>
<td>$210</td>
<td>$1,260</td>
</tr>
<tr>
<td>Misty D. Torbert</td>
<td>27</td>
<td>$220</td>
<td>$5,940</td>
</tr>
<tr>
<td>Research</td>
<td></td>
<td></td>
<td>$119.24</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>247.4</td>
<td><strong>369.35</strong></td>
<td><strong>91,497.24</strong></td>
</tr>
</tbody>
</table>


Chart of Services\textsuperscript{381}

<table>
<thead>
<tr>
<th></th>
<th>Hours</th>
<th>Fees Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Case Administration</td>
<td>23.6</td>
<td>$8,044</td>
</tr>
<tr>
<td>2. Financing</td>
<td>10.3</td>
<td>$4,136</td>
</tr>
<tr>
<td>3. Meeting of Creditors</td>
<td>5.3</td>
<td>$1,216</td>
</tr>
<tr>
<td>4. Accounting/Auditing</td>
<td>20.3</td>
<td>$6,141</td>
</tr>
<tr>
<td>5. Business Analysis</td>
<td>19</td>
<td>$5,590</td>
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<tr>
<td>6. Data Analysis</td>
<td>168.9</td>
<td>$65,891</td>
</tr>
<tr>
<td>7. Research</td>
<td></td>
<td>$119.24</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>247.4</td>
<td><strong>$91,497.24</strong></td>
</tr>
</tbody>
</table>

Motion to Appoint a Chapter 11 Trustee

During the month of June, the bankruptcy court also addressed issues concerning the appointment of a bankruptcy trustee. On June 9, 2009, Titan filed a motion to appoint a Chapter 11 trustee pursuant to Federal Rule of Bankruptcy Procedure 1104(a)(1).\textsuperscript{382} It its motion, Titan alleged that problems regarding the bankruptcy estate dated back to the appointment of Andrew Weber, the Chief Restructuring Officer, on April 14, 2009.\textsuperscript{383} Titan contended that Weber had failed to act in the best interest of the bankruptcy estate since that time.\textsuperscript{384} In particular, Titan alleged that Weber terminated Bryan Chance, the former Chief Operating Officer of Appalachian Oil Company and subsequently filed “a motion to compromise . . . claims of the Debtor against certain escrowed funds and against various of the Debtor’s landlords” without giving Titan


\textsuperscript{382} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) (June 9, 2009).

\textsuperscript{383} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 1, ¶ 1 (June 9, 2009).

\textsuperscript{384} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 2-3, ¶ 6 (June 9, 2009).
Titan stated that Debtor and the Unsecured Creditors Committee attempted to secure “a release of Greystone in exchange for $250,000 of sale proceeds in excess of $4 million and 5% of sale proceeds in excess of $4,250,000, up to $10 million.”

Ultimately, Debtor provided Titan with notice but, according to Titan, did not set forth any reason why the aforementioned terms “amount[ ] to a good deal for the estate.” Titan argued that the problem was that Debtor possessed claims to avoid $7,500,000 worth of leasehold mortgages as preferences but that Weber endorsed a settlement of these claims without even providing notice to creditors. For these reasons, Titan stated that cause existed under Federal Rule of Bankruptcy Procedure 1104(a)(1) to appoint a disinterested Chapter 11 trustee. Titan, however, must have blown off some steam because the company withdrew its motion on June 30, 2009.

In its motion, Titan averred that Weber failed to act in Debtor’s best interest. The real issue, however, was that Weber did not act in Titan’s best interest. Titan, therefore, filed its motion to affect a wake-up call. Titan wanted Weber to know that it would ask the court to appoint a trustee if he continued to overlook Titan’s interests.

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385 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 2-3, ¶ 2 (June 9, 2009).

386 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 2, ¶ 4 (June 9, 2009).

387 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 2, ¶ 4 (June 9, 2009).

388 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 2, ¶ 5 (June 9, 2009).

389 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 453) p. 1 (June 9, 2009).

390 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Notice of Withdrawal of Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee and Motion to Shorten Time for Notice of Motion of Titan Global Holdings, Inc. to Appoint a Chapter 11 Trustee (Dkt. 510) p. 2, ¶ 4 (June 30, 2009).
Extending the Exclusivity Period

Issues related to the filing of the plan came before the court as well. On May 29, 2009, Debtor filed a motion to extend the exclusivity period set forth in § 1121(b), asking the court for 120 additional days in which to file a plan of reorganization. Debtor averred that cause existed to grant its motion since Debtor was “in the process of marketing and selling its assets and had yet to formulate the complete basis upon which the structure its plan of reorganization will take.” The court did not find any opposition to Debtor’s motion and, therefore, granted the motion, giving Debtor until October 8, 2009 to file a plan of reorganization. The court had no trouble reaching this result and, in doing so, kept the door closed to other parties who might have otherwise proposed a plan.

Key Employee Retention Plan

The bankruptcy court dealt with company employees as well. On June 30, 2009, Debtor “move[d] for authority to implement a Key Employee Retention Plan” pursuant to § 363(b)(1) and Federal Rule of Bankruptcy Procedure 6004(a) and “for authority to grant the employees who qualify for severance benefits under the KERP an administrative claim for the amount of severance benefit which shall have equal priority with the superpriority of Greystone . . . and the fees of the United States Trustee” pursuant to § 105(a). The proposed plan included the following terms:

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391 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Extension of Exclusivity Period to File Reorganization Plan (Dkt. 397) (May 29, 2009).

392 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Extension of Exclusivity Period to File Reorganization Plan (Dkt. 397) (May 29, 2009).

393 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 494) (June 18, 2009).

394 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 1 (June 30, 2009).
a. Eligible Employees will receive lump sum severance benefits equal to three (3) weeks salary at the salary in existence upon completion of the sale transaction.
b. Department managers which include the Chief Executive Officer, Vice President of Finance, Controller, Vice President of C-Store, Vice President of Human Resources, and Vice President of Maintenance will receive an additional bonus of $5,000 each upon completion of the sale transactions (the three (3) week salary benefit and $5,000 bonus collectively the "Severance Benefit").
c. Eligible Employees will receive their severance benefit within thirty (30) days of the closing of the sale transaction and such benefits shall be earned and payable regardless if an eligible employee is retained by any acquirer of the assets of the Debtor or any successor or assign of the Debtor.
d. The term "Eligible Employees" as used herein shall mean APPCO store supervisors, management and office personnel.
e. An Eligible Employee will not be eligible to receive the severance benefits contemplated by this KERP if (1) the Eligible Employee voluntarily resigns prior to the completion of the sale transaction; (2) the Eligible Employee is terminated prior to the completion of the sale transaction; (3) the Eligible Employee retires, dies or is permanently disabled prior to the completion of the sale transaction.395

Debtor averred that, if the court approved the plan, “approximately thirty-seven (37) current employees would participate in the three (3) week salary severance benefit and five (5) employees would participate in the $5,000 bonus severance benefit,” and such participation would result in a sum of $113,565.00.396 Debtor contended that the covered employees were essential to the continuation of Debtor’s business and to maximizing the amount realized from the sale process.397 Further, Debtor argued that these employees would be difficult to replace and were at risk of resigning.398 As additional support for its motion, Debtor mentioned that Greystone “support[ed] the KERP and consent[ed] to the exception of the Severance Benefits to

395 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 4 (June 30, 2009).
396 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 4 (June 30, 2009).
397 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 5-6, ¶ 10, 15 (June 30, 2009).
398 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 6, ¶ 14 (June 30, 2009).
its superpriority claim” and stated that the Unsecured Creditors Committee did not object either.\footnote{\textit{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 5, ¶ 11 (June 30, 2009).}}

Generally, employee priorities are covered by § 507.\footnote{Jonathan P. Friedland, Michael L. Bernstein, George W. Kuney, & John D. Ayer, \textit{Chapter 11-101: The Nuts and Bolts of Chapter 11 Practice} 160 (ABI, 2007).} However, the priority that Debtor proposed places the employees’ claims “above the list,” giving the administrative claims superpriority status.\footnote{Jonathan P. Friedland, Michael L. Bernstein, George W. Kuney, & John D. Ayer, \textit{Chapter 11-101: The Nuts and Bolts of Chapter 11 Practice} 161 (ABI, 2007).} This elite status practically guarantees that the claims belonging to this privileged group of employees will be paid and provides an excellent inducement for the employees to continue working with Debtor as it moves toward reorganization.

\textbf{§ 3.6 – July 2009}

\textit{Post-Petition Financing}

The bankruptcy court dealt briefly with debtor in possession financing. On July 20, 2009, the court amended the Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral that it entered on April 14, 2009 for a third time.\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 553) (July 20, 2009).} The amended order was the result of a joint motion by Debtor and its creditor, Greystone, which requested that Greystone be permitted to “advance up to $200,000 more in additional funding to Debtor [in order for Debtor to continue its operations], provided that Greystone [would be] repaid these additional advances prior to the repayment of any other sums to be received from the anticipated sale of Debtor’s
In consideration of Greystone’s advance, the parties proposed that the Settlement Order be changed “to reflect an amendment to the formula of the division of the net proceeds of the sale of the Debtor’s assets.” The Unsecured Creditors Committee objected to the motion on July 17, 2009. The Committee did not object to the proposed increase in the credit facility but, rather, to the proposed amendment. Specifically, the Committee averred that it was not willing to agree to the carve-out modification and stated that the parties filed their motion with full knowledge of that fact.

Nevertheless, the Committee eventually acquiesced to the amendment, and the aforementioned order served as confirmation of the parties’ agreement. The court’s order provided for “an increase in the amount of the DIP Facility from Three Million One Hundred Fifty Thousand and 00/100 Dollars ($3,150,000.00) to Three Million Three Hundred Fifty Thousand and 00/100 Dollars ($3,350,000.00) with the same maturity date of July 26, 2009, as set forth in the Second Amended Order” and incorporated all other provisions of the previous

403 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 542) p. 2 (July 15, 2009).

