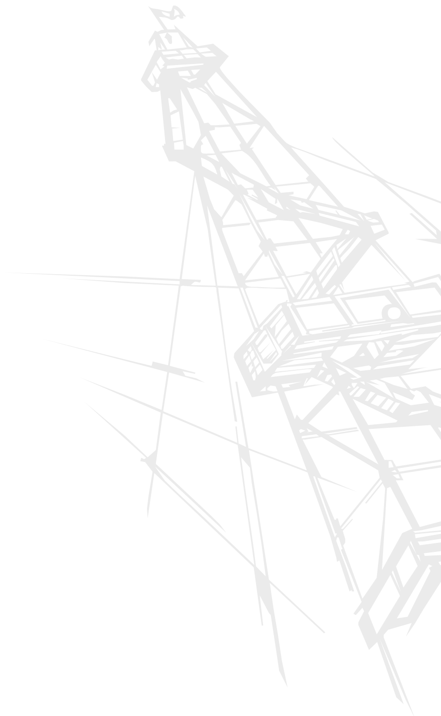

CHAPTER 4

The First Days: Unique E&P Issues

A. Financing an Entity During the Case

To effectively reorganize, an E&P company needs cash, at the very least, for basic operating expenses. The goal is to spend just enough money to retain key employees, maintain the most important leases and/or contracts, pay necessary oil and gas service providers, and otherwise continue to operate the business on as lean a budget as possible. This often does not include new drilling activity. However, there are some cases where putting together and implementing a drilling budget makes sense and, in fact,

will benefit creditors by increasing the value of the estate. There are two common scenarios. One is where important leases have continuous drilling obligations that require new drilling to maintain the lease and a determination has been made that there is value on the lease. The other is when an E&P company is a party to a farm-in agreement. In the latter case (where the debtor is earning acreage by drilling), the value of maintaining that contract can be worth expending capital to drill new wells. Toward this end, an analysis of key contracts and leases must be undertaken to prioritize expenditures. Once this is accomplished, an E&P company can estimate the required cash flow. Occasionally, this cash flow comes from the use of cash collateral — primarily accounts receivable from joint interest billings (JIBs) and the proceeds from the sale of production. More often, additional financing is needed in the form of a DIP loan.

JIBs could be a significant source of cash flow where the debtor is the operator and the other non-operating working interest owners own a substantial percentage of the working interest in a given well or lease. Issues could arise if there are mineral lien subcontractor liens threatened or filed against the JIB obligor. If so, it is possible that the JIB obligor will suspend payment of JIBs until mineral liens are released. Where the E&P debtor is the JIB obligor (*i.e.* the non-operator), there will be a concern on the part of the operators that the debtor will be unable to pay its proportionate share of drilling, completion and LOEs. There are provisions in most standard JOAs aimed at protecting the operator in the event a non-operator becomes a debtor in bankruptcy, such as the operator's right to net the debtor's production revenues against overdue JIB payments and the institution of certain liens to protect against nonpayment. In addition, on the part of vendors, mineral subcontractor liens can be filed against the debtor's working interest if vendors are not being paid. This is an unusual situation, as in most cases the nondebtor operator sees to it that vendors are paid.

In determining the expected net JIB balance, an analysis must be undertaken of whether the JIB obligor has any setoff or recoupment rights and whether any such rights have been exercised. With regard to the lease portfolio, the practitioner must perform a state-by-state analysis to determine what rights, if any, mineral lien claimants have in JIBs. For example, if there are Texas properties, be prepared to argue that JIBs are not subject to the liens of mineral contractors. In other states, determine whether JIBs are subject to the liens of mineral contractors. Either way, the JIB obligor may have the right to suspend payment.

For most E&P companies, the primary source of cash flow comes from the proceeds of production. Under the UCC, depending on the structure of the transaction, some operators have a lien in the production itself to secure payment from the purchaser for the proceeds of production.

B. Mineral Lien Claimants

If interim DIP financing is sought during the "first day" hearings of a bankruptcy case, and if the DIP lender's liens will prime creditors holding senior secured liens, then an offer of adequate protection should be contemplated and made for claimants who will be primed. In addition, even if such liens do not seek to prime the senior mineral lien claimants (*i.e.*, those who would otherwise be first in time, so first in right), adequate protection will have to be offered to the extent that the priming of any bank liens pushes mineral lien creditors further down the line.

