

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: § Chapter 11
ATP Oil & Gas Corporation, §
Debtor. § Case No.: 12-36187
§
§ Hon. Marvin Isgur

**DEBTOR’S EMERGENCY SUPPLEMENTAL MOTION FOR ENTRY OF AN ORDER,
PURSUANT TO BANKRUPTCY CODE SECTIONS 361,362(d), 363(e)
AND 364, (1) APPROVING POSTPETITION FINANCING, (2) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS AND (3) GRANTING ADEQUATE PROTECTION**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON OCTOBER 18, 2012 AT 1:30 P.M. AT THE UNITED STATES COURTHOUSE, 515 RUSK AVENUE, HOUSTON, TEXAS, 77002.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST RESPOND IN WRITING AND SEND A COPY TO THE MOVING PARTY. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIED OF IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.



ATP Oil & Gas Corporation, as debtor and debtor-in-possession (the “Debtor”), files this *Emergency Supplemental Motion for Entry of an Order, Pursuant to Bankruptcy Code Sections 361, 362(d), 363(e) and 364, (1) Approving Postpetition Financing, (2) Granting Liens and Providing Superpriority Administrative Expense Status and (3) Granting Adequate Protection* (the “Motion”). The Motion seeks entry of an order, substantially in the form of **Exhibit A** attached hereto (the “Proposed Order”) and consistent with paragraph 15 of the DIP Order (defined below), authorizing the Debtor to incur secured borrowings and to pay certain fees, costs and expenses of professionals for an ad hoc committee (the “Ad Hoc Second Lien Committee”) of holders of 11.875% Senior Second Lien Notes due 2015 (the “Prepetition Second Lien Notes”). In support of the Motion, the Debtor respectfully submits the following¹:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought hereby are Sections 361, 362(d), 363(e) and 364 of the Bankruptcy Code and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

PROCEDURAL HISTORY AND BACKGROUND

2. On August 17, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-referenced case (collectively, the “Case”). Since the Petition Date, the

¹ Except as otherwise defined herein, capitalized terms shall have the meanings ascribed to them in that certain *Final Order Pursuant to 11 U.S.C. §§ 105, 107, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay and (6) Authorizing Debtor to File the Fee Letter Under Seal* [Docket No. 440] entered by the Court on September 20, 2012 (the “DIP Order”).

Debtor has continued to operate and manage its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. On August 17, 2012, the Debtor filed the *Emergency Motion for Entry of Interim and Final Orders Pursuant to Bankruptcy Code Sections 105, 107(b), 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay, (6) Authorizing Debtor to File the Fee Letter Under Seal and (7) Scheduling a Final Hearing* [Docket No. 21] (the “DIP Motion”), which is incorporated herein by reference.

4. On August 22, 2012, the Court entered the *Interim Order Pursuant to 11 U.S.C. §§ 105, 107, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay, (6) Authorizing Debtor to File the Fee Letter Under Seal and (7) Scheduling a Final Hearing* [Docket No. 126], subject to the *Supplemental Order on Debtor’s Emergency Motion for Order Approving Post-Petition Financing and Related Relief* [Docket No. 128] (collectively, the “Interim Order”), pursuant to which the Debtor was authorized, among other things, to incur secured borrowings from the DIP Lenders on an interim basis pursuant to the terms of the DIP Term Sheet (as defined in the Interim Order) and the Interim Order.

5. On August 24, 2012, the United States Trustee appointed an official committee of unsecured creditors (the “Statutory Committee”) in these Cases [Docket No. 194].

6. On September 21, 2012, the Court entered the DIP Order, pursuant to which the Debtor was authorized, among other things, to incur secured borrowings from the DIP Lenders pursuant to the terms of the DIP Credit Agreement and the DIP Order.

7. The Debtor is the issuer of the Prepetition Second Lien Notes issued pursuant to an Indenture, dated as of April 23, 2010 (the "Prepetition Second Lien Notes Indenture," and together with all other loan and security documents related to the Prepetition Second Lien Notes Indenture, the "Prepetition Second Lien Documents"), by and between the Debtor, as issuer, and The Bank of New York Mellon Trust Company, N.A., as trustee and collateral agent. As set forth in the DIP Order, the Debtor's obligations under the Prepetition Second Lien Notes Documents are secured by liens on certain assets of the Debtor (such assets, the "Prepetition Collateral").

8. In connection with the DIP Motion and the issuance of the Interim Order and the DIP Order, the Ad Hoc Second Lien Committee requested, as adequate protection against diminution in the value of its members' interests in the Prepetition Collateral pursuant to Sections 361, 362(d), 363(e) and 364 of the Bankruptcy Code, reimbursement of certain of the fees, costs and expenses of designated professionals (in addition to other relief embodied in the DIP Order). As set forth in the DIP Order, each of the Debtor, the DIP Agent and DIP Lenders constituting Required DIP Lenders (as defined in the DIP Credit Agreement) have consented to such adequate protection on the terms set forth in paragraph 15 of the DIP Order. *See* DIP Order ¶ 15.