404 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 542) p. 2 (July 15, 2009).

405 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Committee’s Objection to Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 545) (July 17, 2009).

406 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Committee’s Objection to Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 545) p. 3, ¶ 6 (July 17, 2009).

407 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Committee’s Objection to Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 545) p. 3 , ¶ 6 (July 17, 2009).

408 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 553) (July 20, 2009).
In addition, the court amended the Settlement Order to state that Greystone would be repaid the additional advance prior to the repayment of any other sums to be received from the anticipated sale of Debtor’s business.  

This amount, nevertheless, proved to be insufficient. On July 27, 2009, Debtor and Greystone filed yet another interim motion “to extend the maturity date of the DIP Facility until August 30, 2009 and increase the available credit from $3,350,000.00 to $3,900,000.00.” The motion made clear that “Debtor [was] in immediate need of $150,000.00 of the additional available credit in order to pay current operating expenses.” Further, the motion said that “Debtor [was] also in immediate need of the additional $400,000.00 in financing proposed by the new DIP Facility to continue its operations in accordance with the Budget.” Because the Committee did not object to the increase in the facility and previously consented to the formula for repayment set forth in the Settlement Order, Debtor and Greystone asserted that “granting the relief sought in th[e] [m]otion [was] clearly in the best interests of all creditors and parties in

409 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 553) p. 2, ¶ 2-3 (July 20, 2009).

410 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 553) p. 3-4, ¶ 5 (July 20, 2009).


412 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Fourth Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 562) (July 27, 2009).

413 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Fourth Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 562) (July 27, 2009).
interest[,] and should be approved on an interim and then final basis.” The bankruptcy court subsequently granted the motion and amended its order for the fourth time on July 28, 2009.415

Again, the amendment stemmed from the desperate position in which Debtor found itself. Without access to operating income, Debtor could not continue to operate the company or maintain its value as an ongoing concern. Greystone, therefore, was willing to remedy Debtor’s need for additional credit because it guaranteed Greystone’s pre-petition investment in Debtor by maintaining ongoing concern value, and it was profitable for Greystone to lend post-petition funds to Debtor.

**Executory Contracts and Leases**

During the month of July, the court also considered issues relating to the assumption and rejection of executory contracts and unexpired leases. Debtor filed a motion to reject an unexpired lease of non-residential real property pursuant to § 365(a) and Federal Rule of Bankruptcy Procedure 6006 on May 6, 2009.416 The court entered an agreed order approving Debtor’s rejection of the lease on July 1, 2009.417 The court’s order deemed the lease rejected as of May 31, 2009, and required Debtor to pay the landlord, GEC, LLC, $1,500 in post-petition rent by July 10, 2009.418 The bankruptcy court then mandated that GEC, LLC file its pre-

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415 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Fourth Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral (Dkt. 566) (July 28, 2009).

416 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Reject Unexpired Lease of Non-Residential Real Property (Dkt. 298) (May 6, 2009).

417 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order (Dkt. 514) (July 1, 2009).

petition claim for rejection damages by July 20, 2009.\textsuperscript{419} This result was proper because Debtor timely and appropriately sought to reject the unexpired lease, and the parties concurred in the result, enabling the court to enter an agreed order to that effect.

\textit{Sales Free and Clear}

Another issue before the bankruptcy court this month concerned Debtor’s desire to sell property outside the ordinary course of business free and clear of all liens and encumbrances and its interest in utilizing the cash collateral generated by the sale to pay authorized expenditures. In particular, Debtor filed a Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral on June 10, 2009.\textsuperscript{420} The court heard the motion on June 16, 2009, and entered an order in favor of Debtor on July 1, 2009.\textsuperscript{421} In its order, the court authorized Debtor to sell the surplus vehicles and trailers described in the motion to its employees for the values set forth therein.\textsuperscript{422} In addition, the court permitted Debtor to sell the remaining items at auction without the need for further approval from the court.\textsuperscript{423} The court determined that the purchasers were good faith purchasers under 11 U.S.C. § 363(m), that the sale could not be avoided under 11 U.S.C. § 363(n), that all claims of liens and encumbrances would attach to the sale proceeds, that the property shall be deemed sold free and clear of all liens and encumbrances, and that the transaction shall take place immediately.\textsuperscript{424} The court also said,

\textsuperscript{419} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Agreed Order (Dkt. 514) p. 2 (July 1, 2009).

\textsuperscript{420} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 465) (June 10, 2009).

\textsuperscript{421} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 516) (July 1, 2009).

\textsuperscript{422} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 516) p. 2, ¶ 2 (July 1, 2009).

\textsuperscript{423} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 516) p. 2, ¶ 3 (July 1, 2009).

\textsuperscript{424} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 516) p. 2-3, ¶ 5 (July 1, 2009).
[N]otwithstanding anything . . . above to the contrary, the proceeds generated by the sale of the Equipment constitute cash collateral under 11 U.S.C. § 363(a) and the debtor is authorized to use such cash collateral for the expenditures set forth in the Budget attached as Exhibit A to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral [Docket No. 242] or Exhibit B to Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral [Document No. 418] subject to the superpriority claims, rights and security interests of Greystone Credit II, LLC therein.\(^{425}\)

On July 14, 2009, Debtor filed another Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral pursuant to §§ 363(b)(1), 363(c)(2), 363(f) and Federal Rule of Bankruptcy Procedure 6004(a).\(^{426}\) In its motion, Debtor sought the court’s permission to sell surplus equipment by private sale.\(^{427}\) Debtor stated that it received an offer from Petro Services, Inc. to purchase the used equipment for $3,500.00.\(^{428}\) In support of its motion, Debtor averred that the equipment was not being used and was not necessary to its effective reorganization.\(^{429}\) Debtor articulated that Greystone consented to its use of the cash collateral as well.\(^{430}\) The court held a hearing on the motion on July 28, 2009, and entered an order in favor of Debtor on July 29, 2009.\(^{431}\) The court authorized Debtor to sell the aforementioned equipment to Petro Services, Inc. for $3,500 on the same grounds as the

\(^{425}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259 Order (Dkt. 516) p. 3, ¶ 6 (July 1, 2009).

\(^{426}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 532) (July 14, 2009).

\(^{427}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 532) p. 1 (July 14, 2009).

\(^{428}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 532) p. 3, ¶ 6 (July 14, 2009).

\(^{429}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 532) p. 3, ¶ 7 (July 14, 2009).

\(^{430}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free and Clear of Liens and Encumbrances and to Use Cash Collateral (Dkt. 532) p. 5, ¶ 11 (July 14, 2009).

\(^{431}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 576) (July 28, 2009).
aforementioned motion. The court also authorized Debtor to use the cash collateral for authorized expenditures “subject to the superpriority claims, rights and security interests of Greystone . . . therein.”

Debtor’s interest in selling real and personal property free and clear of liens and encumbrances induced it to propose such sales prior to the plan confirmation process. This method of selling property out of the ordinary course of business was far more expeditious for Debtor than engaging in the expensive, time-consuming plan confirmation process. In particular, the § 363 sale process is much less cumbersome because it “require[s] much less in the way of notice, disclosure, or opportunities for objectors or alternative bidders to actually be heard.”

Applications for Relief from Automatic Stay

The court resolved issues regarding Agnes C. Davis’s Motion for Relief from Stay as well. As was previously discussed, Davis’s motion alleged that “just cause exist[ed] to lift the automatic stay for [her] to proceed in state court to evict [] Debtor” because Debtor defaulted under the terms of their lease agreement and failed to cure its default within the prescribed period of time after receiving the requisite notice. In response, Debtor admitted that it defaulted under the terms of the lease agreement. However, Debtor averred that Davis bore the burden


435 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 138) (Mar. 26, 2009).


437 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion for Relief from Stay (Dkt. 419) p. 1, ¶ 2 (June 1, 2009).
of proving that “cause” existed for granting relief from stay under § 362(d)(1) and argued that
Davis’s letter was not an effective termination of the lease because it did not specify the nature
of the breach or indicate a period for cure, if any.\footnote{438} Nevertheless, the parties reached an
agreement, and the court entered an order to that effect.\footnote{439} The order provided,

\begin{quote}
Agnes C. Davis’ motion for relief from the automatic stay . . . and the Debtor's
response thereto . . . shall be decided on the written record provided that the
Debtor shall have until July 28, 2009 to file a brief on whether the January 24,
2009 letter of Ms. Davis constitutes a pre-petition termination of the Lease
Agreement dated September 3, 1991 between Agnes C. Davis and Appalachian
Oil Company, Inc., and Ms. Davis shall have seven . . . days from the filing of the
Debtor's brief to file a reply or response thereto.\footnote{440}
\end{quote}

As was previously stated, Davis filed her Motion for Relief from Stay just over a month
after Debtor filed its Chapter 11 petition. This means that Davis filed her motion at a period in
the case in which the bankruptcy court is typically more concerned with Debtor’s rights. Not to
mention, Debtor still had time to assume or reject the lease. Hence, Davis may have had a
greater chance at success if she had filed a motion to compel. For these reasons, Debtor’s
response to Davis’s motion has a greater chance of prevailing at this point in the case.

\textit{Orders of Employment}

In July, the court also addressed employment issues. Specifically, Debtor filed an
Application for Authority to Employ an Auctioneer on July 15, 2009, pursuant to § 327(a) and

\footnote{438 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Response in Opposition to Motion for Relief
from Stay (Dkt. 419) p. 2, ¶ 3-4 (June 1, 2009).}

\footnote{439 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 539) (July 14,
2009).}

\footnote{440 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 539) p. 1
(July 14, 2009).}
Federal Rule of Bankruptcy Procedure 2014(a). In its motion, Debtor asked the court for permission to hire David L. Cole d/b/a Cole Auctions “to sell certain personal property and vehicles of the Debtor located on the premises of the Debtor's corporate headquarters, 1992 Highway 75, Blountville, Tennessee 37617.” Debtor stated that “[n]o compensation ha[d] been or w[ould] be paid post-petition by Debtor to Cole Auctions except upon proper application to and approval by the [c]ourt after notice and a hearing.” Further, Debtor said that Cole Auctions was a disinterested party under the Bankruptcy Code and that, for these reasons, the court should grant its application. The court entered an order in Debtor’s favor on July 28, 2009.

