

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, : Case No. 19-11563 (KBO)
: :
Reorganized Debtor.¹ : Obj. Deadline: October 15, 2021 at 4:00 p.m. (ET)
: Hearing Date: November 2, 2021 at 11:00 a.m. (ET)
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**MOTION OF THE REORGANIZED DEBTOR FOR AN ORDER FURTHER
EXTENDING PERIOD WITHIN WHICH THE REORGANIZED DEBTOR MAY
REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND RULE 9027 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE
AND GRANTING RELATED RELIEF**

The reorganized debtor in the above-captioned case (the “**Reorganized Debtor**”),²
by and through its undersigned counsel, respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this motion (the “**Motion**”) under 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. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Prior to the occurrence of the Effective Date (as defined below), the Reorganized Debtor was one of five debtors and debtors-in-possession (collectively, and prior to the Effective Date, the “**Debtors**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”).



BACKGROUND

2. On July 15, 2019 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing the Chapter 11 Case.

3. On October 25, 2019, the Court entered an order [Docket No. 548] extending the initial removal deadline of October 11, 2019 to February 10, 2020 (the “**Initial Removal Deadline Extension**”).

4. On December 18, 2019, the Court entered an order [Docket No. 721] (the “**Confirmation Order**”), confirming the *Modified Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (the “**Plan**”). The Plan became effective, and was substantially consummated, on December 20, 2019 (the “**Effective Date**”). See Docket No. 733.

5. On February 26, 2020, the Court entered an order [Docket No. 808] extending the Initial Removal Deadline Extension of February 10, 2020 to June 9, 2020 (the “**Second Removal Deadline Extension**”).

6. On June 25, 2020, the Court entered an order [Docket No. 860] extending the Second Removal Deadline Extension of June 9, 2020 to October 7, 2020 (the “**Third Removal Deadline Extension**”).

7. On October 23, 2020, the Court entered an order [Docket No. 921] extending the Third Removal Deadline Extension of October 7, 2020 to February 4, 2021 (the “**Fourth Removal Deadline Extension**”).

8. On February 16, 2021, the Court entered an order [Docket No. 975] extending the Fourth Removal Deadline Extension of February 4, 2021 to June 4, 2021 (the “**Fifth Removal Deadline Extension**”).

9. On June 21, 2021, the Court entered an order [Docket No. 1008] extending the Fifth Removal Deadline Extension of June 4, 2021 to October 4, 2021 (the “**Sixth Removal Deadline Extension**”).

RELIEF REQUESTED

10. Pursuant to 28 U.S.C. § 1452 and Rules 9006(b) and 9027 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Reorganized Debtor seeks the entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”): (a) further extending the time by which the Reorganized Debtor may file notices of removal under Bankruptcy Rule 9027 by approximately 120 days, through and including February 1, 2022 (the “**Extended Removal Deadline**”), without prejudice to the Reorganized Debtor’s right to seek further extensions and (b) granting related relief.³ The Reorganized Debtor requests that the proposed Extended Removal Deadline apply to all matters specified in Bankruptcy Rules 9027(a)(2) and 9027(a)(3).

BASIS FOR RELIEF

11. 28 U.S.C. § 1452 provides for the removal of pending civil claims with respect to which federal district courts have jurisdiction under 28 U.S.C. § 1334. Section 1452(a) provides in pertinent part as follows:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is

³ The current time period within which the Reorganized Debtor may file any removal notices under Bankruptcy Rule 9027(a)(2) expires on June 4, 2021 (the “**Current Deadline**”). Pursuant to Rule 9006-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the filing of this Motion prior to the Current Deadline serves to automatically extend the Current Deadline until such time as the Court rules on the Motion. *See* Del. Bankr. L.R. 9006-2.

pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

12. Bankruptcy Rule 9027 establishes the deadline for filing notices of removal of claims or causes of action. Bankruptcy Rule 9027(a)(2) provides in pertinent part as follows:

If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed [in the bankruptcy court] only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

13. With respect to postpetition actions, Bankruptcy Rule 9027(a)(3) provides that a notice of removal may be filed:

only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

Fed. R. Bankr. P. 9027(a)(3).

14. Finally, Bankruptcy Rule 9006(b)(1) provides that the Court can extend unexpired time periods, including the removal periods in Bankruptcy Rule 9027, without notice, upon a showing of cause:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion ... with or without motion or notice order the period enlarged if the request therefor is

made before the expiration of the period originally prescribed or as extended by a previous order....

Fed. R. Bankr. P. 9006(b)(1).

15. It is well settled that this Court is authorized to extend the removal periods provided under Bankruptcy Rule 9027. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984) (stating that under Bankruptcy Rule 9006(b), “it is clear that the court may grant such an extension [of time to remove]”), *effectively overruled in part on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995); *Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (explaining that Bankruptcy Rule 9006(b) allows a court to enlarge the time period for removing actions under Bankruptcy Rule 9027); *Saint Joseph's Hosp. v. Dep't of Pub. Welfare of Pa. (In re Saint Joseph's Hosp.)*, 103 B.R. 643, 648 (Bankr. E.D. Pa. 1989) (extending the 90-day time period in which to seek removal of pending state court litigation); *In re World Fin. Servs. Ctr. Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (stating that the court may enlarge the time period for filing removal notices under Bankruptcy Rule 9027(a)(3)).