9. At the hearing on the DIP Motion, the Court stated that it would not approve the reimbursement of fees to professionals for the Ad Hoc Second Lien Committee absent further notice and a hearing. *See* Transcript of Hearing Held on Sept. 20, 2012, at 108-09 [Docket No.

463]. Accordingly, while the Debtor, the DIP Agent and DIP Lenders have consented to the relief sought herein, the DIP Order provides that such relief shall be “subject to approval and further order of the Court.” DIP Order ¶ 15. The purpose of this Motion is to seek such further order of the Court to implement paragraph 15 of the DIP Order. In light of certain modifications to the proposed relief negotiated after the hearing on the DIP Motion (which, among other things, allow the Statutory Committee to terminate the financing set forth herein on 30 days’ notice, but no earlier than 150 days after the entry of an order approving this Motion), each of the Debtor, the Ad Hoc Second Lien Committee and the Statutory Committee supports the relief sought by the Motion and the DIP Agent and DIP Lenders constituting Required DIP Lenders have consented thereto.

REQUESTED RELIEF

10. The Debtor requests that the Court enter the Proposed Order: (i) granting adequate protection to the Ad Hoc Second Lien Committee through the payment of certain professional fees, costs and expenses and (ii) authorizing the Debtor to incur post-petition secured borrowings to facilitate the payment of such fees, costs and expenses. The principal terms of the Proposed Order are as follows²:

a. Reimbursement of Expenses

From and after the Petition Date, the Debtor shall reimburse First Pacific Advisors, LLC and/or any other holder of the Prepetition Second Lien Notes that is a member of the Ad Hoc Second Lien Committee (collectively, the “Funding Parties”) for the reasonable out-of-pocket fees, costs and expenses of the following professionals (collectively, the “Approved Second Lien Professionals”):

- Thompson & Knight LLP, as counsel to the indenture trustee for the Prepetition Second Lien Notes (in an amount not to exceed \$10,000 per month) ;

² This statement is a summary of terms in the Proposed Order. Reference is made to the Proposed Order for a full and complete description of the requested relief. To the extent this statement is inconsistent with the Proposed Order, the Proposed Order shall control.

- Wachtell, Lipton, Rosen & Katz, as restructuring and bankruptcy counsel to the Ad Hoc Second Lien Committee;
- Vinson & Elkins LLP, as local and oil and gas counsel to the Ad Hoc Second Lien Committee; and
- Evercore Group L.L.C., as financial advisor to the indenture trustee for the Prepetition Second Lien Notes.

b. Nature of Reimbursement

The Debtor shall not be required to pay directly any fees, costs or expenses of the Approved Second Lien Professionals in cash during the course of the Case; rather, the Funding Parties will make such payments to the Approved Second Lien Professionals and the amounts of such payments shall accrue as post-petition loans (the “Second Lien Professional Loans”) from the Funding Party making such payment to the Debtor.

c. Required Holdings of Ad Hoc Second Lien Committee

The Debtor’s reimbursement obligations hereunder shall continue only while (i) the members of the Ad Hoc Second Lien Committee hold in excess of 40% of the Prepetition Second Lien Notes and (ii) the Debtor has not received a demand from Prepetition Second Lien Lenders holding, on the date of such demand, a greater percentage of the Prepetition Second Lien Notes than the percentage held by the members of the Ad Hoc Second Lien Committee that such reimbursement cease (a “Cessation Demand”). If any Approved Second Lien Professional becomes counsel to the indenture trustee for the Prepetition Second Lien Notes, only Prepetition Second Lien Lenders holding, on the date of such demand, in excess of 50% of the Prepetition Second Lien Notes can deliver a Cessation Demand with respect to such Approved Second Lien Professional. The Ad Hoc Second Lien Committee is required to notify the DIP Lenders and the Statutory Committee promptly upon becoming aware that the members of the Ad Hoc Second Lien Committee hold, in the aggregate, less than 40% of the Prepetition Second Lien Notes.

d. Terms of Second Lien Professional Loans

The Second Lien Professional Loans shall have the same Maturity Date and interest rate and shall be issued with the same original issue discount as the Refinanced Obligations pursuant to the DIP Credit Agreement. All interest and original issue discount payable with respect to the Second Lien Professional Loans, however, shall be payable in kind, capitalized, compounded and added to the unpaid principal amount of the Second Lien Professional Loans.

e. Voting Rights

The Funding Parties shall not have any right to instruct the DIP Agent to take any action or to consent to any waiver, amendment or modification of any provision of the DIP Credit Agreement. No waiver, amendment or modification to the DIP Credit Agreement or the DIP Order shall have any force or effect of any kind without the consent of the Funding Parties, however, if it purports to (1) reduce the principal amount, interest rate or original issue discount of the Second Lien Professional Loans, (2) extends the Maturity Date of the Second Lien Professional Loans beyond the Maturity Date of the Refinanced Obligations, (3) changes the pro rata sharing arrangement described below, (4) changes the priority of the Second Lien Professional Liens or the Second Lien Professional Superpriority Claim, or (5) reduces the amount of the reimbursement obligations described in this Motion and Proposed Order.