C. Royalty and Other Payments

In most oil and gas-producing states, future royalty interests are real property. This is true in states such as Texas,[244] Wyoming,[245] North Dakota,[246] Colorado[247] and California.[248] Generally speaking, Louisiana law also provides that royalty interests are real property.[249] In Oklahoma, a royalty interest that is unaccrued is real property, but once the royalty owner receives his distribution and the interest has been reduced to possession, it becomes personal property.[250] The right to receive royalties does not arise until the product is sold. Typically, as to oil, this occurs the following month, and as to gas, this occurs two to three months from the end of the production month.

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244 The present right to receive the future proceeds of the sale of oil and gas is considered a real property interest under Texas law. *Humble Oil and Ref. Co. v. West*, 508 S.W.2d 812 (Tex. 1974).

245 *See Denver Joint Stock Land Bank v. Dixon*, 122 P.2d 842, 849-50 (Wyo. 1942).

246 *Nantt v. Puckett Energy Co*., 382 N.W. 2d 655 (N.D. 1986); *see also Kittleson v. Grynberg Petroleum Co.*, 2016 WL 690932 (N.D. Feb. 22, 2016).

247 Colo. Rev. Stat. 38-30-107.5.

248 *La Laguna Ranch Co. v. Dodge*, 114 P.2d 351, 354-55 (Cal. 1941); *but see Atlantic Oil Co. v. County of Los Angeles*, 446 P.2d 1006, 1014-15 (Cal. 1968) (holding that royalty interests are not real property for purposes of taxation).

249 Due to multiple statutes and conflicting case law (which, of course, in Louisiana does not have the same precedential effect as does case law in common law states), Louisiana royalty interests can be personal property or real property depending on the date the interest was created, whether the question of characterizing the interest is related to succession property (*i.e.*, descent and distribution), and whether the interest has been reduced to possession. *LSA Code of Civil Procedure*, Art. 3664; Act 205 of 1938; Act 6 (2d Ex. Sess.) of 1950, now LSA-R.S. 9:1105; *see also Gulf Refining Co. of Louisiana v. Glassell*, 171 So. 846 (La. 1936); *Tyson v. Surf Oil Co*., 196 So. 336 (La. 1940); *Arnold v. Sun Oil Co*., 48 So.2d 369 (La. 1950); *Succession of Simms*, 175 So.2d 113, 126 (La. App. 4 Cir. 1965), *rev.'d on other grounds*, 250 La. 177, 215-216 (La. 1966).

250 *See Estate of Shelton v. Oklahoma Tax Commission*, 544 P.2d 495, 497-498 (Okla. 1975) (holding that rights to receive royalty were real property because they had not been reduced to possession); *In re Shailer's Estate*, 266 P.2d 613, 616 (Okla. 1954) (noting that reservation of royalties is usually treated as real property if unaccrued); *McCully v. McCully*, 184 Okl. 264, 86 P.2d 786, 788 (Okla. 1939) (stating that unaccrued royalty is real and not personal property).

The Bankruptcy Code does not permit a distribution to unsecured creditors other than pursuant to a confirmed plan of reorganization except in limited circumstances. The question, then, is when is the appropriate time to pay pre-petition royalty claims: (1) during the first days (with the argument usually being that "imminent harm" will come to the estate), (2) between the interim orders and the final orders on DIP financing and/or use of cash collateral, or (3) at the end of a case as part of a confirmed plan of reorganization?

A royalty owner with unpaid pre-petition royalties is arguably an unsecured creditor and not generally entitled to have pre-petition royalties paid except as part of a confirmed plan. A current trend, however, is to have a lease with a termination provision for failure to pay royalties or give royalty owners a secured claim under a statutory or contractual lien. It may be a distinction without a difference because in modern E&P bankruptcies, most often early in a case (usually as part of first-day motions), the debtor seeks to pay pre-petition royalties. The business reasons for the desire to pay unpaid pre-petition royalties include the practical need to have a good working relationship with the landowner on whose land the entity is conducting operations (especially if the mineral interest owner is also the surface owner).

