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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

MATHON FUND, L.L.C.,

Debtor.

In Proceedings Under
Chapter 11

Case Nos: 05-27993 PHX GBN

**JOINT MOTION OF DEBTOR AND
OFFICIAL CREDITOR'S COMMITTEE
FOR ADMINISTRATIVE ORDER
ESTABLISHING PROCEDURES FOR
INTERIM COMPENSATION AND
REIMBURSEMENT OF JAMES C. SELL
AND PROFESSIONALS**

Mathon Fund, LLC ("Debtor") and the Official Creditor's Committee appointed herein ("Committee"), through counsel of record undersigned, hereby move the court for the entry of an administrative order establishing an orderly, regular process for allowance and payment of compensation and reimbursement of James C. Sell and his employees ("Sell") and attorneys and other professionals employed by the Debtor and the Official Creditor's Committee pursuant to §§ 327 or 330 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to §§ 330 or 331 of the Bankruptcy Code. Specifically, the Debtor and the Committee requests that the court authorize the payment of 80%

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1 of the fees and 100% of the reimbursable expenses incurred by Sell and such professionals on a
2 monthly basis, subject to later approval of interim and final fee applications, and subject to the
3 procedures set forth below. This motion is more fully set forth and supported in the
4 accompanying Memorandum of Points and Authorities.
5

6 **MEMORANDUM AND POINTS AND AUTHORITIES**

7 1. The Debtor and Committee, with the court’s approval, have employed the
8 following professionals in the capacities set forth below:

9 Law Offices of Michael W. Carmel, Ltd., counsel for Debtor;

10 Jaburg & Wilk, P.C., special counsel for Debtor

11 Stinson, Morrison & Hecker, LLP, counsel for the Official Creditor’s Committee

12 The Debtor may also need to retain other professionals in these cases.

13 2. James C. Sell was appointed as the State Court Conservator in Maricopa County
14 Superior Court cause number CV 2005-005484. Subsequently, after obtaining an Order in the
15 State Court authorizing the filing of this Bankruptcy proceeding, Sell placed three
16 Conservatorship entities into Bankruptcy; World Sports Fans, LLC., Mathon Fund, I LLC., and
17 Mathon Fund, LLC. Pursuant to the State Court Order, Sell was to be paid hourly to manage the
18 Conservatorship entities. Sell continues to manage the entities in the pending Chapter 11
19 proceedings.

20 3. Pursuant to § 331 of the Bankruptcy Code, all professionals are entitled to submit
21 applications for interim compensation and reimbursement every 120 days, or more often if the
22 court permits. In addition, § 105(a) of the Bankruptcy Code authorizes the court to issue any
23 order “that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code],”
24 thereby codifying the court’s inherent equitable power.

25 4. The Debtor and Committee request that a procedure for compensating and
26 reimbursing Sell and the professionals on a monthly basis be established, thereby enabling the
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1 court and all parties-in-interest to monitor the fees incurred more effectively and on a more
2 current basis. Such a procedure is commonly known as a *Knudsen* Order, and has been approved
3 by courts in this district in other large Chapter 11 cases.

4 5. The requested procedure would require Sell and the professionals to present to the
5 Debtor, Committee and U.S. Trustee's office, a statement of services rendered and expenses
6 incurred each month. If there are no timely objections to the monthly statements, the Debtor
7 would pay 80% of the fees and 100% of disbursements for the month. These payments would be
8 subject to the court's subsequent approval as part of the interim and final fee application process.