f. Security

Second Lien Professional Loans (other than Excess Loans (as defined below)) shall be secured by continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests (the "Second Lien Professional Liens") in the DIP Collateral. The Second Lien Professional Liens shall have the same priority as, and shall be equal and ratable with, the DIP Liens that secure the Refinanced Obligations. Excess Loans shall be secured as set forth below.

g. Superpriority Claim

The Funding Parties will be granted, pursuant to Bankruptcy Code Section 364(c)(1), an allowed superpriority claim with respect to all Second Lien Professional Loans (other than Excess Loans) (the "Second Lien Professional Superpriority Claim"). The Second Lien Professional Superpriority Claim shall have the same priority as any DIP Superpriority Claim with respect to the Refinanced Obligations. With respect to Excess Loans, the Funding Parties will be granted a superpriority administrative expense claim as set forth below.

h. Pro Rata Sharing

Any Second Lien Professional Loans (other than Excess Loans) shall share pro rata in any distribution or recovery received by the DIP Agent or any DIP Lender on account of the Refinanced Obligations (other than any excess cash flow sweep under the DIP Credit Agreement unless such payment would result in the payment in full of the Refinanced Obligations).

i. Reimbursement Caps

The aggregate amount of accrued fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) that may be reimbursed as set forth herein shall not exceed \$400,000 in any given month (the

“Monthly Cap”). The positive excess, if any, of (A) \$400,000 over (B) the aggregate amount of accrued fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) reimbursed in any given month may be applied in a future month to reimburse the Funding Parties in addition to the Monthly Cap.

If the aggregate amount of reimbursed fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) exceeds \$4,000,000.00 (the “Overall Cap”) during the Case:

- the Second Lien Professional Liens securing any Second Lien Professional Loans (including all interest (including capitalized interest) thereon and original issue discount with respect thereto) with respect to accrued fees in excess of such amount (the “Excess Loans”) shall be (i) senior to the Prepetition Second Liens and the Second Lien Adequate Protection Liens, but (ii) junior to (A) the Carve Out; (B) with respect to any DIP Collateral constituting Prepetition Collateral, the Senior Prior Liens; (C) the DIP Liens; (D) the Senior Statutory Liens; (E) the Prepetition First Liens; (F) the First Lien Adequate Protection Liens; and (G) the Second Lien Professional Liens securing the Second Lien Professional Loans other than the Excess Loans;
- the Second Lien Professional Superpriority Claim with respect to the Excess Loans shall be (i) senior to the Adequate Protection Claims held by the Prepetition Second Lien Trustee and the Prepetition Second Lien Lenders, but (ii) junior to (A) the Carve Out; (B) the DIP Superpriority Claim; (C) the First Lien Adequate Protection Claim and (D) the Second Lien Professional Superpriority Claim with respect to the Second Lien Professional Loans other than the Excess Loans.

j. Termination of Reimbursement Obligations

If DIP Lenders constituting Required DIP Lenders determine at any point, in their reasonable discretion, that any action taken by the Ad Hoc Second Lien Committee or its professionals is adverse to the interests of the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent and/or the Prepetition First Lien Lenders, then all fees accrued by the Approved Second Lien Professionals after the first date that any professional of the Ad Hoc Second Lien Committee generates fees with respect to any such adverse action shall give rise only to Excess Loans. Such DIP Lenders must notify the Approved Second Lien Professionals of any such adverse action within fourteen (14) days of the receipt of any invoice of the Approved Second Lien Professionals evidencing such adverse action, unless such adverse action is not apparent from the invoice, in which case the Required DIP Lenders shall be required to notify the Approved Second Lien Professionals of such adverse action within five (5) days of the date that they become aware of such adverse action. No fees of the Approved Second

Lien Professionals incurred in connection with any action that violates the Intercreditor Agreement shall give rise to Second Lien Professional Loans.

If the Statutory Committee provides written notice of its intention to terminate the arrangement described herein, no additional Second Lien Professional Loans shall accrue pursuant to this arrangement on or after the later of (i) the date that is 30 days after delivery of such notice and (ii) the date that is 150 days after the entry of such order.

k. Recharacterization as Principal

If the Prepetition Second Lien Obligations are determined by final order of this Court to be undersecured, payments in respect of Second Lien Professional Loans shall be recharacterized as payments of principal of the Prepetition Second Lien Obligations deemed to have been made to each holder of the Prepetition Second Lien Notes on a pro rata basis. Under all circumstances, payments of interest and original issue discount in respect of the Second Lien Professional Loans will be deemed to have been payments of principal of the Prepetition Second Lien Obligations made to each holder of the Prepetition Second Lien Notes on a pro rata basis..

l. Invoice Review

The fees, costs and expenses incurred by Approved Second Lien Professionals shall not be subject to Court approval or U.S. Trustee guidelines and no Approved Second Lien Professional shall be required to file with respect thereto any interim or final fee application with the Court. The Approved Second Lien Professionals, however, shall submit copies of their respective professional fee invoices for review to the Debtor, the U.S. Trustee, counsel for the DIP Agent and counsel for the Statutory Committee, who shall be entitled to object to the reasonableness or necessity of fees, costs and expenses to the extent set forth in the Proposed Order.

