

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

ORIGINAL

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 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
 :
 Debtors. : Jointly Administered
 :
 ----- X Re: Docket No. 8

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 362(d), 363(b), 364(c) AND 503(b)
 AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION INSURANCE
 OBLIGATIONS, (II) PAY THEIR PREPETITION BONDING OBLIGATIONS,
 (III) MAINTAIN THEIR POSTPETITION INSURANCE COVERAGE,
 (IV) MAINTAIN THEIR BONDING PROGRAM AND (V) MAINTAIN
POSTPETITION FINANCING OF INSURANCE PREMIUMS**

Upon the motion (the "Motion")² of the Debtors for entry of an Interim Order, authorizing the Debtors to (i) continue to (a) administer the Insurance Policies and pay the Prepetition Insurance Obligations and (b) pay the Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers' Fees) relating to (a) the Postpetition Insurance Obligations, or (b) the Postpetition Bonding Obligations, as such payments become due; (iii) revise, extend, supplement, change, terminate, and/or replace the Debtors' insurance coverage or the Bonding Program as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services, LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort. Worth, Texas 76109.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



insurance premiums; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Interim Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies, the PFA, and the Bonding Program.

3. The Debtors are authorized, but not directed, to pay to the Insurance Carriers, the Brokers, AFCO, and the Sureties any amounts owed on account of the Insurance Obligations, the PFA, and the Bonding Obligations, ~~whether incurred prepetition or postpetition~~, in the ordinary course of business and not on an accelerated basis, ~~provided that payments on account of the Prepetition Insurance Obligations, the PFA, and the Prepetition Bonding Obligations shall not~~ *to the extent incurred*

~~exceed \$150,000 in the aggregate pursuant to this Interim Order without further order of this Court.~~

4. Notwithstanding anything to the contrary in any Insurance Policy, any agreement in respect of the Bonding Program, the PFA, or any related agreements, in the event the Debtors default under the terms of any of the foregoing, no Insurance Carrier, Surety, Broker, or AFCO shall purport to cancel, modify or take any other action adverse to the Debtors without first providing notice of such default in writing by overnight mail to the Debtors and their bankruptcy counsel, and at least 5 business days to cure. If the Debtors fail to cure the default within that time, then the relevant Insurance Carrier, Broker, Surety, or AFCO may, to the extent consistent with the terms of their agreement(s) with the Debtors, and without further order of this Court, exercise any and all of their rights under such agreement(s).

5. Subject to paragraph 14 of this Interim Order, the Debtors are authorized, but not directed, to revise, extend, supplement, change, terminate, and/or replace insurance coverage, premium financing arrangements, and their Bonding Program as needed and to enter into new insurance policies, premium financing arrangements, and surety bonds through renewal or purchase of new insurance policies, premium financing arrangements, and surety bonds, in each case without further notice to, hearing before, or order from this Court; *provided, however*, that absent further order of this Court upon notice, during the course of the Chapter 11 Cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the exiting PFA.

6. The Debtors are authorized to pay any prepetition or postpetition fees of the Brokers in connection with the Insurance Policies and the Bonding Program in the ordinary

course of business, subject to the cap set forth in paragraph 3 of this Interim Order with respect to prepetition obligations.

7. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to those Insurance Obligations and the Bonding Obligations whose payment is approved by this Interim Order, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

8. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

9. The Debtors are hereby authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests with respect to the Prepetition Insurance Obligations and the Prepetition Bonding Obligations dishonored or denied as a consequence of the commencement of the Chapter 11 Cases, and to reimburse any expenses that holders of claims in connection with the Prepetition Insurance Obligations and the Prepetition Bonding Obligations may incur as a result of any bank's failure to honor a prepetition check.

10. Nothing contained in the Motion or this Interim Order or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim held by, any person to whom any of the Insurance Obligations or the Bonding Obligations may be owed.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon its entry.

13. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

14. Notwithstanding ~~anything to the contrary in the Motion or this Interim Order~~, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.

15. The final hearing (the “**Final Hearing**”) on the Motion shall be held on August 14, 2019, at 11:00 a.m., prevailing Eastern Time. On or before 4:00 p.m., prevailing Eastern Time, on August 7, 2019, any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: July 17, 2019
Wilmington, Delaware

Karen B. Owens
THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE