

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	
FIRST RIVER ENERGY, LLC	§	CHAPTER 11 CASE
DEBTOR	§	
	§	CASE NO. 18-50063-cag
	§	

**AMENDED MOTION OF U.S. ENERGY DEVELOPMENT CORPORATION,
VICEROY PETROLEUM, L.P., ET AL. TO APPOINT CHAPTER 11 TRUSTEE**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

U.S. Energy Development Corporation, Viceroy Petroleum, L.P., Ageron Energy, LLC, Lewis Petro Properties, Inc., Crimson Energy Partners IV, LLC, PetroEdge Energy IV LLC, Teal Natural Resources, LLC, AWP Operating Company, RLU Oil & Gas, Inc., Killam Oil Co, Ltd., WCS Oil and Gas Corporation and Herschap Brothers (collectively referred to as “**Producers**”) request the Court to appoint a Chapter 11 Trustee for First River Energy, LLC (“**First River**” or “**Debtor**”) and state:

I. PRELIMINARY STATEMENT

As set forth in the Motion to Dismiss for Lack of Authority to File on file in the United States Bankruptcy Court for the District of Delaware and attached hereto as Exhibit “A” and incorporated herein, the Debtor, without authority, filed a Chapter 11 bankruptcy proceeding in Delaware after: (a) a receiver was properly appointed pursuant the provisions of Chapter 64 of the Texas Civil Practice and Remedies Code and (b) notice of such receivership was sent to Debtor’s counsel. Despite the appointment of the receiver, the Debtor chose to disregard the Texas State court’s order and file a bankruptcy proceeding in Delaware (merely 30 minutes before the receiver filed this San Antonio proceeding).

The Producers contend that the Debtor's current management is incapable of administering the Debtor's bankruptcy estate in accordance with the fiduciary duties of a debtor-in-possession, such that the appointment of a Chapter 11 Trustee is not only warranted, but imperative.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for relief is section 1104 of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

III. FACTUAL BACKGROUND

A. Argument And Authorities

3. For the reasons herein and set forth in the Motion to Dismiss attached hereto, the Producers assert that a Chapter 11 trustee must be appointed immediately.

4. Section 1104 of the Bankruptcy Code provides that

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

B. There Is Sufficient “Cause” To Appoint A Chapter 11 Trustee.

5. As set forth in the attached Motion to Dismiss, the Honorable Judge Russell Wilson’s correspondence in Exhibit “B” and as will be further shown in court, the Debtor’s management’s apparent, brazen disregard of court orders and failure to deliver funds in which has no interest to the rightful owners clearly demonstrates a lack of honesty and trustworthiness in the conduct of the Debtor’s business. Thus, there is sufficient “cause” to appoint a Chapter 11 Trustee.

6. Additionally, in order to have a receiver appointed under section 64.001(b) of the Texas Civil Practice and Remedies Code, the moving party must have a probable interest in or right to the property or fund, and the property or fund must be in danger of being lost, removed, or materially injured. Pursuant to the Bexar County District Court’s order appointing a receiver, the Producers met that burden. The Investors respectfully suggest that the Bexar County District Court’s determination that the Producers’ property was in danger of being, lost, removed or materially damage establishes “cause” under 1104(a)(2). Incidentally, the State’s and royalty interest holders’ property was/is also in danger of being lost, removed or damaged.

7. If cause exists for the appointment of a Chapter 11 Trustee under subsection (a)(1), such appointment is mandatory. *See In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989) (once the court has found that cause exists under section 1104(a)(1); there is no discretion; an independent trustee must be appointed).

C. Appointing A Chapter 11 Trustee Is In The Best Interest Of The Creditors.

8. Section 1104(a)(2) provides for discretionary appointment of a Chapter 11 Trustee. *See In re Deena Packaging Industries, Inc.*, 29 B.R. 705, 706 (Bankr. S.D.N.Y. 1983)

(appointing a trustee to protect the interests of creditors, entails equitable considerations through which the court may exercise its discretionary powers).

9. It is in the best interest of the creditors and the Debtor's estate to appoint a Chapter 11 Trustee. Given the history of the Debtor's current management, it is likely that the estate has substantial claims against the Debtor's current management. A Chapter 11 Trustee is far more likely to pursue those claims than the Debtor-in- possession. Thus, the second prong of section 1104(a)(2) is satisfied.

D. Section 1104(a)(3) Also Provides Grounds For Appointing A Chapter 11 Trustee

10. Section 1104 (a)(3) provides:

At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee ... (3) if grounds exist to convert or dismiss the case under section 1112 [11 USCS § 1112], but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.

11. Among the grounds for "cause" to convert or dismiss that could be used in this case as a basis for appointment of a Chapter 11 trustee is gross mismanagement of the estate [11 U.S.C. § 1112(b)(4)(B)]. The facts set forth above and in the attached exhibits show that the Debtor's current management is not inclined or not capable of managing the Debtor's assets for the benefit of the creditors. Furthermore, this case is effectively a dispute between the Debtor's lender and the Producers (and similar producers, royalty owners and the State).

E. The Producers Propose Mr. Raymond Battaglia As Chapter 11 Trustee

12. The Investors propose that Mr. Raymond Battaglia be appointed as Chapter 11 Trustee. Mr. Battaglia was appointed as the Receiver in the Bexar County Lawsuit as described

in the order attached to the Motion to Dismiss (Exhibit “A” hereto).

13. Mr. Battaglia is well-known for his expertise in complex bankruptcy proceedings. His professional experience and acumen make him ideally suited to deal with the complex issues that are likely to arise in this case.

14. Based on the Producers’ knowledge of Mr. Battaglia, the Producers respectfully suggest to the Court and the United States Trustee that Mr. Battaglia is the best candidate to serve as Chapter 11 Trustee in this case.

WHEREFORE, PREMISES CONSIDERED, the Producers pray that this Court order the Appointment of Chapter 11 Trustee and grant them such other relief as may be just and proper.

Dated: January 17th, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been sent pursuant to the applicable rules (Court's ECF System or U.S. First Class Mail, postage paid) on this 17th day of January, 2018 to the parties on the attached service list

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