BASIS FOR RELIEF

11. The Debtor has concluded, in the exercise of its business judgment, that the Ad Hoc Second Lien Committee should be reimbursed for certain fees, costs and expenses of its professionals as adequate protection against the diminution of the value of its members' interests in the Prepetition Collateral. Under the Bankruptcy Code, the holder of an interest in the Debtor's property is entitled to adequate protection against diminution in the value of such interest as a result of imposition of the automatic stay, the Debtor's use of the property that is the

subject of such interest, or the Debtor's obtaining of credit secured by a senior or equal lien on the property that is the subject of such interest. *See* 11 U.S.C. §§ 362(d) (automatic stay), 363(e) (use of property), 364(d) (obtaining of credit). The provision of such adequate protection is mandatory. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983); *In re Vienna Park Properties*, 976 F.2d 106, 114 (2d Cir. 1992); *In re MetroMedia Fiber Network, Inc.*, 290 B.R. 487, 491 (Bankr. S.D.N.Y. 2003); *In re Heatron, Inc.*, 6 B.R. 493, 494 (Bankr. W.D.Mo. 1980); 3 *Collier on Bankruptcy* ¶ 363.05[2] (16th ed. 2010).

12. Adequate protection may be provided in various forms depending on the particular case. *See* 11 U.S.C. § 361 (allowing adequate protection to take the form of "cash payments," "additional or replacement lien[s]" or "such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property"); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("The determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case . . ."); *accord, e.g., In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986). Reimbursement of professional fees is a common form of adequate protection regularly granted to secured creditors. *See, e.g., In re Graceway Pharm., LLC*, No. 11-13036 (PJW) (Bankr. D. Del. Nov. 7, 2011); *In re Bos. Generating, LLC*, No. 10-14419 (SCC) (Bankr. S.D.N.Y. Sept. 22, 2010).

13. The Debtor has determined that the Prepetition Second Lien Lenders, including the members of the Ad Hoc Second Lien Committee, are entitled to adequate protection. The Prepetition Second Lien Lenders hold liens on the Prepetition Collateral. In the Debtor's judgment, after consultations with the DIP Agent and the Required DIP Lenders, the Prepetition Second Lien Lenders should be granted adequate protection to compensate for: (a) the Debtors'

\$642.6 million post-petition financing, which is secured by a lien on the Prepetition Collateral senior to the Prepetition Second Liens; (b) the effects of the automatic stay; and (c) the DIP Order's authorization of the Debtor's use of cash collateral, including the Prepetition Collateral, to fund the Debtor's ongoing expenses during the Case, including the fees, costs and expenses of the Debtor's professionals as well as those of the DIP Agent, the DIP Lenders and the unsecured creditors' committee.

14. The limited form of adequate protection embodied in the Proposed Order will benefit not only the Ad Hoc Second Lien Committee, but also the Debtor and its creditors. As Mr. Al Reese, the Debtor's Chief Financial Officer, testified at the hearing on the DIP Motion, Prepetition Second Lien Lenders are the Debtor's largest creditor constituency, and the Debtor is not likely to exit from bankruptcy without the agreement and active participation of those lenders. *See* DIP Hearing Transcript, at 102-03. Accordingly, it is extremely important that the Debtor works quickly and cooperatively with the Ad Hoc Second Lien Committee on an exit strategy. *Id.* at 104. In the Debtor's business judgment, it is thus "absolutely" beneficial to the estate to reimburse the Ad Hoc Second Lien Committee for professional fees on the terms set forth in paragraph 15 of the DIP Order and in the Proposed Order. *Id.* at 106-07. Among other things, reimbursement of such professional fees will maximize the likelihood that Prepetition Second Lien Lenders will negotiate with the Debtor in an organized, unified way through professionals who are familiar with this Case.

15. While providing substantial benefits, the relief sought will impose only minimal burdens on the Debtor. During the course of the Case, the Debtor is not required to make cash payments to any party in respect of the fees, costs and expenses of the Approved Second Lien Professionals. Rather, as a result of the funding arrangement entered into with the Funding

Parties, the Funding Parties will pay the Approved Second Lien Professionals during the Case, and the Debtor will incur post-petition borrowings which, as described in this Motion, will be either *pari passu* with or junior to refinancing loans incurred pursuant to the DIP Order and the DIP Credit Agreement. If the Prepetition Second Lien Lenders are eventually found to be undersecured, any payments with respect to such loans shall be recharacterized as payments of the principal of the Prepetition Second Lien Notes. If, on the other hand, the Court determines that the Prepetition Second Lien Lenders are oversecured, the trustee for the Prepetition Second Lien Lenders would be entitled to the reimbursement of professional fees pursuant to the Prepetition Second Lien Documents. In either circumstance, only the interest and original initial issue discount payable to the Funding Parties would not otherwise be payable to the Prepetition Second Lien Lenders. In the Debtor's business judgment, the limited costs associated with a grant of the requested relief are substantially outweighed by the potential benefit of facilitating the critical restructuring of the Prepetition Second Lien Notes.