Fee Applications

The court also dealt with compensation for services rendered and reimbursement of expenses incurred. Whiteford, Taylor & Preston, L.L.P. filed its first application for allowance of interim compensation for services rendered and reimbursement of expenses on June 18, 2009. After reviewing the application, the United States Trustee filed an objection on July 6,

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441 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor for Authority to Employ Auctioneer (Dkt. 536) (July 15, 2009).

442 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor for Authority to Employ Auctioneer (Dkt. 536) p. 1 (July 15, 2009).


444 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application by Debtor for Authority to Employ Auctioneer (Dkt. 536) p. 2, ¶ 7 (July 15, 2009).

445 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 578) (July 28, 2009).

2009.\(^{447}\) In his objection, the Trustee first averred that the service descriptions in the application were vague and made it impossible to determine what task the professional was completing.\(^{448}\) Second, the Trustee alleged that the attorneys’ rates as set forth in the motion were much higher than those of similarly qualified East Tennessee lawyers.\(^{449}\) The Trustee stated, “The [C]ommittee is accorded the right to employ counsel to represent their interest in the case.\(^{450}\) But the [C]ommittee’s professionals must show that their services are necessary and reasonable and that it benefits the estate just as counsel for the debtor-in-possession.”\(^{451}\) The Trustee also asked to reserve his right to object until Whiteford, Taylor & Preston, L.L.P. filed its final application and requested that the court require the firm to establish a twenty-five percent hold-back until the court issued its final approval.\(^{452}\)

\(^{447}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Fees of Whiteford, Taylor & Preston, L.L.P. Attorneys for the Unsecured Creditors Committee and Reservation of Rights (Dkt. 521) (July 6, 2009).

\(^{448}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Fees of Whiteford, Taylor & Preston, L.L.P. Attorneys for the Unsecured Creditors Committee and Reservation of Rights (Dkt. 521) p. 1 (July 6, 2009).


\(^{450}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Fees of Whiteford, Taylor & Preston, L.L.P. Attorneys for the Unsecured Creditors Committee and Reservation of Rights (Dkt. 521) p. 2 (July 6, 2009).

\(^{451}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Fees of Whiteford, Taylor & Preston, L.L.P. Attorneys for the Unsecured Creditors Committee and Reservation of Rights (Dkt. 521) p. 2 (July 6, 2009).

\(^{452}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection to Fees of Whiteford, Taylor & Preston, L.L.P. Attorneys for the Unsecured Creditors Committee and Reservation of Rights (Dkt. 521) (July 6, 2009).
Debtor agreed with the Trustee and objected to the application as well, arguing that the Committee failed to meet the criteria set forth in § 330(a)(1). Debtor stated, “The Committee has not met its burden [of showing] that hourly rates requested in the Application represent[] the prevailing market rate for the Eastern District of Tennessee” and averred that “the Application should be denied or the hourly rates requested therein reduced so as to be in accordance with such prevailing rates.”

Further, Debtor said that, “to the extent that the Committee’s Application is approved, that the funding for such fees [must] be limited to the monies to be received by the Committee under the Settlement Order and/or from a separate DIP Facility funded by Greystone for that purpose.”

Regardless, the parties were able to resolve their differences, and the court entered an agreed order on July 28, 2009. The court’s order approved “$170,681.00 as compensation for services rendered and $8,735.16 as reimbursement of expenses incurred” for Whiteford, Taylor & Preston, L.L.P. and authorized Debtor to “release and deliver to WT&P the total amount of $40,000 for payment of such approved fees and expenses.” However, the court said that “the

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remainder of allowed fees and expenses approved for payment to WT&P pursuant to this Order shall be payable only from the funds paid or to be paid to counsel.” 458 Finally, the order preserved “the right of the Debtor and the Trustee to object to future fee applications, including final fee applications, of WT&P or other Committee professionals for the Committee pursuant to the Order Approving Compromise and Settlement.” 459

On July 6, 2009, Hunter, Smith & Davis, LLP filed its Second Application for Interim Compensation for services rendered and reimbursement of expenses incurred between March 26, 2009 and June 23, 2009, pursuant to Federal Rule of Bankruptcy Procedure 2016(a). 460 Hunter, Smith & Davis, LLP sought interim compensation in the amount of $101,675.00 and reimbursements totaling $9,491.36 for its legal representation of Debtor and alleged that these amounts should be paid out of the $75,000,000 retainer fee originally paid by Debtor with the remainder to be paid by Debtor. 461 In response, Carolyn G. Chance filed an objection in which she alleged that “the fees [were] excessive[] and [that] the creditors of the bankruptcy estate [we]re unfairly prejudiced by payment of these interim fees.” 462

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460 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Application for Interim Compensation to Hunter, Smith & Davis (Dkt. 522) (July 6, 2009).


Subsequently, Debtor filed an objection to Protiviti, Inc.’s application on July 8, 2009.\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objections to First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 525}) (July 8, 2009).} In its application, Protiviti, Inc. sought to recover “$91,378.00 as compensation and $119.24 as reimbursement of actual and necessary expenses for the period of March 2, 2009 through May 31, 2009” for its services as financial advisors to the Unsecured Creditors Committee.\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 497}) p. 1-2 (June 18, 2009).} Debtor first responded that Protiviti, Inc.’s application failed to demonstrate that the services listed were beneficial to or necessary to the case and, citing § 330(a)(4)(A)(ii), averred that the services could not meet those tests anyway.\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objections to First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 525}) p. 1, ¶ 1 (July 8, 2009).} Second, Debtor contended that Protiviti, Inc. failed to meet the burden of showing that “the hourly rates requested . . . represent the prevailing market rate for an accountant or financial advisor in the Eastern District of Tennessee” and, for that reason, said that the court should deny the application.\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objections to First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 525}) p. 5, ¶ 2 (July 8, 2009).} Third, Debtor argued that the “source of payment of any compensation or reimbursement of expenses awarded Applicant should not be from the bankruptcy estate[] but limited to funds previously allocated for the benefit of unsecured creditors and/or directly funded by Greystone . . . through a separate DIP loan.”\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objections to First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 525}) p. 8, ¶ 3 (July 8, 2009).}

Nevertheless, the parties resolved their differences and entered an agreed order, which allocated $91,378.00 for professional services and $119.24 reimbursement of actual and

\footnote{In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objections to First Interim Application of Protiviti as Financial Advisors for the Official Committee of Unsecured Creditors for Allowance of Compensation and for Reimbursement of Expenses for March 2, 2009 Through May 31, 2009 (\textit{Dkt. 525}) (July 8, 2009).}
necessary expenses. The agreed order, however, made clear that “the compensation to and reimbursement of Protiviti . . . shall solely be paid from funds held by Committee’s counsel.”

Finally, it preserved “Debtor’s right to object to future fee applications of Protiviti.”

It is a well-known fact that, when serving as counsel in a bankruptcy case, a lawyer must jump through a number of hoops in order to get paid. In this case, the most noteworthy issue regarding professional fees and compensation was the “national-rate vs. local-rate” debate, which was spawned by the number of objections to the participating professionals’ hourly rates. This issue typically arises “where a local professional . . . charges lower hourly rates than national firms charge.” Debtor, the United States Trustee, and Carolyn G. Chance all voiced objections alleging that the hourly rates advanced by opposing professionals were excessive compared to the market hourly rate advanced by similar professionals in the Eastern District of Tennessee. Traditionally, professionals do not make a habit of objecting to the professional fees advanced by other professionals. It seems, however, that the animosity between the parties in this proceeding played a role in the way the parties responded to fee applications filed in this case.

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Key Employee Retention Plan

In July, the bankruptcy court reached a conclusion on an issue concerning company employees. On June 30, 2009, Debtor “move[d] for authority to implement a Key Employee Retention Plan (‘KERP’)” pursuant to § 363(b)(1) and Federal Rule of Bankruptcy Procedure 6004(a) and “for authority to grant the employees who qualify for severance benefits under the KERP an administrative claim for the amount of severance benefit which shall have equal priority with the superpriority of Greystone . . . and the fees of the United States Trustee” pursuant to § 105(a).473 The court entered an order granting Debtor’s motion on July 15, 2009.474 In addition to the provisions set forth by Debtor, the court made clear that “no employee will be eligible to participate in or to otherwise obtain any benefit under the KERP if: (a) the employee is not employed, for any reason, by the Debtor at the time of the completion of the sale transaction (as described in the Motion[]), or (b) the employee is employed by any buyer of any assets of the Debtor acquired as part of such sale process[].”475

Again, employee priorities are usually covered by § 507.476 The priority that the court approved, however, places the employees administrative claims “above the list,” giving them superpriority status.477 This elite status ensures that the claims belonging to participating employees will be paid and provides an excellent inducement for them to continue working with Debtor as it works toward reorganization.

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473 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Authority to Implement Key Employee Retention Program (Dkt. 512) p. 1 (June 30, 2009).

474 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 540) (July 15, 2009).