9 6. With respect to monthly compensation and reimbursement, the Debtor and
10 Committee propose the following procedures:

- 11 a. Each Professional seeking compensation and reimbursement from the estates may
12 submit a monthly statement (the "Monthly Statement") to the Debtor, Committee
13 and the Office of the United States Trustees commencing from the date of filing;
- 14 b. Each Monthly Statement will include: (1) the objection deadline (as described
15 below); (2) a summary of the services provided; (3) the professionals who worked
16 on these cases, indicating their hourly rate, the hours they worked and the total
17 fees; (4) the expenses incurred; and (5) the total fees and expenses incurred and the
18 amount that will be paid if there are no timely objections (i.e., 80% of the fees and
19 100% of the expenses incurred during the relevant time period);
- 20 c. The recipients of each Monthly Statement shall have 10 days from the date of
21 mailing to object to any Monthly Statement, with any such objection to be served
22 upon the professional and/or Sell, the Debtor and/or Committee. Any such
23 objection must set forth the precise nature of the objection and the amount at issue.
24 The Debtor shall promptly pay 80% of any portion of the fees and 100% of any
25 portion of the expenses that are not subject to the objection. If the objecting party
26 and Sell and/or the professional cannot resolve the objection, then Sell and/or the
27 professional may either (i) file a request for payment with the court, with the
28 Monthly Statement and the objection attached as exhibits, or (ii) forego payment
of the disputed amount until the next interim application, at which time the court
will rule on the objection. If an agreement is reached regarding the objection, the
Debtor will be so notified and will promptly pay any remaining amounts owed
with respect to previously disputed fees and expenses, up to 80% of the undisputed
fees and 100% of the undisputed expenses;
- d. If there are no timely objections to a Monthly Statement, the Debtor will promptly
pay 80% of the fees and 100% of the expenses requested therein;
- e. No action or inaction in response to a Monthly Statement or an objection thereto
shall prejudice the rights of any party in regard to an interim or final fee
application.

7. A holdback of 20% of the interim fees requested in any Monthly Statement is
consistent with compensation procedures approved by other bankruptcy courts. *See, In re Apex*

1 *Oil Co.*, 111 B.R. 235, 237 (Bankr E.D. Mo. 1990), *rev'd in part, aff'd in part on other grounds*,
2 960 F.2d 728 (8th Cir. 1992) (15% hold-back); *In re Public Service of New Hampshire*, 93 B.R.
3 823, 826-28 (Bankr. D. N.H. 1988) (recognizing use of mandatory holdbacks by bankruptcy
4 courts). The holdback protects the estates and provides for possible adjustment of compensation
5 when interim fee applications are considered or at the conclusion of the case. *In re Four Star*
6 *Terminal*, 42 B.R. 419, 439 (Bankr. D. Alaska 1984).

7 8. Some courts have even allowed full interim payments, particularly where the
8 debtor has been in a strong financial position. See, e.g., *In re Wilson Foods Corp.*, 36 B.R. 317,
9 322 (Bankr. W.D. Oklahoma 1984) (debtor solvent with substantial assets). Some courts have
10 initially allowed 100% interim payments, but have later reduced them. See, *In re Public Service*
11 *of New Hampshire*, 93 B.R. 823, 826-28 (Bankr. D. N.H. 1988) (discussing modified orders in
12 *Western Farm Assoc. and UNR Indus.*).

13 9. The Debtor and Committee propose that Sell and the professionals file interim and
14 final fee applications in accordance with the Bankruptcy Code, Bankruptcy Rules, and the Local
15 Bankruptcy Rules or such other procedures as the court may direct.

16 **CONCLUSION**

17 The procedures outlined above will enable the Debtor to monitor the costs of
18 administration, maintain a level of cash flow and implement efficient cash management
19 procedures. They will also allow the court and interested parties to monitor the costs of
20 administration and ensure the reasonableness of the fees and costs paid to professionals while
21 allowing the professionals timely payment. Accordingly, the Debtor and Committee requests that
22 the court enter a *Knudsen* Order adopting such procedures.

23 DATED this 9th day of January, 2006.

24 **JABURG & WILK, P.C.**

25 /s/ # 006510

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1 COPY of the foregoing mailed
2 this 9th day of January, 2006.

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24 /s/Janet Forster
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