16. Finally, for reasons set forth in the DIP Motion with respect to the loans under the DIP Credit Facility, the Debtor requests that the Court permit it to incur debt to the Funding Parties — to facilitate the payment of the professional fees referenced above — pursuant to section 364 of the Bankruptcy Code.³ The terms of such debt are fair and reasonable and the Debtor believes the incurrence of such debt to be in the best interests of the Debtor's estate, its creditors and other stakeholders. Following arms'-length negotiations conducted in good faith by both the Debtor and the Funding Parties, the Debtor was not able to obtain financing on better terms from any party other than the Funding Parties and was unable to obtain such financing other than on a superpriority basis and secured by liens with the priority set forth above.

³ The Funding Parties agreed to finance the reimbursement of the fees, costs and expenses of the Approved Second Lien Professionals so as to avoid requiring the DIP Lenders to provide additional commitment under the DIP Credit Facility.

17. It is the Debtor's view that notice of the relief requested in the Motion was provided to each interested party at the hearing on the DIP Motion and that the Motion is accordingly not being considered on an emergency basis. To the extent that such notice was insufficient, however, emergency relief is required in order to ensure that the Approved Second Lien Professionals, who have not yet been compensated for their work on behalf of the Ad Hoc Second Lien Committee and the indenture trustee for the Prepetition Second Lien Notes, receive recompense in a timely fashion. Moreover, as the relief requested in the Motion is substantially equivalent to the relief previously requested at the hearing on the DIP Motion, each interested party has been aware of the requested relief for several weeks and will have ample time to object, if necessary, to the granting of the Motion. Finally, the Debtor has not unnecessarily delayed filing of the Motion, as filing occurred immediately after the Debtor obtained the support of the Statutory Committee.

NOTICE

18. Notice of this Motion shall be provided to the following parties: (i) the Office of the U.S. Trustee; (ii) members of the Committee; (iii) counsel to the Committee; (iv) counsel to the administrative agent for the DIP Lenders and the Senior Lenders; (v) The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee for the Senior Second Lien Noteholders; (vi) Bingham McCutchen LLP and Winstead PC as counsel to certain DIP Lenders and certain Senior Lenders; (vii) the Securities and Exchange Commission; (viii) the Internal Revenue Service; and (ix) all parties requesting notice in this Chapter 11 case pursuant to Bankruptcy Rule 2002

PRAYER

The Debtor respectfully requests that the Court enter an Order, substantially in the form of the Proposed Order, granting the relief requested herein.

Dated: October 11, 2012

Respectfully submitted,

MAYER BROWN LLP

By: /s/ Charles S. Kelley

Charles S. Kelley

Attorney-in-Charge

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: § Chapter 11
ATP Oil & Gas Corporation, §
Debtor. § Case No.: 12-36187
§
§ Hon. Marvin Isgur

**ORDER PURSUANT TO 11 U.S.C. §§ 361,362(d), 363(e) AND 364
(1) APPROVING POSTPETITION FINANCING, (2) GRANTING LIENS
AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS
AND (3) GRANTING ADEQUATE PROTECTION**

THIS MATTER having come before the Court upon the Debtor’s¹ *Emergency Supplemental Motion for Entry of an Order, Pursuant to Bankruptcy Code Sections 361, 362(d), 363(e) and 364, (1) Approving Postpetition Financing, (2) Granting Liens and Providing Superpriority Administrative Expenses Status and (3) Granting Adequate Protection* (the “*Supplemental DIP Motion*”); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b), venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and proper and adequate notice of the Supplemental DIP Motion and the hearing thereon having been given; and it appearing that the legal and factual bases set forth in the Supplemental DIP Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Supplemental DIP Motion is in the best interests of the Debtor, its estate and its creditors; and the Court having considered the Supplemental DIP Motion, the evidence and arguments submitted at the Final Hearing on the DIP Motion held on September 20, 2012, the

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evidence and arguments submitted at the hearing on the Supplemental DIP Motion held on October 18, 2012, and all objections, if any, to the Supplemental DIP Motion having been withdrawn, resolved or overruled by this Court; it is hereby ORDERED THAT:

1. The Supplemental DIP Motion is granted.

2. Pursuant to Bankruptcy Code Sections 361, 362(d), 363(e) and 364 and Bankruptcy Rules 4001 and 9014, the Debtor is authorized and directed (i) to provide adequate protection to the members of the Ad Hoc Second Lien Committee through the payment of certain professional fees, costs and expenses, and (ii) to incur post-petition secured borrowings to facilitate the payment of such fees, costs and expenses.