One basis under the Bankruptcy Code for granting a debtor the right to pay pre-petition royalties outside of a confirmed plan of reorganization is found by reading § 105(a) of the Bankruptcy Code together with § 363.[251] Section 363(c)(1) of the Bankruptcy Code provides that "[i]f the business of the Debtor is authorized to be op-

251 *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.").

erated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing."[252] A bankruptcy court may also grant relief under § 363(b)(1), which allows a debtor to use, sell or lease property of the estate, after notice and a hearing, outside the ordinary course of business.[253] In some instances, courts have been willing to allow payment of certain pre-petition "critical vendor" claims before the confirmation of a plan, although such "critical vendor" orders are not expressly authorized under the Bankruptcy Code.[254] It is in no way cut-and-dried case law that "critical" royalty owners may be paid before other unsecured creditors,[255] and this area of the law remains ripe for debate in current oil and gas bankruptcy cases.[256]

Another argument could be that royalty owners are owed a fiduciary duty by operators and therefore should be paid before other unsecured claimants. Despite the characterization as real property, in most states the duty an operator owes to the royalty owner is not a fiduciary one; rather, each side is simply bound to each other by the terms of the contract: the lease.[257]

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252 *Id.* at § 363(c)(1).

253 *Id.* at § 363(b)(1).

254 *Compare In re Kmart Corp.*, 359 F.3d 866, 872-74 (7th Cir. 2004) ("[P]referential payments to a class of creditors are proper only if the record shows the prospect of benefit to the other creditors. This record does not, so the critical-vendors order cannot stand."), *with In re Mirant Corp.,* 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003) (authorizing payment of "critical vendor" claims, provided that debtors "reasonably believe, in the exercise of their business judgment, that such claim must be paid in order for Debtors to continue their respective businesses," with certain enumerated exceptions).

255 *In re Oxford Management*, 4 F.3d 1329 (5th Cir. 1993).

256 *See, e.g.*, the briefing filed in *Halliburton Energy Services Inc., et al. v. TXCO Resources Inc., et al.*, App: 5:09-cv-00580-FB.

257 In Texas, *see Amoco Prod. Co. v. Alexander*, 622 S.W. 2d 563, 567-68 (Tex. 1981) (holding that standard of care an operator owes to a lessee is that of a "reasonably prudent operator"); *see also Garman v. Conoco Inc.*, 886 P.2d 652

This is not necessarily the case in Oklahoma, where a fiduciary duty has been recognized in certain limited contexts.[258] In *Young v. West Edmond Hunton Lime Unit*,[259] the Oklahoma Supreme Court — without recognizing that the relationship between an operator of *any* oil and gas well is fiduciary in nature — recognized a narrow exception to the general rule and imposed a "trustee-like" obligation upon the *unit operator* of a statutorily created § 287.1 enhanced recovery unit. Additionally, while the oil and gas lease does not include a fiduciary duty, in *Leck v. Continental Oil Co.*,[260] the Oklahoma Supreme Court held that a fiduciary duty to protect against *drainage* existed between the unit and the royalty owners. The *Leck* decision did not, however, extend this fiduciary duty to payments of royalties.

In 2010, an Oklahoma Court of Civil Appeals panel found that this fiduciary duty was present and resulted from the Oklahoma Corporation Commission's entry of a spacing order under 52 Okla. Stat. § 87.1.[261] The *Hebble* decision has recently come under close scrutiny in Oklahoma courts and the Oklahoma legislature. Most

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n. 23 (Colo. En Banc. 1994) (discussing implied covenants in Colorado). "Some question exists [as to] whether the implied covenants under an oil and gas lease extend to overriding royalty owners. []However, the rationale for application of the covenants to protect the lessor similarly extends to the interest of an overriding royalty owner.[] The commentators note an alternative covenant based on the duty of fair dealing, which applies to every contract, also extends to the relationship owed by the operator to the nonworking interest owners…. Imposition of a duty of fair dealing does not contradict *Degenhart v. Gold King Petroleum Corp.*, 851 P. 304 (Colo. App. 1993), in which the court of appeals correctly explained [that] the reservation of an overriding royalty interest does not create a confidential or fiduciary relationship." *Id. (citing, inter alia, Degenhart v. Gold King Petroleum Corp.*, 851 P. 304, 306 (Colo. App. 1993)).

258 Gary W. Catron, "The Operator's 'Fiduciary' Duty To Royalty And Working Interest Owners," 64 *Okla. Bar J.* 2763 (1993); *see also Howell v. Texaco Inc.*, 2004 OK 92, 25 (Okla. 2004) (holding that communitization agreement did not create fiduciary duty to lessees on part of the operator).

259 *Young v. West Edmond Hunton Lime Unit*, 275 P.2d 304 (Okla. 1954).

