

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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In re:	:	Chapter 11
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AUSTEX OIL, LTD,	:	Case No. 19-11138
an Australian corporation,¹	:	
	:	Jointly Administered
Debtor.	:	
	:	
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**MOTION FOR AUTHORIZATION OF DEBTORS TO USE FUNDS PURSUANT
TO 11 U.S.C. § 363(b) AND NOTICE OF OPPORTUNITY FOR HEARING**

International Energy Holding Company, LLC (“Holding”), a Debtor and Debtor-in-Possession before this Court, requests the Court to enter an order authorizing transfer of cash proceeds to AusTex Oil, Ltd. (“AusTex Oil”) for the purposes of paying a retainer and fees to Baker McKenzie Australia to commence a proceeding to recognize AusTex Oil’s Chapter 11 Case as the foreign main proceeding, under Australia’s version of Chapter 15 of the Bankruptcy Code, as set forth herein.

1. On June 3, 2019, the following entities (collectively, “Debtors”), filed Voluntary Petitions pursuant to Chapter 11 of the Bankruptcy Code:

- a. AusTex Oil, Ltd.
- b. AusTex Holdco, LLC
- c. International Energy Holding Company, LLC
- d. International Energy Company, LLC
- e. International Energy Corporation
- f. International Energy, LLC
- g. International Properties Partners, LLC
- h. International Oil & Gas, LLC

¹ The Debtors in these Chapter 11 cases are : (1) AusTex Oil, Ltd., Case No. 19-11138-M, (2); AusTex Holdco, LLC, Case No. 19-11139-M, (3) International Energy Holding Company, LLC, Case No. 19-11140-M, (4) International Energy, LLC, Case No. 19-11141-M, (5) International Energy Company, LLC, Case No. 19-11142-M, (6) International Energy Corporation, Case No. 19-11143-M, (7) International Properties Partners, LLC, Case No. 19-11144-M, and (8) International Oil & Gas, LLC, Case No. 19-11145-M.

2. On June 3, 2019, the Debtors filed Debtors' Motion for Entry of an Order Directing Joint Administration Pursuant to Bankruptcy Rule 1015(b) which Motion was granted on July 12, 2019, by Order Granting Debtors' Motion for Entry of an Order Directing Joint Administration Pursuant to Bankruptcy Rule 1015(b) [Docket No. 24]. The Debtors are affiliated through common ownership.

3. As set forth in more detail in the Richard Adrey Declaration ('Adrey Declaration') [Docket No. 3], AusTex Oil, is a publicly traded Australian oil and gas company listed on the Australian Securities Exchange (the "ASX") under the symbol "AOK." Although AusTex Oil, is an Australian listed Company, it operates exclusively through its United States subsidiaries, each of which is headquartered in Tulsa, Oklahoma. The Debtors' business was the exploration and production of oil and natural gas, largely in Oklahoma and Kansas.

4. The Board of Directors of AusTex Oil authorized the filing of a Chapter 11 petition in the United States, which is permitted by the United States Bankruptcy Code so long as the foreign company has property in the district in which the case is filed. *See* 11 U.S.C. § 109(a). While this Court has exclusive jurisdiction over the property of AusTex Oil and the other Debtors located in the United States and its territories, such jurisdiction does not extend to property located in Australia. In recognition of that fact, the Board of Directors of AusTex Oil, has authorized the Company to file a recognition proceeding ("Recognition Proceeding") in Australia seeking to have AusTex Oil's Chapter 11 case before this Court recognized as the foreign main proceeding under Australia's version of Chapter 15 of the Bankruptcy Code.

5. In order to be recognized as the foreign main proceeding, the appropriate court in Australia must find that the center of main interests is in the United States. As noted above, AusTex Oil operates exclusively in the United States, which courts in Australia have previously

found to be dispositive for recognizing a Chapter 11 case as a foreign main proceeding. *See* Notice of Recognition, *In re Buccaneer Resources, et al.*, Case No. 14-60041(DRJ) (Bankr. S.D. Tex.) [Docket No. 209] (finding that Chapter 11 case of Australian holding company that operated exclusively through United States subsidiaries was entitled to recognition as foreign main proceeding).