3. As adequate protection of the interests of the Prepetition Second Lien Lenders in the Prepetition Collateral, the Debtor agrees, from and after the Petition Date (i) for so long as the members of the Ad Hoc Second Lien Committee (as defined below) hold in excess of 40% of the Prepetition Second Lien Notes or (ii) until the Debtor receives a demand from Prepetition Second Lien Lenders holding, on the date of such demand, a greater percentage of the Prepetition Second Lien Notes than the percentage held by the members of the Ad Hoc Second Lien Committee that such reimbursement cease (a "**Cessation Demand**"), to reimburse First Pacific Advisors, LLC, one or more of its affiliated and managed funds and/or any other holder of the Prepetition Second Lien Notes that is a member of the Ad Hoc Second Lien Committee (collectively, the "**Funding Parties**") for all reasonable out-of-pocket fees, costs and expenses of Thompson & Knight LLP, as counsel to the indenture trustee for the Prepetition Second Lien Notes (in an amount not to exceed \$10,000 per month), Wachtell, Lipton, Rosen & Katz, as restructuring and bankruptcy counsel to an ad hoc committee of certain Prepetition Second Lien Lenders (as the membership of such committee may change from time to time, the "**Ad Hoc**

Second Lien Committee”), Vinson & Elkins LLP, as local and oil and gas counsel to the Ad Hoc Second Lien Committee, and Evercore Group L.L.C., as financial advisor to the indenture trustee for the Prepetition Second Lien Notes (collectively, the “*Approved Second Lien Professionals*”) paid by such Funding Party during the Case and any Successor Cases. The Ad Hoc Second Lien Committee shall notify the DIP Lenders and the Statutory Committee promptly upon becoming aware that the membership of the Ad Hoc Second Lien Committee holds, in the aggregate, less than 40% of the Prepetition Second Lien Notes. The Debtor shall not be required to pay any fees of the Approved Second Lien Professionals in cash during the course of the Case. Rather, reimbursement obligations to the Funding Party that pays such fees, costs and expenses will accrue as a postpetition loan pursuant to the terms of this Order (the “*Second Lien Professional Loans*”). For the avoidance of doubt, no fees, costs and expenses of the Approved Second Lien Professionals shall give rise to Second Lien Professional Loans if incurred (1) at a time when the members of the Ad Hoc Second Lien Committee hold, in the aggregate, less than 40% of the Prepetition Second Lien Notes or (2) on or after the date of receipt of a Cessation Demand; provided that, for the avoidance of doubt, all fees, costs and expenses of the Approved Second Lien Professionals incurred at any other time on or after the Petition Date shall give rise to Second Lien Professional Liens in accordance with the terms of this Order. If any Approved Second Lien Professional becomes counsel to the indenture trustee for the Prepetition Second Lien Notes, (x) the Funding Parties will continue to be reimbursed for fees, costs and expenses of such Approved Second Lien Professional paid by the Funding Parties in accordance with the terms of this Order and (y) Prepetition Second Lien Lenders shall not deliver a Cessation Demand with respect to such Approved Second Lien Professional unless such Prepetition Second Lien Lenders hold, on the date of such demand, in excess of 50% of the Prepetition Second Lien Notes.

4. The Second Lien Professional Loans shall have the same Maturity Date and interest rate and shall be issued with the same original issue discount as the Refinanced Obligations pursuant to the DIP Credit Agreement as in effect on the date hereof; provided that all interest and original issue discount payable with respect to the Second Lien Professional Loans shall be payable in kind, capitalized, compounded and added to the unpaid principal amount of the Second Lien Professional Loans on the date when such interest or original issue discount would have been due and payable if the Second Lien Professional Loans were loans made pursuant to the DIP Credit Agreement; provided further that, for the avoidance of doubt, the Funding Parties shall not have any right to instruct the DIP Agent to take any action or to consent to any waiver, amendment or modification of any provision of the DIP Credit Agreement; provided further that no waiver, amendment or modification to the DIP Credit Agreement or the DIP Order that (1) reduces the principal amount, interest rate or original issue discount of the Second Lien Professional Loans; (2) extends the Maturity Date of the Second Lien Professional Loans beyond the Maturity Date of the Refinanced Obligations; (3) changes the pro rata sharing arrangement set forth in this Order; (4) changes the priority of the Second Lien Professional Liens or the Second Lien Professional Superpriority Claim; or (5) reduces the amount of the reimbursement obligations set forth herein shall have any force or effect of any kind without the consent of the Funding Parties. Notwithstanding anything to the contrary in this Order or any Prepetition Second Lien Document, under no circumstances shall any Funding Party have any obligation to turn over any amounts received as payments in respect of the Second Lien Professional Loans to the indenture trustee for the Prepetition Second Lien Notes or any other holder of Prepetition Second Lien Notes