Adversary Proceedings

During the month of July, the bankruptcy court also addressed an adversary proceeding that was commenced by Debtor on July 10, 2009.\footnote{478} Debtor filed a complaint for:

(I) Avoidance of Fraudulent Conveyances and/or Preferential Transfers, (II) Avoidance of Unlawful Distributions, (III) Damages for Unlawful Distributions, (IV) Recovery of Property, and (V) Related Relief, pursuant to 11 U.S.C. §§ 544, 547, 548, and 550 and applicable State law, against Titan Global Holdings, Inc. . . . , David Marks . . . , Bryan Chance . . . , and Scott Hensell, individually, and in their capacities as directors of Appco . . . .\footnote{479}

In its complaint, Debtor alleged that Titan acquired Appalachian Oil Company, Inc. for $30,000,000 in a leveraged buy-out transaction.\footnote{480} Debtor said it made the deal possible by selling real estate it owned for $15,000,000, putting the proceeds toward the acquisition, and borrowing the remainder of the purchase price from Greystone.\footnote{481} However, the transaction created significant debt and lease obligations that rendered Debtor insolvent and left the company without sufficient capital to operate its business.\footnote{482} Thereafter, Titan allegedly transferred large sums of cash from Debtor to itself despite the fact that Titan had “full
knowledge that [Debtor] (i) was insolvent and (ii) did not have sufficient capital to operate." Debtor contended that “the Director Defendants either directed, voted, or assented to the distributions to Titan.” Debtor, therefore, commenced the adversary proceeding in an attempt to avoid the following: fraudulent transfers pursuant to § 548(a)(1)(B); fraudulent transfers pursuant to § 548(a)(1)(A); fraudulent conveyances pursuant to § 544 and applicable state law; preferential transfers pursuant to § 547; wrongful distributions to shareholders pursuant to T.C.A. § 48-16-401(C); and wrongful distributions to shareholders pursuant to T.C.A. § 48-18-304.

Debtor also sought to recover some of these transfers and conveyances from Titan under § 550.

Debtor clearly availed itself of all avoidance powers available under applicable law. Debtor alleged two different kinds of transfers under § 548(a): those made with actual fraud and those involving constructive fraud. In addition, Debtor set forth allegations under § 544, which allowed it to look to nonbankruptcy law for avoiding power. "The most common use of § 544(b) is to give the trustee [or debtor-in-possession] a right of action under state fraudulent


486 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Complaint for (I) Avoidance of Fraudulent Conveyances and/or Preferential Transfers, (II) Avoidance of Unlawful Distributions, (III) Damages for Unlawful Distributions, (IV) Recovery of Property, and (V) Related Relief (Dkt. 527) p. 4-7 (July 10, 2009).


transfer law,” which was exactly what Debtor pled.\(^{489}\) \textsection 547 permitted Debtor to avail itself of nonbankruptcy law as well.\(^{490}\) The result of this action, therefore, depends on whether Debtor can prove up these allegations and whether the named defendants have any viable defenses. Regardless, this proceeding indicates the sort of relationship that existed between Debtor and Titan.

\textit{Compromise and Settlement}

The court also considered issues concerning compromise and settlement during the month of July. On July 14, 2009, Debtor filed a Motion to Approve Compromise.\(^{491}\) Debtor stated that it entered into an agreement with Randy Benge on July 28, 2005, which covered the sale of gasoline and petroleum products.\(^{492}\) At the time Debtor filed for bankruptcy, Benge owed Debtor $19,343.95 for fuel previously supplied, and “Debtor ha[d] equipment at the Benge dealer location valued at $17,200.00.”\(^{493}\) Accordingly, Debtor and Benge entered into an agreement, which set forth the following terms:

\begin{enumerate}
  \item The Debtor will permit Mr. Benge to secure petroleum supply agreements from third parties.
  \item Mr. Benge will pay the Debtor $750.00 per week or $3,000.00 per month until the $19,343.95 indebtedness is fully satisfied.
  \item Upon payment of such indebtedness, the Debtor will agree to sell its agreement at the Benge dealer location to another fuel distributor for a
\end{enumerate}


\(^{491}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Compromise (\textit{Dkt. 534}) (July 14, 2009).

\(^{492}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Compromise (\textit{Dkt. 534}) p. 2, ¶ 4 (July 14, 2009).

\(^{493}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Compromise (\textit{Dkt. 534}) p. 2, ¶ 4 (July 14, 2009).
purchase price of $17,200.00.\textsuperscript{494} Debtor concluded by stating “that the proposed compromise and settlement . . . [wa]s in the best interests of the Debtor's creditors and the bankruptcy estate” and asserting that the court should approve the proposed agreement.\textsuperscript{495} The bankruptcy court agreed and, after finding no opposition to the motion, entered an order in favor of Debtor on July 28, 2009.\textsuperscript{496}

\textbf{§ 3.7 – August 2009}

\textit{Cash Collateral and Post-Petition Financing}

In July 2009, Debtor and Greystone filed a joint motion, which requested that the court amend its Order Authorizing Debtor in Possession Financing and Use of Cash Collateral for a third time.\textsuperscript{497} By August 12, 2009, all Committee objections were dealt with by agreement, and the court entered an amended order increasing the amount of credit Greystone would make available to Debtor as part of the “secured post[-]petition revolving credit facility” that Greystone previously agreed to provide.\textsuperscript{498} The amendment effectively “increase[d] . . . the amount of the DIP Facility from Three Million One Hundred Fifty Thousand and 00/100 Dollars ($3,150,000.00) to Three Million Three Hundred Fifty Thousand and 00/100 Dollars ($3,350,000.00) with the same maturity date of July 26, 2009, as set forth in the Second

\textsuperscript{494} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Compromise (Dkt. 534) p. 2, ¶ 5 (July 14, 2009).

\textsuperscript{495} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Compromise (Dkt. 534) p. 2, ¶ 6 (July 14, 2009).

\textsuperscript{496} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 577) p. 2, ¶ 4 (July 28, 2009).

\textsuperscript{497} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Joint Motion for Entry and Filing of Interim Third Amendment to Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 542) (July 15, 2009).

\textsuperscript{498} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Third Amendment to Final Order Authorizing Debtor In Possession Financing and Use of Cash Collateral and Amendment to Settlement Order (Dkt. 605) p. 2, ¶ 1 (Aug. 12, 2009).
Amended Order.499 By August 25, 2009, the court held a final hearing on a joint motion to amend this order for a fourth time; however, the court did not issue its final order on the motion in August.500

Sales Free and Clear

On August 3 and 4, Debtor filed four motions to sell and assign some of its property and equipment “outside of the ordinary course of business and free and clear of liens and encumbrances,” “pursuant to 11 U.S.C. § 363(b)(1), § 363(c)(2), § 363(f), and Fed[eral] R[ule] Bankr[uptcy] P[rocEDURE] 6004(a).”501 During the next two weeks, the court held hearings on those four motions to sell, and orders granting each motion were entered.502 § 363(b) “provide[s] a speedy, effective way to accomplish a sale” since it “require[s] much less in the way of notice, disclosure, or opportunities for objectors and alternate bidders to actually be heard.”503 Additionally, § 363(f) allows Debtor “to sell property of the estate ‘free and clear’ of liens or


501 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 593) (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) (Aug. 5, 2009).


other interests in the property, if any one of five conditions is met:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
(2) such entity consents;
(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
(4) such interest is in bona fide dispute; or
(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Three of the four motions concerned the sale of Debtor’s “dealer business” at various locations. Specifically, Debtor’s “dealer business” encompassed its “equipment at these locations and the right to supply or negotiate supply arrangements with the specific dealers.

The first motion dealt with the sale of Debtor’s “dealer business’ at nine (9) separate dealer locations for a purchase price of $33,042.00.” The second motion dealt with a sale to Riggs Oil Company of Debtor’s “dealer business’ at seven (7) separate dealer locations for a purchase


506 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) p. 3-4, ¶ 6 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) p. 3-4, ¶ 6 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) p. 3, ¶ 6 (Aug. 5, 2009).

507 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) p. 3-4, ¶ 6 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) p. 3-4, ¶ 6 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) p. 3, ¶ 6 (Aug. 5, 2009).

508 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) p. 3-4, ¶ 6 (Aug. 3, 2009).
price of $62,666.00.”509 The final motion pertained to a sale to Robert W. Agee Oil Company of Debtor’s “‘dealer business’ at twenty-seven (27) separate dealer locations for a purchase price of $225,000.00.”510 In each motion, Debtor made an assurance that it did “not intend to continue the [d]ealer [b]usiness as part of its reorganization”511 and claimed that it believed the purchase price “represent[ed] a fair value for the equipment at the dealer sites and any residual value in the Supply Contracts.”512 Although creditor Greystone had a security interest in the property being sold in each of these transactions, Debtor was permitted to make these sales free and clear of liens and encumbrances pursuant to § 363(f)(2) because Debtor first obtained Greystone’s consent.513 The court determined that the proceeds of the sale constituted cash collateral and authorized Debtor’s use thereof pursuant to § 363(c)(2), provided that Debtor used the cash

509 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) p. 3-4, ¶ 6 (Aug. 3, 2009).

510 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) p. 3, ¶ 6 (Aug. 5, 2009).

511 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) p. 4, ¶ 8 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) p. 4, ¶ 8 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) p. 4, ¶ 8 (Aug. 5, 2009).

512 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 589) p. 4, ¶ 8 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 591) p. 4, ¶ 8 (Aug. 3, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral (Dkt. 596) p. 4, ¶ 8 (Aug. 5, 2009).

collateral in accordance with the Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral that the court previously entered.\textsuperscript{514}

As was mentioned above, Debtor also filed a fourth motion to sell its property out of the ordinary course of business. This motion was slightly different from the other three because it concerned a sale of Debtor’s equipment rather than its dealer business. In the motion, Debtor sought to sell certain equipment to Debbie Saffell for \$13,050.00.\textsuperscript{515} The court granted the motion in Debtor’s favor on August 14, 2009.\textsuperscript{516} The equipment that Debtor sold was as follows:

\textit{Chart of Equipment Sold to Debbie Saffell}\textsuperscript{517}

<table>
<thead>
<tr>
<th>Amount</th>
<th>Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Encore MPD/Blender/DCR</td>
</tr>
<tr>
<td>1</td>
<td>Gilarco Highliner Suction Dual</td>
</tr>
<tr>
<td>2</td>
<td>Ruby CPU 5</td>
</tr>
<tr>
<td>1</td>
<td>Manitowac Ice Maker</td>
</tr>
<tr>
<td>1</td>
<td>Manitowac Ice Maker/Remote</td>
</tr>
<tr>
<td>1</td>
<td>Hot Dish Serving Table</td>
</tr>
<tr>
<td>1</td>
<td>Refrigerated Prep Table</td>
</tr>
<tr>
<td>1</td>
<td>4’ Stainless Table</td>
</tr>
<tr>
<td>1</td>
<td>Sanyo Cooler</td>
</tr>
<tr>
<td>1</td>
<td>CSS Safe</td>
</tr>
<tr>
<td>1</td>
<td>Convection Oven</td>
</tr>
<tr>
<td>1</td>
<td>INCON (no probes)</td>
</tr>
<tr>
<td>1</td>
<td>Roundup Toaster</td>
</tr>
<tr>
<td>1</td>
<td>Cookie Oven</td>
</tr>
<tr>
<td>1</td>
<td>Carwash Parts</td>
</tr>
<tr>
<td>4</td>
<td>LSI Canopy Lights</td>
</tr>
</tbody>
</table>


\textsuperscript{515} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral \textit{(Dkt. 593)} pp. 4, ¶ 6 (Aug. 3, 2009).


