

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> ,	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	Hearing Date: October 24, 2019 at 1:00 p.m. (ET)
	:	Objection Deadline: October 11, 2019
	:	
	:	Related Docket No. 362
	:	

**POWNALL SERVICES, LLC'S OBJECTION TO  
DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION**

Pownall Services, LLC ("Pownall"), by and through its undersigned counsel, hereby objects (the "Objection") to the *First Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* [D.I. 362] (the "Plan").<sup>1</sup> In support of this Objection, Pownall states as follows:

**PRELIMINARY STATEMENT**

1. There are two issues to determine at confirmation regarding the Kingfisher<sup>2</sup> property: First, does any prepetition lender have a lien on the property? Second, what is the value of the property?

2. The answer to the first question is clear: The only secured creditors with rights to the Kingfisher property are mechanic's lien claimants. To put it frankly, the Debtors are currently playing games with this legal issue, unnecessarily driving up attorney's fees and costs in this bankruptcy proceeding for parties who provided millions of dollars of work for the Debtor, but have never been paid. Despite the fact that HPS Investment Partners, LLC ("HPS")

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<sup>1</sup> Any capitalized term not otherwise defined herein shall have the same meaning as that ascribed to it in the Plan.

<sup>2</sup> Any capitalized term in this preliminary statement not otherwise defined herein shall have the same meaning as that ascribed to it elsewhere in the Objection.



never recorded a lien on the property, and despite the fact that the Debtors admit in their disclosure statement that no recorded mortgages exist, the Debtors are denying this claim in Pownall's adversary proceeding. In any event, Pownall expects this legal issue to be resolved—in its favor—at or before confirmation. Either the Debtors will stop playing games and admit that HPS does not have a lien, or the Court will determine this at confirmation.

3. The answer to the second question—the value of Kingfisher—remains an open issue. Because HPS Investment Partners, LLC ("HPS") is in *de facto* control of the plan process, and because HPS does not have a lien on Kingfisher, the Debtors will likely try to push through a low-ball valuation of Kingfisher. Presumably, the Debtors will argue that Kingfisher is worth \$441,000, as they contend in their disclosure statement and as suggested in the Plan. However, at confirmation, Pownall expects to establish that Kingfisher is worth no less than \$11,207,973.59, based on a recent offer to purchase Kingfisher described below.

### **BACKGROUND**

4. Pownall is a contractor which provides design, construction, and maintenance services for a variety of industrial processing facilities, including frac sand plants.

5. Debtor Superior Silica Sands LLC (the "Debtor") owns multiple frac sand plants, including a plant in Kingfisher, Oklahoma (the "Kingfisher plant") located at 13479 E0690 Road, Dover, OK 73734.

*i. No lien by HPS*

6. Pownall furnished the Debtor with labor and materials at the Kingfisher plant.

7. On or about April 5, 2019, Pownall recorded a mechanic's lien (the "Pownall Lien") against the Kingfisher property in the amount of \$1,598,738.31. See Proof of Claim No. 251; Notice of Lien, D.I. 302.

8. According to the notices of liens and proofs of claims filed in this matter, TMT Solutions, Inc., RB Scott Company, Inc., and Market and Johnson, Inc., also recorded prepetition mechanic's liens against the Kingfisher property (collectively, and together with the Pownall Lien, the "M&M Liens"). See Proofs of Claim Nos. 248, 252, 300; Notices of Lien, D.I. 253, 429.

9. On August 16, 2019, Pownall filed a complaint in this Court against the Debtor and HPS, seeking a declaration that there are no other liens on the Kingfisher premises, other than mechanic's liens. The Debtor and HPS generally deny Pownall's allegations.

