

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

_____)	
)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAH
)	
Debtors.)	(Jointly Administered)
_____)	

**MOTION UNDER 11 U.S.C. §§ 105(A) AND 331 TO ESTABLISH
PROCEDURES FOR THE INTERIM COMPENSATION OF PROFESSIONALS AND
NOTICE OF OPPORTUNITY FOR HEARING**

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 Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than 21 days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant/movant’s attorney [and others who a required to be served] 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 21 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession (collectively the “Debtors”), file this Motion under 11 U.S.C. §§ 105(A) and 331 to Establish Procedures for the Interim Compensation of Professionals (the “Motion”).

In further support of the Motion, the Debtors respectfully represents as follows:

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 105 and 361.

BACKGROUND

3. On April 18, 2017 (the "Petition Date"), Debtors filed their respective voluntary petitions for relief under chapter 11 the Bankruptcy Code. Eateries owns 100 percent of Zanesville.
4. Debtors continue in possession of their properties and the management of their businesses as a debtors-in-possession pursuant to § 1107 and § 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed herein.
5. This motion is based, in part, on the Affidavit of William C. Liedtke, III, Vice President of Eateries, and Zanesville, in Support of the Debtors' Chapter 11 Petitions and First Day Motions, sworn to on April 17, 2017 (the "First Day Affidavit"), which sets forth a description of the Debtors' businesses, the reasons for filing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under chapter 11. Debtors adopt and incorporate herein the First Day Affidavit in its entirety.
6. On April 18, 2017 the Debtors filed its Debtors' Application for Order Pursuant to § 327(a) Authorizing the Employment and Retention of Crowe & Dunlevy as General Bankruptcy and Litigation Counsel for Debtors [Dkt. No. 9] seeking authorization of

employment of Crowe & Dunlevy, PC as counsel for the Debtors. The Debtors file this Motion to establish procedures for the interim compensation of such professionals and any other professionals who may be appointed in this Case.

RELIEF REQUESTED AND BASIS FOR RELIEF

7. Pursuant to § 331 of the Bankruptcy Code, all professionals are entitled to submit applications for interim compensation and the reimbursement of expenses not more than once every 120 days unless otherwise authorized by the Court.

8. The Debtors seek approval of a procedure for the interim compensation of court-approved professionals on a bi-monthly basis. Specifically, the Debtors propose the following interim compensation procedures:

- a. On or before the 20th day of every other month, each professional may submit a bi-monthly fee statement (“Fee Statement”) to (i) counsel for the United States Trustee, (ii) counsel for SpiritBank (the “Lender”) and (iii) counsel for the Committee, if appointed. Such Fee Statements shall describe and itemize the fees and expenses (in accordance with the guidelines promulgated by the United States Trustee) incurred within the previous two-month period, together with (i) a summary setting forth the total amount of fees; (ii) each professional’s (and any paraprofessional’s) hourly rate; (iii) total time and fees; (iv) the amount of reimbursable expenses sought; and (v) the amount of any prepetition retainer held by the professional.
- b. In the event that an entity set forth in subparagraph (a) has an objection to the compensation or reimbursement sought in a particular Fee Statement, such entity shall, no later than 20 days after receipt of the Fee Statement, serve upon the professional whose Fee Statement is objected to and the other parties designated in subparagraph (a) a written “Notice of Objection to Fee

Statement” setting forth with specificity the nature of the objection by time entry and the amount of fees or expenses at issue. Thereafter, the objecting party and the professional whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection within 10 days after receipt of such objection, the professional whose Fee Statement is objected to shall have the option of (i) filing a motion seeking payment of the disputed amount with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested.

- c. Promptly after the expiration of the 20-day period described above, if no objection has been served in accordance with subparagraph (b), the Debtors shall pay 80% of the fees and 100% of the expenses requested in the Fee Statement. If the Debtors receive an objection to a Fee Statement, the Debtors shall withhold payment of the disputed amount and promptly pay the remainder based upon the percentages set forth above.
- d. Any and all payments made pursuant to the procedures in 8.c above shall be held in trust pending a duly entered order approving such amounts paid as provided in 8.d et seq. below.
- e. The first Fee Statement shall be submitted by each of the professionals on or before June 15, 2017, and shall cover the period from the Petition Date through June 1, 2017.
- f. Every 3 months, on or before the 45th day following the last day of the period for which compensation is sought, each of the professionals shall file with the Court and serve on those parties identified in subparagraph (a) and the parties on the Master Service List an application for interim approval and allowance pursuant to 11 U.S.C. § 331, of the fees and expenses requested for the prior 4 months (which identifies the professional seeking compensation, discloses the period

for which the payment of compensation and reimbursement is being sought and describe the amount of compensation and expenses sought). The first interim applications shall be filed on or before August 21, 2017, and shall cover the period from the Petition Date through and including July 31, 2017. Any professional who fails to file an interim application when due, or who does not file an appropriate pleading explaining why such application has not been filed, shall be ineligible to receive further interim payments of fees or expenses as provided for herein until such time as the application is submitted.

