

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

In re: APACHE ENERGY SERVICES, LLC Debtor	§ § § §	Chapter 11 Case No. 15-60069 (DRJ)
In re: HII TECHNOLOGIES, INC. Debtor	§ § § §	Chapter 11 Case No. 15-60070 (DRJ)
In re: AQUA HANDLING OF TEXAS, LLC Debtor	§ § § §	Chapter 11 Case No. 15-60071 (DRJ)
In re: HAMILTON INVESTMENT GROUP Debtor	§ § § §	Chapter 11 Case No. 15-60072 (DRJ)
In re: SAGE POWER SOLUTIONS, INC. f/k/a KMHVC, INC. Debtor	§ § § § §	Chapter 11 Case No. 15-60073 (DRJ) (Joint Administration Requested)

**DEBTORS' MOTION FOR ADMINISTRATIVE ORDER UNDER 11 U.S.C. §§ 105(a)
AND 331 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS 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 RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED; YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**The Honorable David R. Jones,
United States Bankruptcy Judge:**

HII Technologies, Inc. and its above-captioned affiliated debtors (collectively, the “Debtors”), hereby file this Motion for Administrative Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Motion”), and would respectfully show the Court as follows:

JURISDICTION

1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND¹

2. HII Technologies, Inc. is a Houston, Texas based oilfield services company with operations in Texas, Oklahoma, Ohio and West Virginia focused on commercializing technologies and providing services in frac water management, safety services and portable power used by exploration and production companies in the United States. It is traded on the OTCQB under the Stock Symbol HIIT.

¹ A more complete background of the Debtor’s businesses and the events leading to the filing of these cases is provided in the Affidavit of Loretta Cross in Support of First Day Motions.

3. This case is anticipated to progress quickly. Likewise, the professionals engaged in the case will be required to expend a significant amount of effort in a shortened timeframe. The interim fee procedures requested herein reduced the burden on those professionals and are consented to by the DIP lender and budgeted for as an agreed usage of cash collateral. The proposed procedures preserve the rights of the committee to object and are substantially fair to the creditor body, who maintains the power to object to fee applications.

RELIEF REQUESTED

4. By this Motion, the Debtors request the entry of an order authorizing and establishing procedures for compensating and reimbursing Court-approved estate professionals (“Professionals”)² on a monthly basis, comparable to those procedures established in other large chapter 11 cases.

A. Monthly Interim Compensation and Reimbursement.

5. The Debtors propose the following structure for the payment of compensation and expense reimbursement of the Professionals on a monthly basis as follows:

- (a) Pending eventual Court approval thereof under paragraph 7 below, each Professional (other than those subject to separate Court order) retained by the estate in this chapter 11 case pursuant to Sections 327 and 1103 of the Bankruptcy Code seeking the interim payment of fees and reimbursement of expenses may:
 - (i) submit to the Debtors an itemized monthly fee and expense statement (“Monthly Statement”) in compliance with the provisions of subparagraph 6(b) below setting forth the fees and expenses for which payment is sought for the preceding month, with supporting detail; and
 - (ii) serve a copy of such Monthly Statement on the Debtors to the attention of the CRO, bankruptcy counsel for the Debtors, Counsel for DIP Agent and the DIP Lenders, counsel for Committee of

² The precise terms for the payment of the CRO is set forth in the Order approving the terms and conditions surrounding the appointment of the CRO and may differ from those for other professionals retained in these cases and expected to be paid from the Debtors’ estates.

Unsecured Creditors (if appointed), and the United States Trustee (collectively, the “Fee Parties”).

- (b) Each Monthly Statement shall include, as an exhibit, time records that itemize services in tenth of an hour increments.
- (c) The Fee Parties shall have ten (10) days from the date of service of the Monthly Statement to review the Monthly Statements. After such review, and except as provided in subparagraph 6(d) below, the Debtors shall pay in the ordinary course of business:
 - (i) Eighty percent (80%) of the fees requested by a Professional; and
 - (ii) One Hundred percent (100%) of the expenses requested by a Professional.
- (d) In the event that there are objections to any Monthly Statement submitted by a Professional, the objecting Fee Party shall, within ten (10) days of service of the Monthly Statement, notify the Fee Parties and the affected Professional in writing of such objection. The objection shall specify in detail the nature and basis of the objection. Pending resolution of such objection, the Debtors shall promptly pay to the Professional, as to fees, the amount requested in the particular Monthly Statement less the greater of (i) the amount in dispute or (ii) the twenty percent holdback provided in subparagraph 12(c)(i) above and, as to expenses, the amount requested less the actual amount in dispute. The Professional and the objecting Fee Party shall endeavor to amicably resolve any objection within five (5) days after notice of the objection. If a resolution cannot be reached in that period, the Professional may request that the Court resolve the dispute at the next regularly scheduled fee application hearing (or at the final fee application hearing if the parties agreed to such). The failure of any Fee Party (or other interested party with standing to object) to object to the payment of any Monthly Statement within the ten (10) day period set forth above shall not be deemed to constitute a waiver of that party’s right to object to any interim or final fee application filed by any Professional or preclude any disgorgement of any fees paid.
- (e) The initial Monthly Statement shall be submitted and served in accordance with this paragraph, and shall cover the period from the later of (i) the Petition Date or (ii) the effective date of the approval of the Professional’s retention by the Court. Thereafter, each Monthly Statement shall be submitted and served in accordance with the terms set out above.
- (f) Interim compensation will be paid pursuant to the DIP Budget, as may be modified from time to time, without prejudice to any Professional’s right to seek an allowed administrative expense claim.