\textsuperscript{517} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property Free And Clear of Liens And Encumbrances And to Use Cash Collateral \textit{(Dkt. 593)} p. 3, ¶ 5 (Aug. 3, 2009).
In the orders granting Debtor’s motions, the court made extensive findings of fact and conclusions of law—a procedure which is typically invoked in order to “insulat[e] the seller, the purchaser, their insiders[,] and professionals from liability.” Although the Bankruptcy Code does not explicitly give the court the power to make such findings, “[t]he authority to [do so] is thought to reside in §§[ ]363(b) and (f) or to emanate from §[ ]105(a), the ‘all writs’ provision of the Bankruptcy Code.” Pursuant to § 363(m), the court’s orders were final and not subject to appeal since the court found that these sale transactions were achieved in good faith and since no one appealed within the ten (10) day limit set forth in Federal Rule of Bankruptcy Procedure 6004(g).

On August 18, 2009, Debtor filed another motion to sell property out of the ordinary course of business to Rogers Petroleum. Debtor’s motion sought the court’s permission to sell its “‘dealer business’ at forty[-]six (46) separate dealer locations for a purchase price of up to $521,784.00.” The court, however, did not address the motion during the month of August.


522 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free and Clear of Liens and Encumbrances And For Approval of Bidding Procedures (Dkt. 626) (Aug. 18, 2009).

523 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free and Clear of Liens and Encumbrances And For Approval of Bidding Procedures (Dkt. 626) p. 3-4, ¶ 6 (Aug. 18, 2009).
Rather, the court set a hearing on this motion for September 4, 2009, and Debtor reserved the right to accept higher bids on this property up until 8:00 a.m. on the morning of the hearing.

In the event that Debtor found a higher bidder, the motion to sell stipulated that Rogers Petroleum would be entitled to a break-up fee “in an amount which the bid that is accepted exceeds the Rogers Petroleum bid up to the sum of $25,000.00.”

On August 25, 2009, Debtor submitted the most crucial motion to sell property pursuant to § 363 and § 365 and Federal Rule Bankruptcy Procedure 6004(a) and 6006. In its motion to sell, Debtor requested the authority to sell to Florida Sunshine Investments I, Inc. (“Florida Sunshine Investments I, Inc.” or “Florida Sunshine”) “substantially all the assets of the Debtor under the terms of the purchase agreement filed herewith outside the ordinary course of business and free and clear of liens and encumbrances.” Additionally, Debtor requested authority to “assume certain executory contracts and unexpired leases and assign same to [Florida] Sunshine outside the ordinary course of business and free and clear of liens and encumbrances; . . . [to] amend sale procedures; and . . . [to] authorize Debtor to enter into management agreement.”

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524 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free and Clear of Liens and Encumbrances And For Approval of Bidding Procedures (Dkt. 626) (Aug. 18, 2009).

525 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free and Clear of Liens and Encumbrances And For Approval of Bidding Procedures (Dkt. 626) p. 6, ¶ 12 (Aug. 18, 2009).

526 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell and Assign Property Free and Clear of Liens and Encumbrances And For Approval of Bidding Procedures (Dkt. 626) p. 6, ¶ 12 (Aug. 18, 2009).

527 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 1 (Aug. 25, 2009).

528 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 1 (Aug. 25, 2009).

529 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 1 (Aug. 25, 2009).
The court approved the procedures for selling “substantially all the assets” of Debtor in May of 2009.\textsuperscript{530} Thereafter, the court approved NRC Realty Advisors, LLC to serve as Debtor’s “real estate sales agent and financial advisor,”\textsuperscript{531} and NRC Realty Advisors, LLC was in charge of “market[ing] and sell[ing] the assets of the Debtor pursuant to the [aforementioned p]rocedures.”\textsuperscript{532} Pursuant to its obligations, NRC Realty Advisors, LLC began soliciting bids from parties interested in purchasing Debtor and set a deadline for bid submission of July 8, 2009.\textsuperscript{533}

As of July 8, 2009, the only viable bulk bid, or offer to buy substantially all of Debtor’s property, came from Empire Petroleum Holdings, LLC.\textsuperscript{534} Although Empire Petroleum Holdings, LLC had originally offered a $9.1 million bid, it terminated that offer after reviewing Debtor’s financial statements.\textsuperscript{535} Subsequently, Empire Petroleum Holdings, LLC submitted a bid totaling $5.5 million,\textsuperscript{536} and a Sale Agreement was executed on April 18, 2009.\textsuperscript{537} However, the Sale Agreement permitted Debtor to continue to accept bids at least five percent higher than

\textsuperscript{530} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 10 (Oct. 2, 2009).
\textsuperscript{531} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 10 (Oct. 2, 2009).
\textsuperscript{532} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 10 (Oct. 2, 2009).
\textsuperscript{533} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 11 (Oct. 2, 2009).
\textsuperscript{534} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 11 (Oct. 2, 2009).
\textsuperscript{536} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 13 (Oct. 2, 2009).
\textsuperscript{537} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 12 (Oct. 2, 2009).
the bid submitted by Empire Petroleum Holdings, LLC as long as it gave the company an opportunity to counter the offer with a bid at least $100,000 greater than the highest offer.\textsuperscript{538}

Around August 15, 2009, “[Florida] Sunshine entered into the bidding process subsequent to the bid deadline imposed by NRC and outside of the Sales Procedures.”\textsuperscript{539} Florida Sunshine Investments I, Inc. offered $6,250,000, and the money was to be allocated as follows: “$6,000,000 to leased property and equipment; and $250,000 to equipment at dealer locations.”\textsuperscript{540} Having “determined that the Florida Sunshine bid represented the highest and best bid for its assets,”\textsuperscript{541} Debtor sought court approval of the sale.\textsuperscript{542} As such, the motion to sell to Florida Sunshine Investments I, Inc. included a motion to amend the sale procedures to allow for this late bid.\textsuperscript{543} In its motion, Debtor justified the need for the sale, contesting as follows:

[T]he sale to [Florida] Sunshine not only represents the highest and best bid for the assets of the Debtor, but also creates the greatest opportunity to sell the company as a going concern and to preserve the jobs of Debtor's non-management employees because Sunshine has indicated that it intends to operate

\textsuperscript{538} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 12-13 (Oct. 2, 2009).

\textsuperscript{539} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 12 (Oct. 2, 2009); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property (to Florida Sunshine Investments I, Inc.) and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; Amend Sale Procedures; and Authorize Debtor to Enter Into Management Agreement Free & Clear of Liens (Dkt. 635) p. 12, ¶ 25 (Aug. 25, 2009).

\textsuperscript{540} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 12, ¶ 25 (Aug. 25, 2009).

\textsuperscript{541} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 13 (Oct. 2, 2009).


\textsuperscript{543} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 12, ¶ 30 (Aug. 25, 2009) (stating that Debtor “sought an amendment to the . . . procedures to permit the [Florida] Sunshine bid to be accepted and the Sunshine Purchase Agreement to be approved outside such . . . procedures”).
all of the forty-seven (47) store locations and retain all non-management employees.  

Following this major motion to sell, Debtor entered a series of sale motions on August 26, 2009, that were conditioned upon the court failing to approve the sale to Florida Sunshine Investments I, Inc. The motions proposed sales of various properties to the following buyers: Mountain Empire Oil Company, Red Hed Oil Co., Inc., Jaymadi, Inc., Jaspreet Singh, Sachin Malhotra, Greenville Oil, and Alpeshumar Patel.

The Unsecured Creditors Committee, Empire Petroleum Holdings, Inc., and McDonald’s Corporation objected to the motion to sell to Florida Sunshine Investments I, Inc.

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544 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 635) p. 13, ¶ 31 (Aug. 25, 2009).

545 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Sell Property and Assume and Assign Unexpired Leases Free and Clear of Liens and Encumbrances (Dkt. 639) (Aug. 26, 2009).


552 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Official Committee of Unsecured Creditor’s Limited Opposition to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 679) (Aug. 31, 2009).

553 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Limited Response to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 680) (Aug. 31, 2009).
The Committee objected to the sale because it included the sale of claims against Bryan Chance and others.\textsuperscript{555} The Committee pointed out that a sale to Empire Petroleum Holdings, Inc. might be better deal for the estate since that sale would not include sale of such claims.\textsuperscript{556} Furthermore, the Committee objected to the award of any break-up fee to Empire Petroleum Holdings, Inc. and, in the alternative, called the break-up fee excessive.\textsuperscript{557} Empire Petroleum Holdings, Inc., on the other hand, objected to the sale “to the extent it [did] not provide the [b]reak-[u]p [f]ee.”\textsuperscript{558} McDonald’s Corporation filed its objection to assure that, when Florida Sunshine Investments I, Inc. assumed the lease to which McDonald’s Corporation was a party, Debtor would pay McDonald’s Corporation in full the amount owed to it. Additionally, McDonald’s Corporation

\textsuperscript{554} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection of McDonald’s Corporation to Motion to Sell Property (Dkt. 683) (Aug. 31, 2009).