10. However, on September 11, 2019, HPS did an "about face" from their blanket denials in the adversary proceeding, and admitted that they are not aware of the existence of any mortgage against the Kingfisher property. Disclosure Statement, D.I. 363, § II(C)(1) ("The Debtors are not aware of the existence of any mortgage on the Debtors' property at Kingfisher, Oklahoma, securing the obligations under the Prepetition Credit Agreement."); § II(C)(2) ("The Debtors are not aware of the existence of any mortgage on the Debtors' property at Kingfisher, Oklahoma, securing the obligations under the Prepetition Notes Agreement."). Nevertheless, as of the date hereof, the Debtor has not amended its answer to Pownall's complaint to comport with the admissions in its Disclosure Statement.

*ii. Gross Undervaluation of Kingfisher*

11. The Debtors' Plan classifies the mechanic's liens under Class 2, "Other Secured Claims." See Disclosure Statement, D.I. 363, Ex. D, n. AC ("Lien claims listed as other secured primarily relate to specific assets at the Kingfisher, OK plant (under construction). Any assumed recovery is related specifically to any potential proceeds from the sale of those particular assets.").

12. The Debtors estimate an aggregate distribution of \$441,000 to the holders of Other Secured Claims under the Plan. See, e.g., Disclosure Statement, D.I. 363, § I(D), Ex. D. Accordingly, the Debtors position at confirmation will apparently be that the Kingfisher plant is worth \$441,000, a gross undervaluation intended to artificially lower the value of the secured claims.

13. In a letter dated October 9, 2019 attached hereto as **Exhibit A**, Yansa Silica, LLC, offered to purchase all of the assets of Superior Silica Sands, LLC and Emerge Energy Services, LP (together, the “Sellers”), related to the Kingfisher plant for the aggregate purchase price of \$11,207,973.59. The offer is comprised of (i) immediately available funds of \$1 million, less the amount of any debt paid directly by the Yansa other than mechanic’s liens, and (ii) a credit bid of \$10,207,973.59, based on the assigned mechanic’s claims of Pownall, TMT Solutions, Inc., RB Scott Company, Inc., and Market and Johnson, Inc.

### **OBJECTION**

14. It is undisputed that HPS neglected to obtain a mortgage on the Kingfisher property. However, the Debtors and HPS both inexplicably filed answers generally denying Pownall’s request for a declaratory judgment. If this issue is not resolved prior to confirmation, Pownall will be prepared to ask the Court to rule on this issue at the confirmation hearing.

15. As to value, Debtors’ counsel confirmed at the September 9, 2019 Disclosure Statement hearing that valuation of the Kingfisher property is “a live issue for confirmation,”<sup>3</sup> and Pownall expects to present evidence regarding valuation at the confirmation hearing, as previously agreed to by the parties. Hr’g Tr. 46:16-22, Sept. 9, 2019. Relevant excerpts from the September 9, 2019 hearing transcripts are attached hereto as **Exhibit B**.

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<sup>3</sup> Pownall’s counsel further confirmed with the Court and Debtors’ counsel the logistics of proceeding with the valuation dispute at the confirmation hearing. Hr’g Tr. 97:1-99:4.

16. “The fair market value of a business or asset is the highest amount that a reasonably well-informed purchaser would pay in arm’s length negotiations in an open and unrestricted market.” In re Nortel Networks, Inc., 532 B.R. 494, 521 n. 165 (Bankr. D. Del. 2015); see also, e.g., In re Aerogroup Int’l Inc., Case No. 17-11962 (KJC), 2018 WL 3155250, \*5 (Bankr. D. Del. June 25, 2018) (determining that a secured creditor can credit bid its entire claim, and “the highest bid—no matter who makes it—sets the asset’s value.”). Here, the \$11,207,973.59 pending offer should be considered the floor for any value determination regarding the Kingfisher property.

17. If the Debtors are really interested in maximizing the value of the Kingfisher property, the Debtors will accept the offer, or explore marketing the property with the offer serving as a stalking horse bid. Of course, because HPS is in *de facto* control of the plan process, and because HPS does not have a lien on Kingfisher, the Debtors may not be interested in maximizing the value of the Kingfisher property. They may instead be completely focused on attempting to artificially lower the value of the existing secured mechanic’s lien claims on the Kingfisher property. The Debtor’s response to Yansa’s offer to purchase the Kingfisher property will likely serve as an indicator of the Debtor’s true intentions.