260 *Leck v. Continental Oil Co.*, 800 P.2d 224 (Okla. 1989).

261 *See Hebble v. Shell W. E. & P.*, 238 P.3d 939 (Okla. Civ. App. 2010).

recently, on May 8, 2012, the governor of Oklahoma signed into law the Energy Litigation Reform Act, which specifically states, "There shall not be implied in the duties ... any fiduciary duty, quasi-fiduciary duty or other similar special relationship in any private agreement, statute or governmental order or common law relating to the exploration for, operations for, producing of, or marketing of oil or gas, or disbursing proceeds of production of oil or gas."[262] It is now unclear whether this new legislation will have a retroactive effect on cases that have already been filed and that assert a fiduciary duty pursuant to the *Hebble* decision.

Aside from asserting fiduciary duties pursuant to the Oklahoma Corporation Commission's spacing orders, royalty owners in Oklahoma have also made claims of a fiduciary duty arising from Oklahoma's Production Revenue Standards Act. However, in 2009, the Delaware bankruptcy court found that Oklahoma's Production Revenue Standards Act did not create an implied "trust-like" obligation between the parties.[263] This decision has been adopted by the Western District of Oklahoma.[264]

In North Dakota, the state Supreme Court held under N.D.C.C. § 47-16-39.1 that the failure to pay oil and gas royalties constitutes a breach of obligations under the lease. It went on to hold that royalties must be paid as a condition to assumption of an oil and gas lease.[265]

In addition, it is not uncommon to find that modern leases, especially those negotiated with sophisticated landowners, have lease-ter-

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262 52 Okla. Stat. § 902(2).
263 *See In re SemCrude L.P.,* 407 B.R. 140 (D. Del. 2009).
264 *See* Order (Apr. 1, 2010) [Dkt. No. 33] in *McKnight v. Linn Operating Inc.*, No. 5:10-cv-00030-R (W.D. Okla. 2010).
265 *Van Sickle v. Hallmark & Associates*, 840 N.W.2d 92 (N.D. 2013).

mination provisions for nonpayment of royalty.[266] Because state law determines the nature of real property rights, and because oil and gas leases are typically interests in real property, bankruptcy courts and practitioners treat such clauses as enforceable.[267]

In states such as Texas, where most leases convey a fee simple determinable and therefore the leasehold interest will automatically terminate, reverting back to the landowner upon the occurrence of a condition, some sophisticated leases state that timely and proper payment of royalty is one such condition of the lease. Even in leases containing a clause like this, typically there must be notice to the lessee and an opportunity to cure.

In Louisiana, the state's Civil Code gives royalty owners the right to cancel a lease for nonpayment of royalty after notice and a period for cure.[268] If the operator continually fails to pay royalties, the royalty owner can cancel the lease.[269] In cases where the asset is at risk due to failure to pay royalties, the argument is stronger that the payment of pre-petition royalties early in the case is an appropriate course of action.

In some states such as Texas and Oklahoma, some royalty owners may be entitled to a statutory lien on the severed oil and gas proceeds under a non-uniform UCC provision codified in Texas in § 9.343 of the Texas Business and Commerce Code (hereinafter referred to as a "§ 9.343 lien"),[270] and in Oklahoma in 52 Okla. Stat.

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266 The lease-termination provisions can take several forms, but usually provide for automatic termination of the lease for nonpayment, after a notice-and-cure period.

267 This is true despite the Bankruptcy Code generally finding *ipso facto* clauses to be unenforceable (such as in 11 U.S.C. § 365 and the automatic stay of 11 U.S.C. § 362(a)).

268 La. R.S. 31:133 - 31.143.

269 *Id*.

270 It is important to note that the U.C.C. § 9.343 lien attaches to separate collateral than the mineral lien under Chapter 56 of the Texas Property Code. Whereas

§ 549.1, *et seq*.[271] (both generally referred to herein as "the interest owners' lien"). Interest owners' liens are intended to protect royalty owners and operators from bankrupt oil and gas *purchasers*.[272] The statutes grant an automatically perfected security interest in severed oil and gas "identifiable proceeds" owned by, received by or due to the first purchaser to secure the first purchaser's obligation to pay the purchase price. The inclusion of the qualifier "identifiable" has caused some practitioners to argue that tracing is required to maintain the lien on accounts or cash proceeds.[273]

Depending on the structure of the transaction, it could be the case that the operator is the "first purchaser" and, as an obligor to pay the "purchase price" to the royalty owner, is subject to the interest owners' lien. With regard to the Texas statute, the ability of the royalty owner to rely on § 9.343 does not depend on the existence of either a written agreement for attachment of the lien or the filing of a financing statement.[274] The only requirements are (1) an agree-

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the § 9.343 lien attaches to the severed oil and gas (and identifiable proceeds), the Chapter 56 mineral lien attaches to the oil and gas in place, as part of the leasehold estate. Section 9.343 previously was codified at Texas Business & Commerce Code, § 9.319.