\textsuperscript{555} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Official Committee of Unsecured Creditor’s Limited Opposition to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 679) p. 3 (Aug. 31, 2009) (On July 20, 2009, Debtor and the Committee filed a cause of action against Bryan Chance and others, alleging that Debtor was owed almost $5,000,000.").

\textsuperscript{556} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Official Committee of Unsecured Creditor’s Limited Opposition to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 679) p. 14 (Aug. 31, 2009).

\textsuperscript{557} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Official Committee of Unsecured Creditor’s Limited Opposition to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 679) p. 5-7 (Aug. 31, 2009).

\textsuperscript{558} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Limited Response to Debtor’s Motion to: (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3) Authorize Debtor to Enter into Management Agreement (Dkt. 680) p. 4 (Aug. 31, 2009).
requested adequate assurances of Florida Sunshine Investment I, Inc.’s future performance.\textsuperscript{559} The court set a hearing regarding those objections for September 1, 2009.\textsuperscript{560}

\textit{Applications for Relief from Automatic Stay}

One relief from stay issue arose on behalf of Anges C. Davis, a creditor and lessor. Davis attempted to avoid the automatic stay pursuant to § 362(b)(10), which exempts from the stay a lessor’s actions taken to repossess non-residential real property when the underlying lease was terminated before commencement of the bankruptcy case.\textsuperscript{561} On March 26, 2009, Davis filed her original Motion for Relief from Stay in an attempt to secure the authority to evict Debtor from property in Wythe County, Virginia.\textsuperscript{562} Davis argued that Debtor failed to pay rent on time, that she provided Debtor with notice of termination, and that such termination entitled her to relief from stay.\textsuperscript{563} However, Debtor objected to this motion, claiming that it did not receive adequate notice of termination.\textsuperscript{564} In response, Davis argued that her notice of termination was “clear and unequivocal” and averred that it met the notice requirements under Virginia state law.\textsuperscript{565} On August 31, 2009, the court ruled on the issue and denied Davis’s motion.\textsuperscript{566} The court found that

\begin{itemize}
  \item \textsuperscript{559} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Objection of McDonald’s Corporation to Motion to Sell Property (\textit{Dkt. 683}) p. 3 (Aug. 31, 2009).
  \item \textsuperscript{560} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Hearing Set (\textit{Dkt. 684}) (Aug. 31, 2009).
  \item \textsuperscript{561} 11 U.S.C. § 362(b)(10).
  \item \textsuperscript{562} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (\textit{Dkt. 138}) p. 1-2; Exhibit A, p. 1 (Mar. 26, 2009).
  \item \textsuperscript{563} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (\textit{Dkt. 138}) p. 1-2 (Mar. 26, 2009).
  \item \textsuperscript{564} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Opposition in Response to Motion for Relief from Stay (\textit{Dkt. 419}) p. 3, ¶ 4 (Jun. 1, 2009).
  \item \textsuperscript{565} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Reply to Debtor’s Memorandum Brief in Opposition to Motion for Relief From Stay filed by Agnes C. Davis (\textit{Dkt. 595}) p. 1-2 (Aug. 4, 2009).
  \item \textsuperscript{566} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Memorandum (\textit{Dkt. 681}) (Aug. 31, 2009).
\end{itemize}
the lease was not clearly and unequivocally terminated.\textsuperscript{567} The letter of notice that Davis sent to Debtor stated as follows:

\begin{center}
Wytheville, Virginia  
January 24, 2009

Appalachian Oil Co. Inc.  
Box 1500 Highway 75  
Blountville, Tenn. 37617

Dear Sir:

Due to breach of Contract I will be compelled to Contract another Oil Co. to take over the business at my Station at Fort Chiswell.

Sincerely,

Agnes C. Davis\textsuperscript{568}
\end{center}

The court reasoned that this notice was not clear and unequivocal, stating as follows:

[N]o particular breach of contract was identified in the letter, it was unclear whether the Debtor would have a ten or twenty-day cure period under the lease. More importantly, the future tense language used by Davis, ‘I will be compelled to Contract another Oil Co.,’ could be viewed as a threat to lease to another tenant rather than an expression of a present intention. While, as Davis argues, the letter also could be construed to mean that Davis was giving notice that she considered the lease terminated and that she planned to re-lease the premises, the fact that the letter is capable of more than one meaning renders it equivocal and, thus, lacking the necessary definiteness to constitute an effective termination notice.\textsuperscript{569}

Another relief from stay issue arose on behalf of Branch Banking and Trust Company. On August 31, 2009, Branch Banking and Trust Company entered a Motion for Relief from Stay in an effort to obtain the court’s blessing for a payment that it made to Western Union in early

\begin{footnotes}
\end{footnotes}
August pursuant to the Security Agreement in effect between Branch Banking and Trust Company and Debtor.\(^570\) This issue, however, remained unresolved at the end of August.

**Fee Applications**

Another issue that arose during the month of August was compensation of Debtor’s counsel, Hunter, Smith & Davis, LLP. Hunter, Smith & Davis, LLP entered its second application for compensation and reimbursement on July 7, 2009.\(^571\) However, Carolyn G. Chance, a creditor, entered an objection to the application on July 27, 2009.\(^572\) As a result, this issue was not resolved until August. On August 25, 2009, the court approved the application.\(^573\) Specifically, the court approved an award of fees and expenses in the amount of $111,166.36.\(^574\)

During the month of August, Debtor also entered an application for compensation for NRC Realty Advisors, LLC, the company that identified a buyer for Debtor’s property.\(^575\) However, the court did not address that issue until the September 4, 2009, hearing.\(^576\) In the application, Debtor requested that NRC Realty Advisors, LLC be paid four percent of the sale


\(^{571}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Second Application for Interim Compensation to Hunter, Smith & Davis, LLP (\textit{Dkt. 522}) (July 6, 2009).


\(^{575}\) In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application for Compensation to NRC Realty Advisors, LLC (\textit{Dkt. 653}) (Aug. 26, 2009).

proceeds to Florida Sunshine Investments I, Inc., which amounted to $275,668.00, in accordance with the engagement agreement between NRC Realty Advisors, LLC and Debtor.\textsuperscript{577}

\section*{§ 3.8 – September 2009}

\textit{Cash Collateral and Post-Petition Financing}

Finding no objections, the court entered the fourth amendment to the Final Order Authorizing Debtor in Possession Financing and Use of Cash Collateral on September 1, 2009.\textsuperscript{578} The fourth amended order increased the amount of credit available to Debtor as part of its credit facility.\textsuperscript{579} The amendment effectively “increase[d] . . . the amount of the DIP Facility from Three Million Three Hundred Fifty Thousand and 00/100 Dollars ($3,350,000.00) to Three Million Nine Hundred Thousand and 00/100 Dollars ($3,900,000.00).”\textsuperscript{580} Additionally, it extended the “maturity date of the DIP Facility from July 26, 2009 until August 30, 2009.”\textsuperscript{581}

This amendment, like others before it, stemmed from the Debtor’s cash-strapped posture. Without access to sufficient operating capital, Debtor could not continue to operate as an ongoing concern. Greystone, therefore, was willing to remedy Debtor’s need for additional credit because it guaranteed Greystone’s pre-petition investment in Debtor by maintaining ongoing concern value, and it was profitable for Greystone to lend post-petition funds to Debtor.

\textsuperscript{577} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Application for Compensation to NRC Realty Advisors, LLC (Dkt. 653) p. 1, \S\ 3; p. 2, \S\ 3-5 (Aug. 26, 2009).

\textsuperscript{578} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Amendment To Final Order Authorizing Debtor In Possession Financing and Use of Cash Collateral (Dkt. 693) (Sept. 1, 2009).

\textsuperscript{579} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Amendment To Final Order Authorizing Debtor In Possession Financing and Use of Cash Collateral (Dkt. 693) p. 2, \S\ 1 (Sept. 1, 2009).

\textsuperscript{580} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Amendment To Final Order Authorizing Debtor In Possession Financing and Use of Cash Collateral (Dkt. 693) p. 3, \S\ 2 (Sept. 1, 2009).

\textsuperscript{581} In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Fourth Amendment To Final Order Authorizing Debtor In Possession Financing and Use of Cash Collateral (Dkt. 693) p. 3, \S\ 2 (Sept. 1, 2009).
Motions to Sell Debtor’s Assets

On September 1, the court held a hearing on the August motion to sell substantially all of Debtor’s assets to Florida Sunshine Investments I, Inc.. During the hearing, both the Unsecured Creditors Committee and the McDonald’s Corporation withdrew their objections. Furthermore, the court deemed the objection by Empire Petroleum Holdings, LLC limited and, thus, overruled it. Following the hearing, the court issued an order granting Debtor’s motion to sell to Florida Sunshine Investments I, Inc. free and clear of liens and encumbrances.

Given that this motion to sell was granted, Debtor no longer needed all of the contingent motions to sell that it proposed in August. As a result, Debtor withdrew those motions on September 3, 2009. Additionally, Debtor withdrew its outstanding motion to sell property to Rogers Petroleum. Since the court approved another bid, the court awarded Rogers Petroleum

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582 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Hearing Held. Motion by Debtor to (1) Sell Property and Assume and Assign Executory Contracts and Unexpired Leases Free and Clear of Liens and Encumbrances; (2) Amend Sale Procedures; and (3)Authorize Debtor to Enter Into Management Agreement (Dkt. 688) (Sept. 1, 2009).


586 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Notice of Withdrawal of Motion to Sell Property to Alpeshumar Patel and Assume and Assign Unexpired Leases Free and Clear of Liens and Encumbrances (Dkt. 706) (Sept. 3, 2009).

with “an administrative expense claim pursuant to 11 U.S.C. § 503(b) in the amount of $25,000.00[,] provided that no portion of such administrative expense or claim shall be paid from or charged to Greystone's collateral.”