18. Nevertheless, Pownall is prepared to present evidence of the fair market value of the Kingfisher property at the confirmation hearing and, specifically, establish that the value is, at a minimum, \$11,207,973.59, given Yansa’s pending offer to purchase the Kingfisher property.

#### **RESERVATION OF RIGHTS AND JOINDER**

19. Pownall reserves all of its rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Objection, to seek discovery, and to raise additional objections during the confirmation hearing. Pownall hereby joins all other

objections to the Plan, to the extent such other objections are not inconsistent with this Objection.

WHEREFORE, Pownall respectfully requests that the Court deny confirmation of the Plan.

Dated: October 11, 2019

**SAUL EWING ARNSTEIN & LEHR LLP**

/s/ Lucian B. Murley

Lucian Murley (DE Bar No. 4892)  
1201 North Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6898  
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Counsel to Pownall Services, LLC

# Exhibit A

October 9, 2019

Emerge Energy Partners, LP  
Superior Silica Sands, LLC  
c/o Bryan M. Gaston, Restructuring Officer  
Ankura Consulting Group, LLC  
2 Houston Center, 909 Fannin Street, Suite 2450,  
Houston, TX, United States 77010  
Via email only: bryan.gaston@ankura.com

-and-

c/o Adam Dunayer  
Houlihan Lokey Capital, Inc.  
200 Crescent Ct., Suite 1900  
Dallas, TX 75201  
Via email only: ADunayer@HL.com

Re: Proposal to acquire substantially all of the assets of the Dover, Oklahoma Plant

Dear Sirs:

This letter is intended to summarize the principal terms of a possible transaction whereby Yansa Silica, LLC ("Buyer") would acquire all or substantially all of the assets of Superior Silica Sands, LLC and Emerge Energy Services, LP (together, "Sellers") related to the plant located at E0690 Road, Dover, Kingfisher County, Oklahoma 73734 (the "Plant"). To the extent you wish to accept the terms offered in this letter agreement, please sign and return a copy to Buyer within two (2) weeks of the date hereof, and immediately pursue approval of the sale under section 363 of title 11 of the United States Code (the "Bankruptcy Code") in the Sellers' chapter 11 cases pending before the United States Bankruptcy Court for the District of Delaware (the "Court").

1. Basic Transaction. It is contemplated that Buyer and Sellers would enter into an asset purchase agreement, on terms mutually satisfactory to the parties, pursuant to which Buyer would, among other things, (i) acquire substantially all of the assets owned by Sellers or used in the business of Sellers in connection with the Plant, including, without limitation, all real property, equipment, vehicles, inventories, signage, licenses, permits, computer software and hardware, telephone numbers, email addresses, websites, accounts and other receivables, documents, records, fixtures, supplies, goodwill, customer lists, trademarks and tradenames, trade secrets, know-how and other intellectual property, and certain contract rights and leases (collectively, the "Assets"), and (ii) assume certain liabilities related to the Assets as agreed upon by Buyer and Sellers. The Assets must be free and clear of all liens, security interests and other encumbrances on or before the closing of the proposed transaction (the "Closing"). The Closing would occur as soon as reasonably practicable following (i) the Due Diligence Investigation, (ii) receipt of third party consents and assignment of permits and licenses or, in the event such are not assignable, Buyer's receipt of permits and licenses required to construct and operate the Plant, and (iii) the Court's approval of the sale of Assets.



2. Purchase Price.

A. The aggregate purchase price (the "Purchase Price") for the Assets would be the sum of \$11,207,973.59. Buyer would have the right to pay directly any debts that are owed by Sellers and that are secured by the Assets (the "Debt") that are outstanding as of Closing (which Debt shall not be deemed to include the M&M Liens listed in Paragraph 2.B.(ii) below) and to set off the amounts paid against the Purchase Price.