16. Certain of the former Debtors are party to various civil lawsuits and proceedings (the “Civil Actions”) and the Reorganized Debtor is evaluating whether it may seek to remove certain of the Civil Actions. Since the Sixth Removal Deadline Extension, the Reorganized Debtor’s limited resources have been focused on numerous pressing matters associated with (a) the administration of the bankruptcy estate and (b) the review and analysis all claims filed against it. Consequently, the Reorganized Debtor requires a reasonable amount of additional time to complete its evaluation of whether removal is appropriate in any litigation matters.

17. Further, due to various “shelter-in-place” laws and “work-from-home” mandates resulting from the national and international emergency caused by the novel coronavirus,

the Reorganized Debtor's efforts to evaluate the appropriateness of removal in any litigation matters has been significantly slowed. These laws and mandates, while justifiable under the circumstances, have placed significant hardship on the personnel necessary for the Reorganized Debtor to perform the required analysis of potential removal. As a result, for more than a year, the Reorganized Debtor had difficulty completing such analysis. These facts further support the requested extension of the Claims Objection Deadline.

18. Accordingly, the Reorganized Debtor seeks an extension of the Current Deadline under Bankruptcy Rule 9027(a) to protect its right to remove those Civil Actions for which it may determine that removal is appropriate. The extension sought will afford the Reorganized Debtor additional time to determine whether to remove any pending Civil Action and will ensure that the Reorganized Debtor does not forfeit valuable rights under section 1452 of the Judicial Code. Critically, the rights of other parties to the relevant litigation will not be prejudiced by the extension, because any party to an action that is removed may seek to have the litigation remanded to the state court pursuant to section 1452(b) of the Judicial Code.⁴

19. The Reorganized Debtor further requests that the Proposed Order be without prejudice to (a) any position the Reorganized Debtor may take regarding whether the injunctions under the Plan stay any given Civil Action in which any Debtor is a party and (b) the rights of the Reorganized Debtor to seek further extensions of the period during which such parties may remove civil actions pursuant to Bankruptcy Rule 9027.

20. For the reasons stated above, the Reorganized Debtor submits that cause exists to grant the relief requested herein, which relief is in the best interest of its estate. Moreover,

⁴ Section 1452(b) of the Judicial Code provides that "[t]he court to which [a] claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise...." 28 U.S.C. § 1452(b).

requests by debtors for extensions of the removal period have been routinely granted by courts in this district. *See, e.g., In re FTD Companies, Inc.*, Case No. 19-11240 (LSS) (Bankr. D. Del. Sept. 13, 2019) (granting 120-day extension); *In re Consolidated Infrastructure Grp., Inc.*, Case No. 19-10165 (BLS) (Bankr. D. Del. May 20, 2019) (same); *In re Videology, Inc.*, Case No. 18-11120 (BLS) (Bankr. D. Del. Aug. 22, 2018) (same); *In re Samuels Jewelers, Inc.*, Case No. 18-11818 (KJC) (Bankr. D. Del. Nov. 26, 2018) (same); *In re Seastar Holdings, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Apr. 25, 2018) (same); *In re General Wireless Operations Inc.*, Case No. 17-10506 (BLS) (Bankr. D. Del. Jun. 20, 2017) (same).

CONSENT TO JURISDICTION

21. Pursuant to Local Rule 9013-1(f), the Reorganized Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

22. Notice of this Motion will be given to: (i) the U.S. Trustee; and (ii) those parties that have requested notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtor submits that, under the circumstances, no other or further notice is required.

23. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Reorganized Debtor's Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at <https://www.kccllc.net/EmergeEnergy>.

NO PRIOR REQUEST

24. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Reorganized Debtor respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: October 1, 2021
Wilmington, Delaware

/s/ Travis J. Cuomo

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Counsel for the Reorganized Debtor

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

In re:	X	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP,	:	Case No. 19-11563 (KBO)
	:	
Reorganized Debtor. ¹	:	
	:	Obj. Deadline: October 15, 2021 at 4:00 p.m. (ET)
	:	Hearing Date: November 2, 2021 at 11:00 a.m. (ET)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on October 1, 2021, the reorganized debtor in the above-captioned case (the “**Reorganized Debtor**”) filed the *Motion of the Reorganized Debtor for an Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure and Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **October 15, 2021 at 4:00 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street,

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

6th Floor, Courtroom 3, Wilmington, Delaware 19801 on **November 2, 2021 at 11:00 a.m.**
(prevailing Eastern Time).

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE
MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH
THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE
MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: October 1, 2021
Wilmington, Delaware

/s/ Travis J. Cuomo

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Counsel for the Reorganized Debtor

EXHIBIT A

Proposed Order

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

In re:	X	
	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP,	:	Case No. 19-11563 (KBO)
	:	
Reorganized Debtor. ¹	:	Re: Docket No.
	:	

**ORDER FURTHER EXTENDING PERIOD WITHIN WHICH THE REORGANIZED
DEBTOR MAY REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND RULE 9027
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
AND GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Reorganized Debtor for entry of an Order extending the time by which the Reorganized Debtor may file notices of removal under Bankruptcy Rule 9027 and granting related relief; the Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing (if any) before the Court; 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

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor’s federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Motion has been given and that no other or further notice is necessary; 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 order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The time periods provided under Bankruptcy Rules 9027(a)(2) and 9027(a)(3) within which the Reorganized Debtor may file notices of removal of any and all civil actions is extended to and including February 1, 2022, to the extent that the time period for filing any such notices of removal expires on or before such date.
3. The Reorganized Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
4. This Order is without prejudice to (a) any position the Reorganized Debtor may take on whether the injunctions under the Plan stay any given Civil Action pending against any Debtor or (b) the Reorganized Debtor's right to seek further extensions of the Removal Deadline.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.