

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

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

**CERTIFICATION OF COUNSEL REGARDING
STIPULATION AGREEING TO MEDIATION**

The undersigned hereby certifies as follows:

1. On September 5, 2019, the above-captioned reorganized debtors (collectively, the “**Debtors**”) filed the *First Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 324] (as may have been amended, modified or supplemented from time to time, the “**Plan**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).²

2. In connection with the above-captioned chapter 11 cases: (1) Market and Johnson, Inc. (“**M&J**”), Pownall Services, LLC (“**Pownall**”) and RB Scott Company, Inc. (“**RB Scott**”) each filed notices of statutory liens (the “**Noticed Liens**”) relating to certain of Debtor Superior Silica Sands LLC’s (“**SSS**”) property in Kingfisher, Oklahoma (the “**Kingfisher Property**”); (2) M&J, Pownall, RB Scott, TMT Solutions Inc. (“**TMT**”), Cooper Engineering Company, Inc. (“**Cooper**”), and EnDeCo Engineers, Inc. (“**EnDeCo**” and, together with M&J, Pownall, TMT,

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 On December 18, 2019, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 721].



RB Scott, and Cooper, collectively, the “**Kingfisher Claimants**”) each filed proofs of claim asserting claims (the “**Kingfisher Claims**”), and in certain cases asserting liens (the “**Claimed Liens**” and, together with the Noticed Liens, the “**Kingfisher Liens**”), securing such claims against the Debtors relating to the Kingfisher Property; (3) Pownall and M&J commenced adversary proceedings (the “**Kingfisher Adversary Proceedings**”) relating to the Kingfisher Property by filing complaints (the “**Complaints**”) against HPS Investment Partners LLC (“**HPS**”) and SSS; and (4) (i) Pownall, (ii) RB Scott, and (iii) M&J, Stout Excavating Group LLC (“**Stout**”), and A-1 Excavating, Inc. (“**A-1**” and, together with Stout, the “**Other Lien Claimants**” and, together with the Kingfisher Claimants, the Debtors and HPS, collectively, the “**Parties**”) filed certain objections and joinders, as applicable (the “**Confirmation Objections**” and, together with the Kingfisher Claims, Kingfisher Liens, and Kingfisher Adversary Proceedings, collectively, the “**Kingfisher Disputes**”), to the Plan³ arguing, among other things, that the value of the Kingfisher Property must be determined in connection with confirmation of the Plan.

3. On September 16, 2019 and December 23, 2019, the Debtors and HPS answered and asserted affirmative defenses to (i) Pownall’s Complaint and (ii) M&J’s Complaint, respectively. The Confirmation Objections were resolved by an agreement, stated on the record at a hearing held on October 30, 2019 (the “**Hearing**”), to schedule a separate hearing to determine the value of the Kingfisher Property.

4. Since HPS and the Debtors answered the Complaints and the conclusion of the Hearing, the Parties have engaged in discussions regarding, among other things, the resolution of the Kingfisher Disputes through mediation. As a result of such discussions, the Parties have

³ On December 10, 2019, the Debtors filed the *Second Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 682].

entered into that certain *Stipulation Agreeing to Mediation* (the “**Stipulation**”), governing, among other things, the mediation of the Kingfisher Disputes.

5. The Parties have prepared a proposed form of order (the “**Proposed Order**”), attached hereto as Exhibit A, approving the Stipulation.⁴ A copy of the executed Stipulation is attached to the Proposed Order as Exhibit 1. Copies of the Proposed Order and Stipulation have been circulated, and are acceptable to, the Kingfisher Claimants, the Other Lien Claimants, and HPS.