B. The Purchase Price would be payable as follows:

(i) Buyer would pay to Sellers, by wire transfer of immediately available funds, an amount equal to \$1,000,000.00 *minus* the amount of any Debt paid directly by Buyer other than the M&M Liens set forth below.

(ii) Buyer would credit bid an aggregate amount of \$10,207,973.59 pursuant to section 363(k) of the Bankruptcy Code, consisting of the following claims and liens (the "M&M Liens"), which have been assigned to Buyer for purposes of making this offer:

a. Market & Johnson, Inc.	\$4,962,401.28
b. TMT Solutions, Inc.	\$1,944,520.00
c. RB Scott Company, Inc.	\$1,702,314.00
d. Pownall Services, LLC	\$1,598,738.31

Buyer will obtain and deliver, at or before Closing, waivers and/or releases in forms reasonably acceptable to Seller, providing that the M&M Liens will be waived and/or released effective as of the Closing.

3. Other Terms. Sellers would make customary comprehensive representations and warranties to Buyer. The consummation of the proposed transaction by Buyer would be subject to the satisfaction of various conditions, including:

A. Inspection of all physical assets and review of all contracts, agreements and other assets necessary or useful in the conduct of Sellers' business as it relates to the Assets and the Plant;

B. Inspections of all real property owned or used in Sellers' business which are part of the Assets and delivery of warranty deeds for such real property in a form satisfactory to Buyer;

C. Negotiation and execution of a definitive asset purchase agreement and other documents customarily delivered in connection with similar transactions;

D. Obtaining third party consents and approvals that are reasonably necessary to consummate the acquisition without violating any contracts, permits, licenses or other rights of third parties;

E. Completion of all actions necessary for the transaction to comply with applicable laws; and

F. Court approval of the sale of the Assets through a form of order reasonably acceptable to Buyer, which includes, without limitation, an explicit finding that the Buyer is purchasing

the Assets in “good faith” within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections offered thereby, and such order has become a final order.<sup>1</sup>

4. Limited Binding Nature. Paragraphs 4 through 9, inclusive, of this letter (the “Binding Provisions”) are the legally binding and enforceable agreements of the parties. Except for the obligations in the Binding Provisions, it is agreed between the parties that (i) this letter is not intended to create or constitute a legally binding obligation between the parties and (ii) none of the parties shall have any liability or duty to any other party with respect to the proposed transaction until the asset purchase agreement and other related documents are prepared, executed and delivered by the parties, and the transaction is approved by the Court. Moreover, except as expressly provided in the Binding Provisions (or as expressly provided in any binding written agreement that the parties may enter into in the future), no past or future action, course of conduct or failure to act relating to the proposed transaction, or relating to the negotiation of the terms of the proposed transaction or any acquisition agreement, will give rise to or serve as a basis for any obligation or other liability on the part of the parties or any of their respective affiliates.

5. Access. Upon execution of this letter agreement by the Seller, Buyer will commence its due diligence investigation of the Plant and the Assets (the “Due Diligence Investigation”). During the Due Diligence Investigation, and until the Termination Date, Sellers shall afford Buyer full and free access to the Plant and the Assets, including any related properties, contracts, books and records and all other documents and data.

6. Consents. During the period from the date hereof until the Termination Date, Buyer and Sellers will cooperate with each other and proceed, as promptly as is reasonably practical, to obtain all necessary consents for consummation of the transaction contemplated herein, including approval by the Court.

7. Entire Agreement. The Binding Provisions constitute the entire agreement between the parties, and supersede all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties on the subject matter hereof. Except as otherwise provided herein, the Binding Provisions may be amended or modified only by a writing executed by all of the parties.

8. Governing Law. The Binding Provisions will be governed by and construed under the laws of the State of Texas without regard to conflicts of law principles.