6. If any party in interest contends that any Professional has a conflict of interest or other affiliation requiring disqualification resulting from matters reasonably disclosed in connection with the Professional's retention application or any amendment thereto, such party in interest shall immediately file an objection to the Professional's retention, detailing the alleged conflict or other disqualifying factors, and shall raise any such contention at the first hearing on interim compensation following such disclosure (unless an earlier hearing is scheduled by the Court in connection with the objection), or shall thereafter be estopped from doing so. Each Professional shall have a continuing obligation to disclose any matter that may affect qualification for court approved employment under the Bankruptcy Code or disqualification from employment under any relevant ethical consideration.

B. Interim Fee Applications.

7. The Debtors also request that the Court's order set certain procedures with regard to interim fee applications by a Professional in this case. The Debtors propose that all interim fee applications cover the same periods and that all fee applications relating to a particular period be heard during the same hearing. Specifically, the Debtors propose the following:

- (a) The initial uniform period to be covered by interim fee applications will be from the Petition Date through January 31, 2016, and subsequent interim fee applications will cover each successive four-calendar-month period thereafter.
- (b) All objections to an interim fee application would be filed within twenty-three (23) days of such filing.
- (c) Hearings on interim fee applications will be held on the next preset hearing date following the day on which objections were due.

8. The Debtors further request that the Court limit the notice of hearings to consider interim applications for application for compensation and reimbursement filed by a Professional to parties on the master service list maintained in this case. Giving notice of the hearing to these

entities should reach the parties most active in this case and will save the expense of undue duplication and mailing.

9. The procedures outlined above will enable all interested parties to closely monitor the costs of administration in this case. Moreover, they will permit the Debtors to maintain a more level cash flow and to implement more efficient cash management procedures.

AUTHORITY FOR RELIEF

10. Section 331 of the Bankruptcy Code provides in relevant part:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 321 or 1103 of this title may apply to the Court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such application or reimbursement for expenses incurred before such date as is provided under section 330 of this title.

11. Section 105(a) of the Bankruptcy Code provides in relevant part:

The court may issue any order, process, or judgment that is necessary to appropriate to carry out the provisions of this title.

12. The proposed procedures for compensating and reimbursing court-approved professionals are consistent with those established in other chapter 11 cases in this District of public companies. Such procedures are needed to avoid having professionals fund the reorganization proceeding. *In re Int'l Horizons, Inc.*, 10 B.R. 895 (Bankr. N.D. Ga. 1981) (court established procedures for monthly interim compensation). Appropriate factors to consider include "the size of [the] reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the Debtor in providing services necessary to achieve a successful reorganization of the Debtor." *Id.* at 897-98. The Debtors submit that the procedures sought herein are appropriate in consideration of these factors.

NOTICE

13. Notice of this Motion will be provided by overnight delivery and/or e-mail or facsimile to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) all known or alleged secured creditors; (c) the 20 largest consolidated unsecured creditors of the Debtors; (d) the DIP Lender(s); (e) all known shareholders holding over 5% of a class of equity interests in any of the Debtors; (f) the Securities and Exchange Commission; and (g) the Internal Revenue Service. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, PREMISES CONSIDERED, the Debtors request this Court enter an order establishing procedures for interim compensation and reimbursement of expenses of Professionals and grant such other and further relief as the Court may deem just and proper.

Dated: September 18, 2015.

McKool SMITH, P.C.