6. AusTex Oil has an ongoing relationship with Baker McKenzie Australia, who have represented AusTex Oil as its general counsel over a number of years. Baker McKenzie Australia has been engaged by AusTex Oil for purposes of commencing a Recognition Proceeding in the Australian federal court to obtain an order of the Australian courts to the effect that the AusTex Oil proceeding in the United States is the main proceeding of AusTex Oil, and is the center of influence and activities of AusTex Oil. Baker McKenzie Australia will not be bankruptcy counsel, and will not enter any appearance in the AusTex Oil case before this Court, nor any of the other cases filed before this Court, nor will they be retained as counsel pursuant to 11 U.S.C. §§ 327 or 328.

7. Baker McKenzie Australia is a separate member in a Swiss Verein or Swiss Association. As noted by Wikipedia:

The form is often used by multinational professional firms so they can operate globally under one brand whilst maintaining separate profit pools (and ring-fencing liability) in each country in which they operate. One advantage to the Verein structure is that because control of the firm is decentralized, offices are only bound by regulators in their country. For instance, non-US offices of accounting firms in a Verein structure are not bound by Securities and Exchange Commission subpoenas from the United States.

Wikipedia, Swiss Association, https://en.wikipedia.org/wiki/Swiss_association (last accessed June 26, 2019); *see also* Douglas R. Richmond, et al., *Professional Responsibility and Liability*

Aspects of Verein, the Swiss Army Knife of Global Law Firm Combinations, 88 St. John's L. Rev. 917, 921 (2014) (setting forth the fundamental of Swiss Vereins).

8. Baker McKenzie Australia has estimated that the cost of a Recognition Proceeding in Australia as contemplated by the Board of Directors of AusTex Oil to be between \$50,000 and \$60,000 USD, and has requested from AusTex Oil a retainer of \$40,000 USD.

9. Prior to commencement of these cases, in the ordinary course of business, Holding, as a subsidiary of AusTex Oil, has distributed funds to AusTex Oil to fund ordinary expenses and obligations of the Company incurred in Australia, which will continue in the ordinary course of business of both entities.

10. The funds of Holding, held in its deposit accounts, are not subject to any claim or interest of any creditor or party other than Holding. The funds are free and clear of any lien, claim, or encumbrance, and thus do not constitute "cash collateral" as defined in § 363(a) of the Bankruptcy Code. Holding intends to continue to provide funds periodically to AusTex Oil to fund maintenance of that entity.

11. By virtue of this Motion, the Debtors are requesting that they be permitted to distribute to AusTex Oil funds to be utilized for the retention and payment of Baker McKenzie Australia to file the Recognition Proceeding in the appropriate court in Australia under Australia's version of Chapter 15 of the Bankruptcy Code, and payment of fees incurred.²

12. Holding will disburse to AusTex Oil the sums to be utilized by AusTex Oil in the ordinary course of its business, as well as for payment of Baker McKenzie Australia to undertake the Recognition Proceeding. No funds will be used to pay any claims of parties that arose prior to the commencement of the bankruptcy case of AusTex Oil, on June 3, 2019.

² For purpose of clarity, the Debtors, including Holding, intend to continue to transfer cash proceeds to AusTex Oil for the purpose of paying its ordinary business expenses.

13. This issue of retention of Baker McKenzie Australia appears to be a matter of first impression in this District. Moreover, there appears to be little, if any, precedent for other jurisdiction on the relief sought in this motion.

14. The first issue is whether Baker McKenzie Australia must be retained as a professional person under 11 U.S.C. §§ 327 or 328 in the AusTex Oil case pending in this Court in order to commence the Recognition Proceeding in Australia. Although not free from doubt, the Debtors believe that these provisions are likely not applicable because Baker McKenzie Australia, as a personal services firm operating solely within the territorial limits of Australia, are not subject to the jurisdiction of this Court. Moreover, Baker McKenzie Australia will not be taking any action with respect to property that is subject to jurisdiction of this Court, but will be taking action consistent with the Chapter 11 Petition of AusTex Oil before this Court, to give full effect to the Chapter 11 proceedings.