9. Termination. This letter will terminate on the date (the “Termination Date”) that is the earlier of (i) a date mutually agreed by the parties, or (ii) the date of Closing. The termination of this

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<sup>1</sup> As used herein, “final order” shall mean an order or judgment of the Court as to which (a) the time to appeal, petition for certiorari, or motion for argument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for re-argument or rehearing shall then be pending, or (b) in the event that an appeal, writ for certiorari, re-argument or rehearing thereof has been sought, such order of the Court shall have been affirmed by the highest court to which an appeal, petition for certiorari or re-argument or rehearing was sought and the time to take any further appeal, petition for certiorari, or motion for re-argument or rehearing shall have expired; *provided, however*, that no order shall fail to be a “final order” solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Rule 9024 of the Federal Rules of Bankruptcy Procedure may be filed with respect to such order, as long as such a motion has not actually been filed.

letter will not affect the liability of a party for breach of any of the Binding Provisions prior to the termination. Except as provided in the immediately preceding sentence, upon termination of this letter, the parties will have no further obligations hereunder.

10. Counterparts. This letter may be executed in one or more counterparts, each of which will be deemed to be an original copy of this letter and all of which, when taken together, will be deemed to constitute one and the same agreement. Counterparts delivered by fax or email will be binding on the sender.

11. Contact Information for Buyer. Any questions regarding this offer should be addressed to Harry Pownall, [harry@pownallservices.com](mailto:harry@pownallservices.com) or (832) 250-2746.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

If you are in agreement with the foregoing, please sign and return one copy of this letter agreement, which thereupon will constitute our agreement with respect to its subject matter, subject to Court approval.

Sincerely,

YANSA SILICA, LLC

By: 

Harry Pownall, Manager

Duly executed and agreed on \_\_\_\_\_, 2019.

EMERGE ENERGY SERVICES, LP

By: \_\_\_\_\_  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUPERIOR SILICA SANDS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Exhibit B

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
EMERGE ENERGY SERVICES LP, Case No. 19-11563 (KBO)  
*et al.*,  
Courtroom No. 2  
824 North Market Street  
Wilmington, Delaware 19801  
Debtor. September 9, 2019  
11:00 A.M.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE THE HONORABLE KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: John H. Knight, Esquire  
Paul N. Heath, Esquire  
Zachary I. Shapiro, Esquire  
Brett M. Haywood, Esquire  
Travis J. Cuomo, Esquire  
RICHARDS, LAYTON & FINGER, P.A.  
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Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

1 APPEARANCES (Continued):

2 For the Debtors: George A. Davis, Esquire  
3 Keith A. Simon, Esquire  
4 Hugh K. Murtagh, Esquire  
5 Liza L. Burton, Esquire  
6 LATHAM & WATKINS LLP  
7 885 Third Avenue  
8 New York, New York 10022

6 For the U.S. Trustee: Juliet Sarkessian, Esquire  
7 UNITED STATES DEPARTMENT OF JUSTICE  
8 OFFICE OF THE UNITED STATES TRUSTEE  
9 844 King Street, Suite 2007  
Lockbox 35  
Wilmington, Delaware 19801

10 For the DIP Agent: David N. Griffiths, Esquire  
11 WEIL GOTSHAL & MANGES LLP  
12 767 Fifth Avenue  
New York, New York 10153

13 For the Committee: David Posner, Esquire  
14 KILPATRICK TOWNSEND & STOCKTON LLP  
15 The Grace Building  
1114 Avenue of the Americas  
New York, New York 10036

16 - and -

17 Todd C. Meyers, Esquire  
18 1100 Peachtree Street NE, Suite 2800  
Atlanta, Georgia 30309

19 - and -

20 Jeremy W. Ryan, Esquire  
21 POTTER ANDERSON & CORROON LLP  
22 1313 North Market Street  
Wilmington, Delaware 19801

23  
24  
25

1 APPEARANCES (Continued):

2 For Pownall Services: Lucian Murley, Esquire  
3 SAUL EWING ARNSTEIN & LEHR LLP  
4 1201 North Market Street  
Wilmington, Delaware 19801

5 For Miller Buckfire Derek Alexander, Esquire  
6 Company, LLP and Stifel STIFEL FINANCIAL CORPORATION  
Financial Corporation: 501 N. Broadway  
St. Louis, Missouri 63102