Following the award of the $25,000 break-up fee to Rogers Petroleum, Empire Petroleum Holdings, Inc. moved the court to approve a break-up fee on its behalf. Empire Petroleum Holdings, Inc. argued that its bid to purchase substantially all of Debtor’s assets for $5,500,000 was instrumental in helping Debtor to receive a greater bid from Florida Sunshine Investments I, Inc. Furthermore, Empire Petroleum argued that Debtor agreed to provide a break-up fee equaling five percent of its purchase offer if it chose to sell its property to a higher bidder.

Applications for Relief from Automatic Stay

The sale to Florida Sunshine Investments I, Inc. helped resolve issues between Debtor and YA Landholdings, which filed a Motion for Relief from Stay in April due to Debtor’s alleged failure to make payments on unexpired commercial leases since November 1, 2008. Although the court ordered some payments to YA Landholdings in mid-April, the court

588 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order (Dkt. 722) p. 2, ¶ 2 (Sept. 11, 2009); See also In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Limited Objection Filed by Greystone Business Credit II, LLC to Motion to Sell and Assign Property to Rogers Petroleum Free and Clear of Liens and Encumbrances and for Approval of Bidding Procedures (Dkt. 709) p. 1, ¶ 2 (Sept. 3, 2009) (noting Greystone’s acquiescence to the $25,000 administrative expense as long as it was not to be paid by Greystone or from its collateral).

589 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Break-Up Fee (Dkt. 729) (Sept. 28, 2009).

590 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Break-Up Fee (Dkt. 729) p. 7-8, ¶ 31 (Sept. 28, 2009).

591 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Approve Break-Up Fee (Dkt. 729) p. 3, ¶ 11, 13 (Sept. 28, 2009).

592 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion for Relief from Stay (Dkt. 150) p. 3, ¶ 4 (Apr. 1, 2009).

required that the automatic stay remain in effect. After the sale to Florida Sunshine Investments I, Inc., however, YA Landholdings agreed to withdraw of the motion in exchange for the payment of outstanding rents at the closing of the sale.

On September 23, 2009, the court granted Branch Banking and Trust Company’s Nunc Pro Tunc Motion for Relief from Stay, blessing its actions in paying Western Union pursuant to the 2008 Security Agreement entered into between itself and Debtor.

**Fee Applications**

On September 4, 2009, the bankruptcy court granted NRC Realty Advisors, LLC’s application for compensation and reimbursement for its efforts in helping to find a buyer for Debtor’s property and awarded them the amount of $275,668.00.


reductions in the exercise of billing discretion) and reimbursement for out-of-pocket expenses in the amount of $1,952.37.”

On September 23, 2009, Protiviti, Inc., the financial advisors for the Unsecured Creditors Committee, entered their second application for compensation as well, seeking “an interim allowance of $8,392.00 as compensation and $0.00 for reimbursement of actual and necessary expenses.” This compensation covered the company for the period June 1, 2009 through August 31, 2009.

Finally, on September 31, 2009, S & B Wholesale Co., LLC filed an informal application for administrative expenses for vendor services that it provided to Debtor during the bankruptcy. S & B Wholesale Co., LLC claimed to be under the impression that it was classified as a “guaranteed vendor.” As such, the company sought to be reimbursed for expenses incurred from “August 22 through September 2, 2009.”

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Withdrawal of Counsel

At the end of September, counsel for creditor Kenneth Shaw moved to withdraw his representation because Shaw disengaged his services, and the court granted the motion.

§ 4 – The Liquidation Plan

Debtor’s Plan was a liquidation plan that “provide[d] for the liquidation of [Debtor] and then the dissolution and termination of its corporate existence.” Although Chapter 11 is typically thought of as a tool for reorganization of a business, some debtors use it “as a forum for an orderly liquidation.” In this case, by liquidating in Chapter 11 rather than Chapter 7, Debtor believed that it would receive a greater recovery with which to repay creditors by (1) avoiding trustee and attorney’s fees associated with Chapter 11 liquidation and (2) allowing Andrew Weber to continue to operate the business in the meantime.

In order for the Plan to be confirmed, the following actions had to take place: (1) the court must first approve Debtor’s Disclosure Statement “in accordance with § 1125 of the

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605 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Withdrawal as Counsel for Kenneth R. Shaw (Dkt. 730) (Sept. 29, 2009).


608 Jonathan P. Friedland, Michael L. Bernstein, George W. Kuney, & John D. Ayer, Chapter 11-101: The Nuts and Bolts of Chapter 11 Practice 4 (ABI, 2007) (stating that “Chapter 11, entitled ‘reorganization,’ is the chapter that provides additional rules for the small number of ‘big’ business reorganizations that entail a lot of lawyer time and effort, and generate a lot of professional fees. If you ask a chapter 11 lawyer what it means to reorganize, she will likely say something like this: A chapter 11 case allows the debtor to preserve the business as a going concern, and thereby to maximize value for creditors, shareholders, employees and other stakeholders.”).


Bankruptcy Code;” 611 (2) the Disclosure Statement must be “provided to all Creditors, Interest Holders, and parties in interest of APPCO;” 612 (3) Creditors with Allowed Claims must vote on the Plan, 613 (4) the court must hold a hearing to determine if the Plan should be confirmed based upon acceptance by each Impaired Class 614 or based upon court approval of a “cram-down” plan in accordance with § 1129(b) of the Bankruptcy Code. 615 As of March 26, 2010, the first three of the aforementioned requirements were satisfied, and the Plan only lacked confirmation. 616

Assets

At the time of filing the Amended Plan, Debtor’s “remaining assets consist[ed] of the following: (1) monies held by the Committee (the "Committee Fund"), (2) the Debtor's claims under Chapter 5 of the Bankruptcy Code, and (3) the Debtor’s post-petition receivables.” 617

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611 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 23 (Feb. 8, 2010).

612 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 23 (Feb. 8, 2010).


614 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 24 (Feb. 8, 2010); In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Disclosure Statement and Plan of Liquidation (Dkt. 735) p. 23 (Oct. 2, 2009) (explaining that, despite the fact that Debtor estimated being able to pay all administrative and priority claims in full, Debtor planned to treat claimants of administrative claims, priority claims, and unsecured claims as “Impaired under the Plan”).

615 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 25 (Feb. 8, 2010); Jonathan P. Friedland, Michael L. Bernstein, George W. Kuney, & John D. Ayer, Chapter 11-101: The Nuts and Bolts of Chapter 11 Practice 209-210 (ABI, 2007) (noting that “[i]t is important to remember that cramdown, although a broad and powerful term, can only overcome one sort of §[ ]1129(a) deficiency—the failure of a class to vote to accept the plan under §1129(a)(8). Even in a cramdown confirmation, all the other §[ ]1129 requirements must be met.”).

Committee Fund consisted of a sum equal to $1,029,738.45, which included funds “to be used solely for distribution to general unsecured creditors and payment of approved fees and expenses of Committee professionals.” The Committee Fund was comprised of “$725,000 from the $1,000,000 escrowed proceeds that [were] segregated and held by the Committee” and “$304,738.45 of the sale proceeds from the Florida Sunshine transaction.” At the date of filing the Amended Plan, the outstanding Committee professional fees and expenses totaled over $350,000, not including any additional applications for compensation that could be submitted. If no further professional fees and expenses were filed, the balance of the Committee Fund for distribution to general unsecured creditors would equal $675,798.05.

In the Amended Disclosure Statement and Plan of Liquidation, Debtor explained its Chapter 5 claims, stating that it “believe[d] that it ha[d] a high likelihood of recovering substantial monies for the benefit of the Estate through preference litigation.” Such monies were anticipated renderings from the adversary proceedings that Debtor commenced against

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618 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 27 (Feb. 8, 2010).
619 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 27 (Feb. 8, 2010).
620 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 27 (Feb. 8, 2010).
621 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 27 (Feb. 8, 2010).
622 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 30 (Feb. 8, 2010).
Titan and former directors as well as from “preferential transfers subject to avoidance under . . . § 547.” Debtor estimated its largest potential recoveries as set forth in the following chart:

<table>
<thead>
<tr>
<th>Payments Received Within 90 Day Preference Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMOCO/BP</td>
</tr>
<tr>
<td>CITGO Petroleum Corp.</td>
</tr>
<tr>
<td>Marathon Ashland Petroleum, LLC</td>
</tr>
<tr>
<td>Valero Marketing &amp; Supply Co.</td>
</tr>
<tr>
<td>Conoco-Phillips</td>
</tr>
<tr>
<td>LP Shanks</td>
</tr>
</tbody>
</table>

Additionally, “[t]here [were] also a number of other preference claims that [were] available to the Debtor[,] which are not summarized above and which range[d] from $10,000 to $500,000.” As of the date of filing the Amended Disclosure Statement and Plan of Liquidation, Debtor also had “post-petition receivables totaling approximately $70,000.00. It [wa]s . . . in the process of attempting to collect th[o]se funds from its account debtors” at that time.

**Liabilities**

Debtor “scheduled total liabilities of approximately $18,815,306.” However, as of the date of filing the Plan, “four hundred twenty-four (424) claims [were] filed[,] totaling

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624 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 27 (Feb. 8, 2010).

625 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 29 (Feb. 8, 2010).

626 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 29 (Feb. 8, 2010).

627 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 30 (Feb. 8, 2010).

628 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 30 (Feb. 8, 2010).
Debtor planned to object to some of these claims, but still estimated that its total liability for unsecured claims would exceed the scheduled amount, “ranging from $30 million to $35 million” if not more. Debtor estimated “Total Allowed Administrative Expense Claims of $250,000 to $300,000,” which it further estimated would be paid in full after recovery of all preferences.

The Plan’s Compliance with § 1123 Requirements

The Amended Plan complied with the requirements of § 1123 of the Bankruptcy Code, in that it:

- Designated classes of substantially similar claims and interests in accordance with § 1122 and § 1123(a)(1), classifying Class 1 as Administrative Claims, Class 2 as Priority Claims, Class 3 as Unsecured Claims, Class 4 as Interest Holders, and Class 5 as Executory Contracts;
- Specified which claims and interests would be treated as impaired in accordance with § 1123(a)(2)-(3), noting that “Claims of Administrative Claim Creditors, Priority Creditors, Interest Holders, and Executory Contracts.”