271 The Oklahoma statute was passed as the "Oil and Gas Owners' Lien Act of 2010," effective April 19, 2010, and in large part mimics the Texas statute. The Oil and Gas Owners' Lien Act of 2010 was designed to address the inadequacies of the prior act (the "Oil and Gas Owners' Lien Act") that were revealed in the wake of ligation following the bankruptcy filing of SemGroup, L.P., including the lack of automatic perfection and express recognition in the prior act of others' co-equal UCC rights.

272 For an overview of the background of § 9.343 liens, *see* Cynthia G. Grinstead, *The Effect of Texas U.C.C. Section 9.319 on Oil and Gas Secured Transactions*, 63 Tex. L. Rev. 311, 321-323; *see also In re Tri-Union Dev. Corp*., 253 B.R. 808, 811 (Bankr. S.D. Tex. 2000).

273 *See* Rhett G. Campbell, *A Survey of Oil and Gas Bankruptcy Issues*, University of Texas School of Law Journal of Oil, Gas, and Energy Law, Vol. 5, No. 2, p. 289 (2009-2010).

274 *But* see *Arrow Oil & Gas Inc. v. SemCrude L.P*. (*In re SemCrude L.P.*), 407 B.R. 112, 137 (Bankr. D. Del. 2009) (applying choice-of-law provisions in holding that the Delaware and Oklahoma versions of the UCC applied, which would have required the interest owners to perfect their § 9.343 security interests

ment in writing giving the interest-holder a right under real estate law (*i.e.*, an oil and gas lease, deed, assignment, etc.), and (2) the act of the first purchaser making a voluntary communication to the interest owner acknowledging his or her rights to the oil and/or gas property or its proceeds.[275] The § 9.343 lien continues for an "unlimited period of time," but is cut off as to the oil and gas if the first purchaser sells to a purchaser in the ordinary course of business, with the lien continuing only in the proceeds of the sale.[276]

The 2009 Delaware chapter 11 cases of SemGroup Corp. and several of its affiliates, each providers of midstream services such as gathering, transportation, processing, storage, distribution and marketing, left a number of issues in their wake. One such issue was the treatment of interest-owners' liens. The bankruptcy court in *In re SemCrude* addressed the validity and priority of § 9.343 liens. In reviewing the statute, the court applied Delaware law (the state of SemGroup's incorporation) for its choice-of-law determination, and held that the location of the debtor (the state of the entity's organization) governs perfection.[277] Then, the court determined that the lien is a consensual security interest, rather than a statutory lien (due to its placement in the Texas version of the UCC and its interaction with other UCC provisions), and thus the § 9.343 lienholders would need properly filed financing statements in Delaware or Oklahoma to have properly perfected liens (the debtors were organized under the laws of Delaware and Oklahoma). Potential § 9.343 lienholders should thus perfect by filing a financing statement in the states of all potential first purchasers with whom they do business despite the clear language of the Texas statute; as

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against Delaware and Oklahoma debtors by filing UCC financing statements in those states to perfect their security interests in Texas oil and gas and the proceeds thereof).

275 *See* Tex. Bus. & Com. Code § 9.343, *et. seq*.