5. Any Second Lien Professional Loans that do not constitute Excess Loans (as defined below) shall be secured by continuing, valid, binding, enforceable, non-avoidable, and

automatically and properly perfected postpetition security interests (the “*Second Lien Professional Liens*”) in the DIP Collateral, which Second Lien Professional Liens shall have the same priority as, and shall be equal and ratable with, the DIP Liens that secure the Refinanced Obligations and which Second Lien Professional Liens are hereby granted to the Funding Parties. In addition, the Funding Parties are hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Case and any Successor Cases against the Debtor for all Second Lien Professional Loans that do not constitute Excess Loans (the “*Second Lien Professional Superpriority Claim*”), which shall have the same priority as any DIP Superpriority Claim with respect to the Refinanced Obligations. Any Second Lien Professional Loans that do not constitute Excess Loans shall be entitled to receive a pro rata share of any distribution or recovery received by the DIP Agent or any DIP Lender on account of the Refinanced Obligations; provided, however, that the Second Lien Professional Loans shall not be entitled to share in any distribution constituting an excess cash flow sweep under the DIP Credit Agreement as in effect on the date hereof unless such payment would result in the payment in full of the Refinanced Obligations. For the avoidance of doubt, should there be a challenge that results in the Refinanced Obligations being subordinated to the new money financed pursuant to the DIP Loan, the Second Lien Professional Loans shall be pari passu with, and shall not prime, the Refinanced Obligations.

6. The aggregate amount of accrued fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) in any calendar month that may give rise Second Lien Professional Loans shall not exceed \$400,000 in any given month (which cap (the “*Monthly Cap*”) shall include the amount, if any, of accrued fees of Approved Second Lien Professionals that are paid in cash by the Debtor); *provided* that the positive excess, if

any, of (A) \$400,000 over (B) the aggregate amount of accrued fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) in any given month may be applied in a future month to make Second Lien Professional Loans in addition to the amount otherwise permitted to be made during such month; *provided further* that, for the avoidance of doubt, the Funding Parties may pay the fees, costs and expenses of the Ad Hoc Second Lien Committee's professionals in excess of the Monthly Cap, but such excess shall not constitute a Second Lien Professional Loan. Notwithstanding the foregoing, in the event that the aggregate amount of accrued fees of Approved Second Lien Professionals (excluding any interest, capitalized interest or original issue discount) giving rise to Second Lien Professional Loans throughout the case exceeds \$4,000,000.00 (i) any Second Lien Professional Loans (including all interest (including capitalized interest) thereon and original issue discount with respect thereto) with respect to accrued fees in excess of such amount (the "***Excess Loans***") shall be secured by Second Lien Professional Liens junior to (A) the Carve Out; (B) with respect to any DIP Collateral constituting Prepetition Collateral, the Senior Prior Liens; (C) the DIP Liens; (D) the Senior Statutory Liens; (E) the Prepetition First Liens; (F) the First Lien Adequate Protection Liens; and (G) the Second Lien Professional Liens securing the Second Lien Professional Loans other than the Excess Loans (but senior to the Prepetition Second Liens and the Second Lien Adequate Protection Liens), (ii) the Second Lien Professional Superpriority Claim with respect to the Excess Loans shall be junior to (A) the Carve Out; (B) the DIP Superpriority Claim; (C) the First Lien Adequate Protection Claim and (D) the Second Lien Professional Superpriority Claim with respect to the Second Lien Professional Loans other than the Excess Loans (but senior to the Adequate Protection Claims held by the Prepetition Second Lien Trustee and the Prepetition Second Lien Lenders), (iii) the holders of the Excess Loans shall not have any right to a pro rata share of any

recovery received by the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent or the Prepetition First Lien Lenders and (iv) the terms of the Excess Loans shall otherwise be the same as the terms of the other Second Lien Professional Loans.

7. If the Required DIP Lenders determine at any point, in their reasonable discretion, that any action taken by the Ad Hoc Second Lien Committee or its professionals is adverse to the interests of the DIP Agent, the DIP Lenders, the Prepetition First Lien Agent and/or the Prepetition First Lien Lenders (which shall include the taking of any action described in Paragraph 32 of the DIP Order) (collectively, as “*Adverse Action*”), then all fees accrued by the Approved Second Lien Professionals after the first date that any professional of the Ad Hoc Second Lien Committee generates fees with respect to any such adverse action shall give rise only to Excess Loans; provided, however, that the Required DIP Lenders shall be required to notify the Approved Second Lien Professionals of any such Adverse Action within fourteen (14) days of the receipt of any invoice of the Approved Second Lien Professionals evidencing such Adverse Action, unless such Adverse Action is not apparent from the invoice (due to redaction for privilege or otherwise), in which case the Required DIP Lenders shall be required to notify the Approved Second Lien Professionals of such Adverse Action within five (5) days of the date that they become aware of such Adverse Action. Notwithstanding anything herein to the contrary, no fees of the Approved Second Lien Professionals incurred in connection with any action that violates the Intercreditor Agreement shall give rise to Second Lien Professional Loans.