Note that the requirements set forth in § 1123(a)(6), which pertain to voting rights specifics for equity securities, do not seem to be applicable since the sole “holder of the membership units in [] Debtor is Titan.” Furthermore, “[u]pon completion of the liquidation process under the Plan and the final distribution to creditors, Debtor will be dissolved under State law. Titan will retain no interest in [] Debtor.”

In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Disclosure Statement and Plan of Liquidation (Dkt. 834) p. 30 (Feb. 8, 2010).


Unsecured Creditors, and Interest Holders were Impaired under the Plan.” This stipulation indicated that each of these creditors would be allowed to vote on the Plan; provided for “the same treatment for each claim or interest of a particular class” pursuant to § 1123(a)(4);

- Provided for an “adequate means for the plan’s implementation” pursuant to § 1123(a)(5), explaining that the Plan “propose[d] to complete the liquidation of the assets of the Debtor and distribute the proceeds thereof in accordance with the Plan;”

- Pursuant to § 1123(a)(7), provided for a manner of selecting an officer and director who was “consistent with the interests of creditors and equity security holders and with public policy.” Specifically, the Disclosure Statement provided for Mr. Weber, the Chief Restructuring Officer approved by the court, to remain the sole officer and director of Debtor throughout the liquidation and dissolution process.

The Plan’s Compliance with § 1129 of the Bankruptcy Code

The primary objection to confirmation revolved around the Plan’s compliance with § 1129(a)(3), which provides that “[t]he court shall confirm a plan only if . . . [t]he plan has been


proposed in good faith and not by any means forbidden by law.” More specifically, the Unsecured Creditors Committee took issue with the following provision in the Disclosure Statement:

The Plan proposed a liquidation of APPCO. Proceeds from the Committee Fund have by the Settlement Order been directly allocated to Claims of Unsecured Creditors and the payment of Committee professionals. If the Debtor is unable to collect sufficient monies through preference recoveries to pay Allowed Administrative Claims and Priority Claims in full, then an issue may arise under the absolute priority rule. If necessary or required, the Debtor will make demand and seek recovery of these funds from the Committee for the benefit of creditors whose Claims have priority to those of Unsecured Creditors.

The Unsecured Creditors Committee argued that this provision was forbidden by law and that it violated § 1129(a)(3) since it sought to set aside the agreement provided for in the court-approved Settlement Order. In particular, the Settlement Order was consideration for the Unsecured Creditors Committee giving up “valuable rights,” including the right to claims against former shareholders and Greystone. Furthermore, the Unsecured Creditors Committee did not want the Settlement Order to be disregarded because it secured at least some payment for the unsecured creditors out of the Committee Fund.


643 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, The Official Committee of Unsecured Creditors’ Objection to Debtor’s Plan of Liquidation (Dkt. 877) p. 6 (Mar. 23, 2010) (stating that “[t]he Plan’s proposed treatment to unsecured creditors . . . [wa]s clearly in violation of the Settlement Order and thus forbidden by law”); See also In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Granting Motion to Compromise (Dkt. 461) p. 6 (June 10, 2010).


Another objection to the Plan concerned its compliance with § 1129(a)(9)(C), which provides, in pertinent part, that:

The court shall confirm a plan only if . . . the plan provides that . . . [allowed unsecured claims of governmental units] will receive on account of such claim regular installment payments in cash—
(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
(ii) over a period ending not later than 5 years after the date of the order for relief . . .; and
(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122 (b)).

Specifically, the Virginia Department of Taxation reminded the court of its priority claim “in the amount of $54,464.50 for sales and use taxes due for the reporting periods preceding the date of the order for relief” and argued that “[t]he Plan [d]id not provide for full payment of the Department’s claim through regular payments within [five (5)] years of the date of the order for relief.”

Additionally, the United States Trustee objected to the Plan’s confirmation based upon Debtor’s failure to comply with the “fee requirements of 28 U.S.C. § 1930(a)(6) and reporting requirements of Local Rule 2015-2 of the U.S. Bankruptcy Court of the Eastern District of Tennessee.” The U.S. Trustee noted that Debtor was “delinquent in the payment of U.S.

647 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Commonwealth of Virginia, Department of Taxation’s Objection to Confirmation (Dkt. 872) p. 1, ¶ 2; p. 2, ¶ 4 (Mar. 15, 2010).
648 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Commonwealth of Virginia, Department of Taxation’s Objection to Confirmation (Dkt. 872) p. 1, ¶ 3 (Mar. 15, 2010).
Trustee fees for 4th Quarter 2009 and ... failed to file operating reports for the months of January and February 2010.”

Given the objections to confirmation, Debtor requested a four-month extension of time before the confirmation hearing. Debtor informed the court that it hoped to resolve these objections since “Debtor [wa]s in the process of objecting to certain administrative expense claims and seeking to collect monies through prosecution of preference claims and collection of post-petition receivables to pay the allowed administrative expense claims.” Subsequently, the court approved the extension and set the hearing for July 27, 2010.

§ 5 – After the Liquidation Plan

Administrative Fees and Expenses


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651 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Continue Confirmation Hearing on Plan of Liquidation (Dkt. 882) p. 3, ¶ 8 (Mar. 26, 2010).

652 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Continue Confirmation Hearing on Plan of Liquidation (Dkt. 882) p. 3, ¶ 8 (Mar. 26, 2010).

653 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Hearing Held. Motion by Debtor to Continue Confirmation Hearing on Plan of Liquidation (Dkt. 891) (Mar. 30, 2010).
pursuant to §§ 330(a) and 331 for legal services in the amount of $22,168.19. The court granted this request on December 7, 2009.

The following claims for payment of administrative expenses were also filed with the court between December 17, 2009 and January 15, 2010, which was the deadline for filing such claims:

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Nature of Claim</th>
<th>Amount of Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crescent Oil Company, Inc.</td>
<td>Administrative expenses under 503(b)(9)</td>
<td>$1,558,576.02</td>
</tr>
<tr>
<td>Furrs 1, LLC; Furrs 2, LLC; Sierra Partners, LLC</td>
<td>Superpriority administrative expenses under 364(c)(1)</td>
<td>$2,775,723.57</td>
</tr>
<tr>
<td>YA Landholdings, LLC and YA Landholdings 7, LLC</td>
<td>Administrative expenses under 105 and 503</td>
<td>$87,499.98</td>
</tr>
<tr>
<td>GEC, LLC</td>
<td>Administrative expenses under 503(b)</td>
<td>$1,815.00</td>
</tr>
<tr>
<td>R. J. Reynolds Tobacco Company</td>
<td>Administrative expenses under 503(b)(1)(A) and 507(a)(2)</td>
<td>$312,333.00</td>
</tr>
</tbody>
</table>

To date, GEC, LLC’s claim was the only one the court granted. Debtor did not object to this motion, presumably because of the minute amount of the claim.

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656 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Amended Motion for Allowance of Administrative Claim Pursuant to 11 U.S.C. § 503(b)(9) and Notice of Opportunity to Object and for Hearing (Dkt. 798) (Jan. 13, 2010); Motion of Furrs 1, LLC, Furrs 2, LLC, and Sierra Partners, LLC for Allowance of Administrative Expense (Dkt. 802) (Jan. 15, 2010); Notice of Opportunity to Object and for Hearing (Dkt. 804) (Jan. 15, 2010); Creditor, GEC, LLC’s Motion for Payment of Administrative Expense (Dkt. 805) (Jan. 15, 2010); Request for Allowance and Payment of Administrative Expense (Dkt. 806) (Jan. 15, 2010).

657 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Order Granting Application for Administrative Expenses (Dkt. 851) (Feb. 18, 2010).
Adversary Proceedings

On March 3, 2010, Debtor commenced an “action to avoid certain preferential transfers pursuant to 11 U.S.C. § 547(b) and 11 U.S.C. § 553(b), and to avoid certain unauthorized post-petition transfers pursuant to 11 U.S.C. § 549(a)” against R.J. Reynolds Tobacco Company. As of the date of this report, no further action was taken regarding this adversary proceeding.

§ 6 – Conclusion

When Debtor filed for Chapter 11 protection on February 9, 2009, it marked the end of an era for a company with more than eighty-six years of experience in the petroleum products industry. However, these Chapter 11 proceedings mark a new beginning for the company because Florida Sunshine Investments I, Inc. plans to emerge from the bankruptcy with substantially all of Debtor’s assets and intends to operate Debtor’s former gasoline and convenient store locations under its own corporate structure. Currently, Debtor awaits confirmation of its plan of liquidation. Although confirmation is not guaranteed due to the fact that some parties raised objections to the plan, Debtor hopes to resolve these objections prior to the hearing on July 27, 2010, by obtaining additional funding to pay claims through preference litigation, collecting post-petition receivables, and making any remaining objections to administrative claims. Confirmation of the plan, therefore, seems likely.

660 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Hearing Held. Motion by Debtor to Continue Confirmation Hearing on Plan of Liquidation (Dkt. 891) (Mar. 30, 2010).
661 In re: Appalachian Oil Company, Inc., Case No. 2:09-bk-50259, Motion to Continue Confirmation Hearing on Plan of Liquidation (Dkt. 882) p. 3, ¶ 8 (Mar. 26, 2010).
Nevertheless, if the bankruptcy court finds confirmation inappropriate, wrap-up of the case might include the proposal and confirmation of a third amended plan or, in the alternative, conversion of the case to one under Chapter 7. Regardless, Debtor’s journey through Chapter 11 bankruptcy reveals the intricacies of post-petition financing issues, the struggles of strategically using cash collateral and tactically assuming and rejecting executory contracts and leases, and the contention between the executives of a parent company and a large secured creditor during the marketing and sale of Debtor’s assets and the creation of a liquidation plan to equitably disperse the proceeds.