7 For the SEC: Neal Jacobson, Esquire  
8 SECURITIES & EXCHANGE COMMISSION  
9 200 Vesey Street, Suite 400  
New York, New York 10281

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**Committee Retention Application.** Application of the Official Committee of Unsecured Creditors to Employ and Retain Miller Buckfire & Co., LLC and Stifel, Nicolaus & Co., Inc. as Investment Banker *Nunc Pro Tunc* to August 2, 2019 [Docket No. 222; filed August 15, 2019]

**RULING:** 36

Debtors' Motion for Entry of an Order Establishing Procedures for the Sale, Transfer or Abandonment of Miscellaneous and *De Minimis* Assets and Granting Certain Related Relief [Docket No. 241; filed August 20, 2019]

**RULING:** Order Signed

Motion of the Debtors for Entry of an Order (I) Approving the Disclosure Statement, (II) Establishing the Voting Record Date, Voting Deadline and Other Dates, (III) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan, (IV) Approving the Manner and Forms of Notice and Other Related Documents, and (V) Granting Related Relief [Docket No. 247; filed August 22, 2019]

**RULING:** 90

COMMITTEES' WITNESS (s)

**Matthew Rodrigue**

Direct by proffer

Cross-examination by Mr. Heath 8

Redirect examination by Mr. Ryan 16

1 MR. MURTAGH: For the record I've handed up two  
2 redlines; one is a changed page redline that shows some  
3 incremental changes that were made between the 5th and today  
4 to address some comments we received from the U.S. Trustees  
5 Office, the second is a comprehensive redline of the draft we  
6 seek approval of today against the draft that was filed on  
7 the, I believe, 29th of August.

8 THE COURT: Okay.

9 MR. MURTAGH: Before getting into those documents,  
10 Your Honor, I guess I'd just say a couple things to frame the  
11 issues for today.

12 Today's issue is about the adequacy of the  
13 disclosure statement. The question is does the disclosure  
14 statement contain information of a kind and in sufficient  
15 detail to permit a hypothetical investor of the relevant  
16 class to make an informed judgement about the plan. That is  
17 11 U.S.C. 1125 as everybody in the courtroom probably knows.

18 In addition, I think it's relevant to point out  
19 today that 1125(b) of the Code also provides that the  
20 disclosure statement does not need to include a valuation or  
21 appraisal of the debtors.

22 So, the question, again, essentially, is, is this  
23 disclosure statement adequate for purposes of allowing people  
24 to make an informed judgment on the plan. The answer to that  
25 question, which is the only question before the court today

1 on the disclosure statement, is yes. The disclosure  
2 statement contains extensive disclosures about the plan  
3 including classes, treatment, the debtors history, events  
4 leading to the Chapter 11 cases, the plan's going forward.  
5 We've added additional disclosure about exit capital. There  
6 is information about the releases, the proposed releases,  
7 valuation, financial projections, tax consequences, security  
8 consequences, securities law consequences.

9 Your Honor, in short, there is something for  
10 everyone in this document. The debtors believe that it more  
11 than covers the ground.

12 Nevertheless, we did receive some comments and  
13 some objections. We received a number of comments from the  
14 U.S. Trustees Office. We received formal objections from  
15 Pownall, from the SEC and from the UCC.

16 So, let me just set the table where we are with  
17 those objections. Mr. Murley will come up if I misstate, but  
18 I believe that subject to our stating that we agree that the  
19 valuation of King Fisher is a live issue for confirmation  
20 Pownall Services objections are, I would say, deferred until  
21 confirmation and are not objections to the disclosure  
22 statement.

23 THE COURT: Okay.

24 MR. MURTAGH: So, that would set aside Pownall.

25 With regard to the SEC, the SEC has objected, in

1 Mr. Murley.

2 MR. MURLEY: A couple of logistical issues, Your  
3 Honor.

4 THE COURT: Yes.

5 MR. MURLEY: Our issue on valuation is narrow. It  
6 has to do with the single piece of real estate. The scope of  
7 what Your Honor will be dealing with is largely going to be  
8 determined by what the position of the debtors and HPS as to  
9 response to our complaint which is due on Monday.