8. Notwithstanding anything contained herein or otherwise, all payments made to the Funding Parties in respect of the Second Lien Professional Loans (including, without limitation, payments in respect of interest (including capitalized interest) and original issue discount with respect to the Second Lien Professional Loans) shall be subject to recharacterization as payments

of principal of the Prepetition Second Lien Notes and shall reduce the principal amount of the Prepetition Second Lien Notes held by each holder of Prepetition Second Lien Notes on a pro rata basis if and to the extent the Prepetition Second Lien Obligations are determined by this Court to be undersecured; *provided* that payments in respect of interest (including capitalized interest) and original issue discount with respect to the Second Lien Professional Loans shall be treated as payments of principal of the Prepetition Second Lien Notes and shall reduce the principal amount of the Prepetition Second Lien Notes held by each holder of Prepetition Second Lien Notes on a pro rata basis even if the Prepetition Second Lien Obligations are determined by this Court not to be undersecured. Nothing in this Order is intended to limit the rights of the Prepetition Second Lien Trustee and the Prepetition Second Lien Lenders against the Debtor under the Prepetition Second Lien Notes Indenture. The Court's findings of fact with respect to the DIP Obligations and the conduct of the DIP Agent and the DIP Lenders shall apply equally to the Second Lien Professional Loans and the conduct of the Funding Parties.

9. None of the fees, costs and expenses incurred by professionals engaged by the Ad Hoc Second Lien Committee shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided that the Approved Second Lien Professionals shall submit copies of their respective professional fee invoices to the Debtor, the U.S. Trustee, counsel for the DIP Agent and counsel for the Statutory Committee (and any subsequent trustee of the Debtor's estate). Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential or privileged information, and the provision of such invoices shall not constitute any waiver of any privilege (including, without limitation, the attorney-client privilege) or of any

benefits of the attorney work product doctrine. The Debtor, the U.S. Trustee, the DIP Agent and the Statutory Committee (and any subsequent trustee of the Debtor's estate) may object to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses included in any professional fee invoice submitted by such professionals; provided that any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on the applicable professional, the Funding Parties, the Ad Hoc Second Lien Committee and the Debtor no later than ten (10) days after delivery of the applicable professional fee invoice to the objecting party (or such later date agreed to by the Ad Hoc Second Lien Committee) and (ii) it describes with particularity the specific basis for the objection. Any hearing on an objection to payment of any fees, costs and expenses set forth in such professional fee invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses which are the subject of such objection. All such fees, costs and expenses that have not been disallowed by this Court on the basis of an objection filed by the Debtor, the U.S. Trustee, the DIP Agent or the Statutory Committee (or any subsequent trustee of the Debtor's estate) and are not subject to a pending objection in accordance with the terms hereof shall, after the expiration of the applicable objection deadline, constitute Second Lien Professional Loans.

10. If the Statutory Committee provides written notice (a "***Termination Notice***") of its intention to terminate the arrangement set forth in this Order to each of the Court, the Debtor, the DIP Agent and the Ad Hoc Second Lien Committee, no additional Second Lien Professional Loans shall accrue pursuant to this Order on or after the date that is 30 days after delivery of a Termination Notice (the "***Termination Date***"); *provided, however* that in no event shall the Termination Date occur before the date that is 150 days after the entry of this Order; *provided further, however*, that, notwithstanding the delivery of any Termination Notice, all Second Lien

Professional Loans which have accrued prior to the Termination Date shall continue to be valid, legal and binding obligations of the Debtor and shall be governed by the terms (including, without limitation, those terms providing for the accrual of interest and for the grant of the Second Lien Professional Liens and the Second Lien Professional Superpriority Claim) set forth in this Order. Upon delivery of a Termination Notice, the Supplemental DIP Motion shall be deemed to have been refiled by the Debtor on the Delivery Date for consideration by the Court on the next omnibus hearing date. The Statutory Committee shall not be deemed to have waived any right to object to the Court's granting of the relief requested in such refiled Supplemental DIP Motion as a result of the approval of this Order.

11. The Ad Hoc Second Lien Committee acknowledges and agrees that for so long as a Termination Date has not occurred, the Statutory Committee shall owe no duty to the members of the Ad Hoc Second Lien Committee with respect to the negotiation or implementation of any plan of reorganization or financing or any litigation relating thereto regardless of whether the Prepetition Second Lien Obligations are undersecured.

12. Notwithstanding the provisions of Bankruptcy Rules 6004 and 6006 and the Local Rules (as defined below), the terms of this Order shall be immediately effective and enforceable upon its entry and the fourteen day stay provided in such rules is hereby expressly waived and shall not apply.

13. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Supplemental DIP Motion

14. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

15. The Court shall retain exclusive jurisdiction to interpret, enforce, and resolve any disputes arising under or related to this Order, and the acceptance by any party of any distribution of funds authorized under this Order shall constitute consent by such party to the exclusive jurisdiction of the Court to hear and determine any such dispute. Any motion or application brought before the Court to resolve any dispute arising under or related to this Order shall be brought on proper notice in accordance with the relevant Bankruptcy Rules and the Local Rules for the Bankruptcy Court for the Southern District of Texas (the "Local Rules").

Signed: October ____, 2012

Marvin Isgur
United States Bankruptcy Judge