⁴ Paragraph 7 of the Proposed Order leaves open the continued hearing date for a date and time to be selected by, and that is convenient for, the Court. Consistent with paragraph 3 of the Stipulation, the Parties will make all reasonable efforts to schedule the mediation in advance of the rescheduled hearing selected by the Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: January 17, 2020
Wilmington, Delaware

/s/ David T. Queroli

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EXHIBIT A

Proposed Order

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

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
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ORDER DIRECTING MEDIATION REGARDING THE KINGFISHER PROPERTY

Upon consideration of the *Stipulation Agreeing to Mediation* (the “**Stipulation**”),² a copy of which is attached hereto as **Exhibit 1**; and the Court having determined that good and adequate cause exists for approval of the Stipulation and the referral of these disputes to mediation; it is hereby **ORDERED**:

1. The Stipulation is APPROVED.
2. The Parties shall participate in the Mediation in good faith to seek to resolve their disputes relating to the value of the Debtors’ interest in the Kingfisher Property, the Kingfisher Liens, the Kingfisher Claims, the claims and causes of action asserted in the Kingfisher Adversary Proceedings to the extent related to the Kingfisher Property, and, to the extent appropriate under the circumstances and agreed to by the relevant Parties, the Other Lien Matters.
3. The Honorable Kevin J. Carey (Ret.) or, in the event conflicts or other exigencies render Judge Carey unavailable, a mediator agreeable to all Parties is hereby appointed as mediator.

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 not defined herein shall have the same meaning as that ascribed to them in the Stipulation.

4. The Mediator shall establish the time and place of mediation, the timing of submission of materials, the persons required to attend the Mediation, and all other issues relating to the Mediation.

5. All proceedings related to the Confirmation Objections, the Liens, the Claims, the Kingfisher Adversary Proceedings, and the Other Lien Matters are hereby, and shall remain throughout the pendency of the Mediation, stayed.

6. The Debtors shall be responsible for payment of fifty percent of the Mediator's fees for the Mediation and the Claimants shall be collectively responsible for fifty percent.

7. The hearing in these cases scheduled for January 9, 2020 regarding the Kingfisher Property is hereby continued to _____, 2020.

8. Local Rule 9019-5 shall apply to the Mediation except to any extent inconsistent with this Order, in which case this Order shall govern.

EXHIBIT 1

Stipulation

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	

STIPULATION AGREEING TO MEDIATION

Pownall Services, LLC, Market & Johnson (“**M&J**”), Inc., RB Scott Company, Inc., TMT Solutions Inc., EnDeCo Engineers Inc., and Cooper Engineering Company, Inc., (collectively, the “**Kingfisher Claimants**”), Stout Excavating Group, LLC (“**Stout**”), and A-1 Excavating Inc. (“**A-1**”) (together and for purposes of this stipulation, the “**Other Lien Claimants**” and together with the Kingfisher Claimants, the “**Claimants**”) and the above-captioned reorganized debtors (the “**Debtors**” and, together with the Claimants and defendant HPS Investment Partners, LLC (“**HPS**”), collectively, the “**Parties**”) hereby stipulate to the following:

WHEREAS, the following notices of statutory liens (the “**Noticed Liens**”) have been filed by the respective Kingfisher Claimants, asserting liens on Debtor Superior Silica Sands LLC’s property in Kingfisher, Oklahoma, located at 13479 E0690 Road, Dover, OK (the “**Kingfisher Property**”):

- *Market & Johnson, Inc.’s Notice of Perfection of Statutory Lien Pursuant to 11 U.S.C. § 546(b)(2)* [Docket No. 253];
- *Pownall Services LLC’s Notice of Perfection of Liens Pursuant to 11 U.S.C. § 546(b)(2)* [Docket No. 302]; and

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.

- *RB Scott Company, Inc.’s Notice of Perfection of Liens Pursuant to 11 U.S.C. § 546(b)(2)* [Docket No. 429];

WHEREAS, the following proofs of claims have been filed by the respective Kingfisher Claimants, asserting claims (the “**Kingfisher Claims**”), and in certain cases asserting liens (the “**Claimed Liens**” and together with the Noticed Liens, the “**Kingfisher Liens**”) securing such claims, against the Debtors relating to the Kingfisher Property:

- TMT Solutions Inc., Proof of Claim No. 248;
- Pownall Services LLC, Proof of Claim No. 251;
- RB Scott Company, Inc., Proof of Claim No. 252;
- Cooper Engineering Company, Inc., Proof of Claim No. 285
- EnDeCo Engineers, Inc., Proof of Claim No. 287; and
- Market and Johnson, Inc., Proof of Claim Nos. 298 and 300;

WHEREAS, the following adversary proceedings relating to the Kingfisher Property (the “**Kingfisher Adversary Proceedings**”) have been initiated in the Debtors’ cases:

- *Pownall Services, LLC v. Superior Silica Sands LLC*, Adv. No. 19-50295;
- *Market & Johnson, Inc. v. Superior Silica Sands LLC*, Adv. No. 19-50728;

WHEREAS, on October 11, 2019, Pownall Services, LLC filed an objection [Docket No. 466], RB Scott Company, Inc. filed a joinder and objection [Docket No. 468], and on October 14, 2019, M&J, Stout, and A-1., filed their objection [Docket No. 477] (collectively, the “**Confirmation Objections**”) to the Debtors’ then-proposed plan;

WHEREAS, both Confirmation Objections argued that the value of the Kingfisher Property must be determined in connection with confirmation of the Debtors’ proposed plan;

WHEREAS, the Confirmation Objections were resolved by an agreement stated on the record at a hearing on October 30, 2019: that after the hearing to confirm the Debtors’ plan, the

Court would schedule a separate hearing to determine the value of the Kingfisher Property and other issues relating to the Kingfisher Liens;

WHEREAS, on September 16, 2019, and December 23, 2019, the Debtors and HPS answered the Complaints in the Kingfisher Adversary Proceedings, asserted affirmative defenses and denied liability to Claimants;

WHEREAS, pursuant to this agreement as to scheduling, the Court scheduled a hearing for January 9, 2020;

WHEREAS, the Parties have reached agreement (a) to continue the January 9 hearing to a date in February 2020, subject to the Court's availability, and (b) to mediate the value of the Debtors' interest in the Kingfisher Property, the Kingfisher Liens, the Kingfisher Claims, and the claims and causes of action asserted in the Kingfisher Adversary Proceedings to the extent related to the Kingfisher Property, which agreement is set forth herein;

WHEREAS, the Kingfisher Claimants will engage in a collective mediation with the Debtors and HPS to mediate the value of the Debtors' interest in the Kingfisher Property and any other of the foregoing issues to the extent such other issues are resolvable on a collective basis; and the Parties will consider in good faith additional mediation on an individual basis to resolve additional issues as appropriate;

WHEREAS, the Other Lien Claimants share common counsel with M&J in respect of the Debtors' Chapter 11 Cases and related proceedings, and the Other Lien Claimants and M&J have asserted certain claims and liens, and have commenced related adversary proceedings (collectively, the "**Other Lien Matters**") asserting liens and claims on property unrelated to the Kingfisher Property but which may be resolvable through mediation, and the Other Lien Claimants, on the one hand, and the Debtors and HPS on the other hand, will consider in good

faith joining the Other Lien Claimants in mediation to the extent appropriate to resolve any of the Other Lien Matters.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties stipulate and agree as follows:

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. The Parties agree to submit to mediation (the “**Mediation**”) to resolve their disputes relating to the value of the Debtors’ interest in the Kingfisher Property, the Kingfisher Liens, the Kingfisher Claims, the claims and causes of action asserted in the Kingfisher Adversary Proceedings to the extent related to the Kingfisher Property, and, to the extent appropriate under the circumstances and agreed to by the relevant Parties, the Other Lien Matters.

2. The parties agree to the Honorable Kevin J. Carey (Ret.) as mediator (the “**Mediator**”).

3. The Parties will jointly request that the Court reschedule the January 9, 2020 hearing relating to the Kingfisher Property to a date in February 2020, and will make all reasonable efforts to schedule the Mediation prior to the rescheduled hearing. During the pendency of the Mediation, all proceedings related to the Confirmation Objections, the Liens, the Claims, the Kingfisher Adversary Proceedings, and the Other Lien Matters will be stayed.

4. The Parties agree that the Debtors shall be responsible for payment of fifty percent of the Mediator’s fees for the Mediation and the Claimants shall be collectively responsible for fifty percent.

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Dated: January 17, 2020

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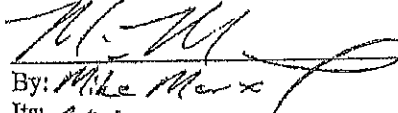
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Dated: January 17, 2020

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By: Mike Marx
Its: CEO

Dated: January 17, 2020

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