15. In the *Buccaneer Resources* case cited above, Norton Rose Fulbright US commenced the Chapter 11 cases for the debtors, and Norton Rose Fulbright Australia was retained to commence the Recognition Proceedings. In its retention application before the bankruptcy court, Norton Rose Fulbright US noted that it was part of a Swiss Verein and that Norton Rose Fulbright Australia was a separate and distinct entity taking action on behalf of the Australian debtor. *See* Retention Application, *In re Buccaneer Resources, et al.*, Case No. 14-60041(DRJ) (Bankr. S.D. Tex.) [Docket No. 57]. Norton Rose Fulbright Australia, however, was not retained; instead, the fees incurred by Norton Rose Fulbright Australia were to be paid through an expense item billed by Norton Rose Fulbright US. *See id.* at Ex. A, Page 8, Fn. 3. Although not dispositive, it appears that the parties either believed that retention of Norton Rose Fulbright Australia under

§§ 327 or 328 was either not required or not enforceable because the firm was outside the jurisdiction of the bankruptcy court.

16. The Debtors believe that 11 U.S.C. § 363 allows for the payment by the subsidiaries to AusTex Oil, for the purpose of paying expenses, including the fees of Baker McKenzie Australia, which provides in relevant part that a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate[.]” 11 U.S.C. § 363(b). As noted by one court:

[T]he authorization of certain types of payments under § 363(b) is not prohibited simply because there is another section of the Bankruptcy Code related to the same type of payment. Nothing in § 327(e) suggests that Congress intended it to be the exclusive authority for approving the payment of legal fees in the bankruptcy code. And, as the Committee itself emphasizes, § 327(e) is directed to the retention of an attorney to represent the debtor, not third parties such as the debtor's employees. Even if Congress intended § 327(e) to be the exclusive means for a debtor to retain an attorney for purposes other than bankruptcy representation, there is nothing to suggest that congressional silence on retention of attorneys for debtors' employees in § 327(e) was meant to foreclose such authority under § 363(b). The Court therefore agrees with the conclusion reached in [*Bethlehem Steel*] that a transaction outside the ordinary course of business may be approved under § 363(b) if the transaction meets the requirements of that section, even if another provision of the Code touches upon the subject matter of the transaction.

In re Enron Corp., 335 B.R. 22, 29 (S.D.N.Y. 2005) (citations and quotations omitted) (allowing funds of the estate to be used to defend employees under § 363(b)); *see also In re Tubular Techs., LLC*, 372 B.R. 820, 822 (Bankr S. Car. 2007) (authorizing payment of retainer to special counsel pursuant to § 363(b)).

17. The Debtors respectfully submit that payments to AusTex Oil to fund Baker McKenzie Australia's fees, including a retainer, is a reasonable exercise of the Debtors' business judgment and should be approved and will benefit the administration of these cases. The Recognition Proceeding is important to the success of these Chapter 11 cases; the cost estimated by Baker McKenzie Australia to commence such proceeding is relatively modest; and the usage

of such funds paid to Australia will be shown, along with all ordinary course expenses, as disbursements on the Debtors' monthly operating report filed in the case. For all of these reasons, this Court should approve the Motion.

18. Holding respectfully submits by this Motion that the utilization of its unencumbered funds, consistent with ordinary practice of Holding, is not inconsistent with the provisions of 11 U.S.C. § 363, but in the interest of transparency, submits this Motion.

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Northern District of Oklahoma, 224 South Boulder, Tulsa, Oklahoma 74103 no later than 24 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection on the undersigned movants' attorneys, and any party who is required to be served under applicable law, and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. **The 24 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).**

WHEREFORE, Debtors respectfully move for an Order granting the relief requested herein.

Respectfully submitted,

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