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UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re:

DP FOREST PRODUCTS, INC.,
Debtor.

Case No.: 11-03047-JDP
(Chapter 11)

**MOTION FOR AUTHORIZATION TO PAY A POST-PETITION RETAINER
TO COUNSEL FOR THE DEBTOR**

The Debtor in the above-described Chapter 11 bankruptcy case, DP Forest Products, Inc., by and through its proposed counsel, moves this Court for entry of an order authorizing the Debtor to pay a post-petition retainer to Angstman Johnson as counsel for the Debtor. In support of this Motion, the Debtor states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(a). This is a core proceeding pursuant to 28 U.S.C. §157(b).

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COUNSEL FOR THE DEBTOR - PAGE 1

Matter: 8144-001

1 2. Venue is proper in this District pursuant to 28 U.S.C. §1408.

2 3. The statutory predicate for the relief requested herein is 11 U.S.C. §28(a).

3 Background

4 4. On October 10, 2011 (the "Petition Date"), the Debtor filed a voluntary
5 petition for relief under chapter 11 of the Bankruptcy Code in the United States
6 Bankruptcy Court for the District of Idaho.

7 5. The Debtor maintains possession of its property and is operating and
8 managing its business as a debtor-in-possession, pursuant to sections 1107 and 1108 of
9 the Bankruptcy Code.

10 6. On October 10, 2011, the Debtor filed an Application to Employ D. Blair
11 Clark as counsel for the Debtor. *See Docket No. 3*. This Application was later denied by
12 the court. *See Docket No. 50*. Mr. Clark subsequently filed a Motion to Withdraw as
13 counsel for the Debtor. *See Docket No. 54*. At the time of the Debtors bankruptcy filing,
14 Mr. Clark was paid \$1300.00, which appears to have been used for the Debtor's filing fee
15 and service costs. *See Docket No. 3, p.7, paragraph 8*. In other words, it does not appear
16 that Mr. Clark has a retainer which could be transferred to Debtor's new counsel.

17 7. Simultaneous with this Motion, the Debtor has filed a new Application to
18 Employ Lead Counsel, seeking to employ Angstman Johnson/Matthew T. Christensen as
19 counsel for the Debtor. However, this representation is contingent on the court approving
20 the payment of a post-petition retainer. The Debtor has been unable to locate other
21 counsel willing to appear in the case without the payment of a post-petition retainer.

22 Relief Requested

1 8. By this Motion, the Debtor respectfully requests the entry of an order
2 allowing the Debtor to pay Angstman Johnson a post-petition retainer in the amount of
3 \$15,000.00 (the "Retainer"). The Retainer shall be considered a security retainer, as it
4 will remain property of the estate until Angstman Johnson applies it to compensation and
5 expenses that have been approved by order of this court.
6

7 9. Section 328(a) of the Bankruptcy Code authorized the employment of
8 professional persons on reasonable terms and conditions of employment, including, *inter*
9 *alia*, a retainer. *See 11 U.S.C. §328(a); see also In re: Dearborn Const., Inc.*, 03.1 IBCR
10 17 (Bankr. D. Idaho, 2002) (recognizing the possibility of post-petition retainers).
11 Factors courts consider when evaluating a request for a post-petition retainer include (i)
12 the retainer's economic impact on the debtor's ongoing business operation; (ii) the
13 retainer's economic impact on the debtor's ability to reorganize; (iii) the amount and
14 reasonableness of the retainer; (iv) the reputation of the counsel seeking the retainer; and
15 (v) the ability of counsel to disgorge payments made under a retainer at the conclusion of
16 the case should the Court determine that the fees paid are not justified. *See In re*
17 *Jefferson Bus. Ctr. Assocs*, 135 B.R. 676, 680 (Bankr. D. Colo., 1992); *3-328 Collier on*
18 *Bankruptcy* p 328.02 (2011).
19
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22 10. The Debtor submits that approval of the Retainer is reasonable under the
23 circumstances. The Debtor requires the assistance of competent Chapter 11 counsel in
24 order to respond to the pending motions before the court, file the required motions to
25 continue operations (including a cash collateral motion), file required monthly operating
26 reports, retain the assistance of a competent accountant to assist the Debtor with certain
27 accounting activities, and propose a reasonable Chapter 11 plan and disclosure statement.
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29

1 The Debtor asserts that the amount of the Retainer is reasonable in light of the current
2 procedural posture of this case, and the amount of pleadings and reports which have yet
3 to be prepared and filed.
4

5 11. The Debtor has ongoing business operations which will provide the source
6 of payment for the retainer. Further, the Debtor's schedules disclose property that
7 appears to be unencumbered. Absent the payment of the Retainer, the Debtor may not be
8 able to attract competent counsel to assist it in this Chapter 11 proceeding.
9

10 12. Of necessity, of course, the Retainer would be paid from current cash
11 collateral of the Debtor, to which one or more creditors may assert a claim. It is the
12 Debtor's intention, provided the Retainer payment is authorized, to immediately file a
13 Motion for Authorization to use Cash Collateral. To the extent necessary, the Debtor
14 seeks authorization by this Motion to use its current cash collateral to pay the Retainer.
15

16 13. Further, Angstman Johnson will only draw against the Retainer after its
17 compensation and expenses are approved on an interim or final basis, thereby preserving
18 the powers of the Court, the U.S. Trustee and all other parties-in-interest to challenge any
19 amounts requested by Angstman Johnson. Additionally, the Debtor asserts that
20 Angstman Johnson possesses the skill and ability to diligently and competently represent
21 the Debtor in this matter.
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/s/

 MATTHEW T. CHRISTENSEN
 (Proposed) Attorney for the Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Matthew T. Christensen	mtc@angstman.com
Mary P. Kimmel	ustp.region18.bs.ecf@usdoj.gov
U.S. Trustee	ustp.region18.bs.ecf@usdoj.gov
D. Blair Clark	dbc@dbclarklaw.com
Brad Goergen	bgoergen@grahamdunn.com
Jeff Wilson	jeff@wilsonmccoll.com
Patrick Geile	pgeile@foleyfreeman.com
Lynnette Davis	ldavis@hawleytroxell.com
Jed Manwaring	jmanwaring@evanskeane.com

AND, I HEREBY CERTIFY that I have served the foregoing document via U.S. Mail to all individuals or entities listed on the attached Exhibit A.

/s/

Matthew T. Christensen