- g. Upon the conclusion of a professional's employment by the estate, such professional shall file a final fee application seeking final approval of all paid and unpaid fees and expenses. Neither the payment of nor the failure to pay, in whole or in part, monthly or quarterly interim compensation and reimbursement of expenses, nor the filing of or failure to file an objection, will bind any party in interest or the Court with respect to the allowance of interim or final applications for compensation and reimbursement of expenses of the each professional. All fees and expenses paid to each professional under these compensation procedures are subject to disgorgement until final allowance by the Court.
- h. Any payments made under these procedures shall be subject to any order entered in this Case on post-petition financing and use of cash collateral (the "Financing Orders"), including, but not limited to any terms thereunder related to a professional fee escrow and any limitation on the payment of certain identified fees, expenses, costs or disbursements.

9. The relief requested in this Motion is appropriate under Bankruptcy Code § 331 because it will (i) enable all interested parties to monitor the costs of administration; (ii) allow professionals to receive interim compensation; and (iii) allow the Debtors to better manage their cash flow. Courts in this jurisdiction have approved similar procedures to allow for the interim

compensation of professionals. See *In re GMX Resources, Inc.*, Case No. 13-11456; *In re Harold's Stores, Inc.*, Case No. 08-5027; *In re Millennium Multiple Employer Welfare Benefit Plan*, Case No. 10-13528; *In re Paul Transportation, Inc.*, Case No. 10-13022; *In re Rocor Int'l, Inc.*, Case No. 02-17658; and *In re Homeland Holding Corp.*, Case No. 01-17869.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and other just relief such further relief as it deems appropriate.

Attached hereto as Exhibit 1 is a proposed order granting the relief requested herein.

Respectfully submitted,

s/ Mark A. Craige

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PROPOSED COUNSEL FOR DEBTORS

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

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)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAH
Debtors.)	
_____)	(Jointly Administered)

**ORDER ESTABLISHING PROCEDURES FOR THE INTERIM
COMPENSATION OF PROFESSIONALS
[This Order Relates to the Motion at Docket No. __]**

Upon consideration of the motion (“Motion”) under 11 U.S.C. §§ 105(a) and 331 to Establish Procedures for the Interim Compensation of Professionals filed by the Debtors and the Court having determined that it has jurisdiction over the matters raised by the Motion and that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and it appearing that proper and adequate notice has been given and that no other or further notice

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445

is necessary; and upon the record herein; and after due deliberation thereon; it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The motion is granted.
2. Unless otherwise ordered by the Court, the following procedures shall apply to all court-approved professionals employed by the Debtors:

- a. On or before the 20th day of every other month, each professional may submit a bi-monthly fee statement (“Fee Statement”) to (i) counsel for the United States Trustee, (ii) counsel for SpiritBank (the “Lender”) and (iii) counsel for the Committee, if appointed. Such Fee Statements shall describe and itemize the fees and expenses (in accordance with the guidelines promulgated by the UST) incurred within such period, together with (i) a summary setting for the total amount of fees; (ii) each professional’s (and any paraprofessional’s) hourly rate; (iii) total time and fees; (iv) the amount of reimbursable expenses sought; and (v) the amount of any prepetition retainer held by the professional.

- b. In the event that an entity set forth in subparagraph (a) has an objection to the compensation or reimbursement sought in a particular Fee Statement, such entity shall, no later than 20 days after receipt of the Fee Statement, serve upon the professional whose Fee Statement is objected to and the other parties designated in subparagraph (a) a written “Notice of Objection to Fee Statement” setting forth with specificity the nature of the objection by time entry and the amount of fees or expenses at issue. Thereafter, the objecting party and the professional whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the objection within 20 days after receipt of such objection, the professional whose Fee Statement is objected to shall have the option of (i) filing a motion seeking payment of the disputed amount with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested.

- c. Promptly after the expiration of the 20-day period described above, if no objection has been served in accordance with subparagraph (b), the Debtors shall pay 80% of the fees and 100% of the expenses requested in the Fee Statement. If the Debtors receive an objection to a Fee Statement, the Debtor shall withhold payment of the disputed amount and promptly pay the remainder based upon the percentages set forth above.

d. Any and all payments made pursuant to the procedures in 2.c above shall be held in trust pending a duly entered order approving such amounts paid as provided in 2.e et seq. below.

e. The first Fee Statement may be submitted by each of the professionals on or before June 15, 2017 and shall cover the period from the Petition Date, through June 1, 2017.

f. Every 3 months, on or before the 45th day following the last day of the period for which compensation is sought, each of the professionals shall file with the Court and serve on those parties identified in subparagraph (a) and the parties on the Master Service List an application for interim approval and allowance pursuant to 11 U.S.C. § 331, of the fees and expenses requested for the prior 3 months. The first interim applications shall be filed on or before August 21, 2017, and shall cover the period from the Petition Date through and including July 31, 2017. Any professional who fails to file an interim application when due, or who does not file an appropriate pleading explaining why such application has not been filed, shall be ineligible to receive further interim payments of fees or expenses as provided for herein until such time as the application is submitted.

g. Upon the conclusion of a professional's employment by the estate, such professional shall file a Final Fee Application seeking final approval of all paid and unpaid fees and expenses.

3. Any payments made pursuant to this Order and the procedures outlined herein shall be made pursuant to, and in compliance with, the terms of any debtor-in-possession financing that is approved by order of this Court and the budget in connection therewith and the terms of such order.

4. Notwithstanding any rule of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry.

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Approved for Entry:

s/ Mark A. Craige

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