10 If they're agreeing that there is no mortgage  
11 encumbering it then all you have before you is a valuation  
12 fight. If there's a dispute as to that then you also have a  
13 priority dispute in addition to that to resolve what we would  
14 suggest is logistic for now, not to make any decisions about  
15 what the confirmation hearing would look like, but we just  
16 like some guidance from the court because there's no chamber  
17 procedures.

18 If we have a discovery dispute which I'm not  
19 anticipating that we will have. We've been working very well  
20 with Latham. How would Your Honor like to deal with that?  
21 Is it Your Honor's preference to have a discovery motion or a  
22 telephone call?

23 THE COURT: I would prefer a letter submission  
24 ahead of time that gets filed on the docket. And then we'll  
25 reach out to the parties and we'll schedule a discovery

1 conference after adequate time is given in response.

2 MR. MURLEY: Thank you, Your Honor.

3 And also, does Your Honor have a preference  
4 knowing that we don't really know what the confirmation  
5 hearing is going to look like as to the submission of a joint  
6 pretrial order, prior to confirmation?

7 THE COURT: So, we're envisioning valuations like  
8 with respect to Kingfisher?

9 MR. MURLEY: Correct. Presumably, there might be  
10 a larger valuation fight. Ours would be more narrow.

11 THE COURT: Right.

12 MR. MURLEY: We think that a joint pretrial  
13 memorandum would probably make sense in that I would imagine  
14 that a lot of the facts are going to be stipulated here. And  
15 that the witnesses will be limited and the exhibits will be  
16 limited or, Your Honor, we can just defer the whole issue and  
17 if the parties can't agree to something leading up to  
18 confirmation, we could reach out to chambers.

19 THE COURT: Yeah, why don't the parties talk and  
20 decide ultimately what you like to present and how you'd like  
21 to present it. I don't have any specific requirements at the  
22 moment. If you think it's something that's going to  
23 streamline the process then, of course, I welcome it.

24 MR. MURLEY: Thank you, Your Honor.

25 THE COURT: Thank you. And also, if this turns

1 out to be -- if we are going to actually have a contested  
2 valuation trial, I'm sure we will all be on the phone at some  
3 point to talk about pretrial procedures and scheduling, and  
4 we can talk about it then.

5 MR. MURTAGH: Your Honor, just to follow up on Mr.  
6 Murley's points. I anticipate that we'll be able to reserve  
7 the adversary complaint with some form of agreed order. I'm  
8 hopeful to have that up to you before we're instead forced to  
9 answer, but that's just a brief update.

10 THE COURT: Okay.

11 MR. MURTAGH: I think the next item was to walk  
12 through the changes to the order. And Ms. Burton can do  
13 that.

14 MS. BURTON: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MS. BURTON: Lisa Burton on behalf of the debtors.  
17 I have a copy here of the order as revised and redlined.

18 THE COURT: Were there any changes made since --

19 MS. BURTON: No, Your Honor.

20 THE COURT: -- it was filed on the 6th?

21 MS. BURTON: No, Your Honor.

22 THE COURT: I don't need to see it.

23 MS. BURTON: With respect to the solicitation  
24 order, the debtors, as you're aware, received a formal  
25 objection from the SEC, as well as informal comments from the

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> ,	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered

**CERTIFICATE OF SERVICE**

I, Lucian B. Murley, hereby certify that on October 11, 2019, I caused a copy of the foregoing *Pownall Services, LLC's Objection to the Debtor's First Amended Joint Plan of Reorganization* to be served electronically with the Court and served through the Court's CM/ECF system upon all registered electronic filers appearing in this case who consented to electronic service and on the parties on the attached service list in the manner indicated therein.

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Dated: October 11, 2019

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