276 Tex. Bus. & Com. Code Ann. § 9.343(c).

277 *In re SemCrude L.P.*, 407 B.R. 112, 137 (Bankr. D. Del. 2009) (citing Del. Code Ann. Tit. 6, § 9-301(1)).

debtors' counsel to an E&P company, this is a potential lien-priority fight.[278]

Unlike the Texas statute, the Oklahoma interest-owners' lien language is not found in Article 9. In the Oklahoma Statutes, it is indexed under the state's other laws regulating the oil and gas industry. In the wake of *In re SemCrude*, the Oklahoma legislature repealed its previous interest-owners' lien statute and replaced it with language designed to strengthen protections for interest owners, especially producers. Under the Oklahoma statute, no writing is required at all, and the lien "exists in and attaches immediately to all oil and gas ... Continues uninterrupted and without lapse in all oil and gas upon and after severance; and Continues uninterrupted and without lapse in and to all proceeds."[279] The Oklahoma statute does not require tracing, but contains a provision addressing how to handle commingling of products.[280]

The § 9.343 lien likewise can protect non-operator working interest owners *vis-à-vis* the operator against nonpayment of the proceeds of production. In such a case, the JOA operates as a writing, although it should be recorded in the records of the county in which the property is located. The JOA standard form likewise contains its own lien provision, and for this to be enforceable, the JOA should likewise be recorded. Such provisions are designed to give non-operator working interest owners, who depend on the operator for their fair share of the distribution of proceeds, a lien on such production and the proceeds thereof to secure payment.

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278 It should be noted that this issue obviously would not exist in the bankruptcy of a Texas entity.

279 52 Okl. St. § 549.3(B).

280 *Id*. at § 549.5.

D. "Critical Vendors" and Suppliers

Along the lines of the "critical vendor" analogy made with respect to royalty owners, an E&P company could seek to pay the pre-petition claims of certain "critical vendors" as well as to use cash collateral to pay such vendors and suppliers post-petition.

While the *Kmart* court rejected the critical-vendor payments proposed in that case, it suggested that bankruptcy law might permit early payments to certain creditors if such payments stand to benefit the other nonpreferred creditors.[281] To make such a showing, a debtor must show that (1) the vendor(s) will stop deliveries if pre-petition arrearages are not paid, and (2) paying such vendor(s) will preserve the likelihood of a successful reorganization, providing all creditors with at least the recovery they would have received in a chapter 7 liquidation.[282]

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281 *See In re Kmart Corp.,* 359 F.3d 866 (7th Cir. 2004).

282 *Id.*; *see also In re CoServ LLC*, 273 B.R. 487 (Bankr. N.D. Tex. 2002). In certain circumstances, courts have recognized the appropriateness of paying pre-petition debts prior to confirmation of a plan. Numerous courts within the Fifth Circuit have recognized that under appropriate circumstances, pre-petition debts should be paid prior to confirmation of a plan. *See, e.g., In re Babcock & Wilcox Co*., 274 B.R. 230, 256 n.208 (Bankr. E.D. La. 2002); *In re Mirant Corp*., 296 B.R. 427 (N.D. Tex. 2003); *In re All Trac Transportation Inc*., 306 B.R. 859 (Bankr. N.D. Tex. 2004); *In re American Plumbing & Mechanical Inc*., 323 B.R. 442, 459 (Bankr. W.D. Tex. 2005). Courts in other circuits have also shown a willingness to allow pre-confirmation payment of pre-petition critical vendor claims. *See, e.g., In re Jeans.com Inc.,* 502 B.R. 250 (Bankr. D.P.R. 2013); *In re Coda Holdings Inc.,* 2013 Bankr. LEXIS 5457 (Bankr. D. Del. May 3, 2013); *In re TVI Corp.,* 2009 Bankr. LEXIS 5269 (Bankr. D. Md. Apr. 7, 2009); *In re News Publ. Co.,* 488 B.R. 241 (Bankr. N.D. Ga. 2013); *In re O&S Trucking Inc.,* 2012 Bankr. LEXIS 3271, 2012 WL 2803738 (Bankr. W.D. Mo. June 29, 2012); *In re Tropical Sportswear Int'l Corp.,* 320 B.R. 15 (Bankr. M.D. Fla. 2005); *but see In re Corner Home Care Inc.,* 438 B.R. 122 (Bankr. W.D. Ky. 2010) (denying a motion for authorization to pay pre-petition critical vendor claims). In some cases, payment of critical vendors may be tied to the vendor's agreement to continue supplying to the debtor and be clawed back in the event that the supplier breaches the agreement by failing to continue it post-petition supply to

The argument of the necessity to pay pre-petition claims before other claims of vendors in the same class must be used sparingly. Negotiations likely should be undertaken with those companies that regularly provide goods and services to the business that are necessary for its operation.

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the debtor. *See, e.g., In re Meridian Auto. Systems-Composites Operations Inc.,* 372 B.R. 710 (Bankr. D. Del. 2007).