By: /s/ Hugh M. Ray, III
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***Proposed Counsel for the Debtors and
Debtors-in-Possession***

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

In re:	§	
APACHE ENERGY SERVICES, LLC	§	Chapter 11
Debtor	§	Case No. 15-60069 (DRJ)
	§	
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In re:	§	
HII TECHNOLOGIES, INC.	§	Chapter 11
Debtor	§	Case No. 15-60070 (DRJ)
	§	
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In re:	§	
AQUA HANDLING OF TEXAS, LLC	§	Chapter 11
Debtor	§	Case No. 15-60071 (DRJ)
	§	
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In re:	§	
HAMILTON INVESTMENT GROUP	§	Chapter 11
Debtor	§	Case No. 15-60072 (DRJ)
	§	
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In re:	§	
SAGE POWER SOLUTIONS, INC. f/k/a	§	Chapter 11
KMHVC, INC.	§	Case No. 15-60073 (DRJ)
Debtor	§	
	§	(Joint Administration Requested)

**ORDER GRANTING INTERIM PROCEDURES FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR CHAPTER 11 PROFESSIONALS**

Upon consideration of the Debtors’ Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Chapter 11 Professionals (the “Motion”)¹ and Debtors’ counsel’s reasonable efforts to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the “Revised UST

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Guidelines”);² and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Except as may otherwise be provided in orders of this Court authorizing the retention of specific Professionals, all Professionals employed by the estates or the Committee in these chapter 11 cases pursuant to order of this Court may seek compensation for professional services rendered and reimbursement of expenses incurred in accordance with the procedures established as follows (collectively, the “Compensation Procedures”):

- a. Pending eventual Court approval thereof as a quarterly fee application, each Professional (other than those subject to separate Court order) retained by the estate in this chapter 11 case pursuant to Sections 327 and 1103 of the Bankruptcy Code seeking the interim payment of fees and reimbursement of expenses may:

- (i) submit to the Debtors an itemized monthly fee and expense statement (“Monthly Statement”) in compliance with the provisions below setting forth the fees and expenses for which payment is sought for the preceding month, with supporting detail; and
 - (ii) serve a copy of such Monthly Statement on the Debtors to the attention of the CRO, bankruptcy counsel for the Debtors, Counsel for DIP Agent and the DIP Lenders, counsel for Committee of Unsecured Creditors (if appointed), and the United States Trustee (collectively, the “Fee Parties”).

² See Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases, 78 Fed. Reg. No. 116, June 17, 2013 at p. 36248.

b. Each Monthly Statement shall include, as an exhibit, time records that itemize services in tenth of an hour increments.

c. The Fee Parties shall have ten (10) days from the date of service of the Monthly Statement to review the Monthly Statements. After such review, and except as provided herein, the Debtors shall pay in the ordinary course of business:

- (i) Eighty percent (80%) of the fees requested by a Professional; and
- (ii) One Hundred percent (100%) of the expenses requested by a Professional.

d. In the event that there are objections to any Monthly Statement submitted by a Professional, the objecting Fee Party shall, within ten (10) days of service of the Monthly Statement, notify the Fee Parties and the affected Professional in writing of such objection. The objection shall specify in detail the nature and basis of the objection. Pending resolution of such objection, the Debtors shall promptly pay to the Professional, as to fees, the amount requested in the particular Monthly Statement less the greater of (i) the amount in dispute or (ii) the twenty percent holdback provided above and, as to expenses, the amount requested less the actual amount in dispute. The Professional and the objecting Fee Party shall endeavor to amicably resolve any objection within five (5) days after notice of the objection. If a resolution cannot be reached in that period, the Professional may request that the Court resolve the dispute at the next regularly scheduled fee application hearing (or at the final fee application hearing if the parties agreed to such). The failure of any Fee Party (or other interested party with standing to object) to object to the payment of any Monthly Statement within the ten (10) day period set forth above shall not be deemed to constitute a waiver of that party's right to object to any interim or final fee application filed by any Professional or preclude any disgorgement of any fees paid.

- (a) The initial Monthly Statement shall be submitted and served in accordance with this paragraph, and shall cover the period from the later of (i) the Petition Date or (ii) the effective date of the approval of the Professional's retention by the Court. Thereafter, each Monthly Statement shall be submitted and served in accordance with the terms set out above.
- (b) Interim compensation will be paid pursuant to the DIP Budget, as may be modified from time to time, without prejudice to any Professional's right to seek an allowed administrative expense claim.

3. If any party in interest contends that any Professional has a conflict of interest or other affiliation requiring disqualification resulting from matters reasonably disclosed in connection with the Professional's retention application or any amendment thereto, such party in interest shall immediately file an objection to the Professional's retention, detailing the alleged

conflict or other disqualifying factors, and shall raise any such contention at the first hearing on interim compensation following such disclosure (unless an earlier hearing is scheduled by the Court in connection with the objection), or shall thereafter be estopped from doing so. Each Professional shall have a continuing obligation to disclose any matter that may affect qualification for court approved employment under the Bankruptcy Code or disqualification from employment under any relevant ethical consideration.

4. All Fee Applications shall comply with the January 22, 2013 Court Procedures and Practice Tips of Judge David Jones at paragraph (17)(b). The first interim fee application will cover the period ending January 31, 2016.

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. A copy of this Order shall be served on all attorneys who have been retained, or who shall thereafter be retained, in the above captioned cases.

10. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

SIGNED: _____, 2015.

UNITED STATES BANKRUPTCY JUDGE