

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

In re: EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹ Debtors.	X : : : : : : X	Chapter 11 Case No. 19-11563 (KBO) Jointly Administered Re: Docket No. 759
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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.

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.



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.

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 March 12, 2020 at 10:00 a.m. (ET).

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.

**Dated: January 27th, 2020
Wilmington, Delaware**

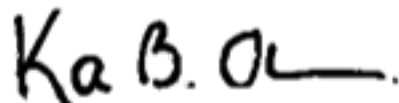

**KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE**

EXHIBIT 1

Stipulation

**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
	:	
-----	X	

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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Dated: January 17, 2020

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Counsel for the Reorganized Debtors

Dated: January 17, 2020

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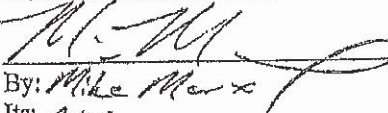
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Dated: January 17, 2020

TMT SOLUTIONS INC.


By: Mike Marx
Its: CEO

Dated: January 17, 2020

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Dated: January 17, 2020