

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EMERGE ENERGY SERVICES LP, *et. al.*,¹

Debtors.

Chapter 11

Case No. 19-11563 (KBO)
(Jointly Administered)

Related to Docket Nos. 830, 833 and 834

Hearing Date: June 4, 2020 at 10:00 a.m. (ET)
Obj. Deadline: To be presented at the Hearing

**TRINITY INDUSTRIES LEASING COMPANY’S MOTION FOR ENTRY OF AN
ORDER AUTHORIZING IT TO SEAL EXHIBIT A TO ITS OBJECTION TO MOTION
OF THE REORGANIZED DEBTORS FOR AN ORDER EXTENDING THE DEADLINE
FOR THE REORGANIZED DEBTORS TO OBJECT TO ADMINISTRATIVE CLAIMS
AND GRANTING RELATED RELIEF**

Trinity Industries Leasing Company (“Trinity”), by and through their undersigned counsel, hereby move this Court (this “Motion”) for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the “Order”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing Trinity to seal Exhibit A (“Exhibit A”) to Trinity’s *Objection* [Docket No. 833] (the “Objection”) to the above-captioned reorganized debtors’ (collectively, the “Reorganized Debtors”)² *Motion of the Reorganized Debtors for an Order Extending the Deadline*

¹ The Reorganized Debtors in these chapter 11 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 Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Prior to the occurrence of the Effective Date (defined below), the Reorganized Debtors were debtors and debtors-in-possession (collectively, the “Debtors”) in the Chapter 11 Cases.



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for the Reorganized Debtors to Object to Administrative Claims and Granting Related Relief [Docket No. 830] (the “Extension Motion”). In support of this Motion, Trinity respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-1(f), Trinity consents to the entry of a final order or judgment by the Court with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

Background

3. The relevant procedural background is set forth in the Objection, which is incorporated fully herein. In brief, on April 8, 2020, the Reorganized Debtors filed the Extension Motion seeking entry of an order extending the deadline by which they are required to object to administrative claims filed in these Chapter 11 Cases. Trinity filed its Objection to the Extension Motion on April 27, 2020. The Objection is supported by three exhibits, one of which – Exhibit A – contains sensitive confidential information belonging to Trinity.

Relief Requested

4. By this Motion, Trinity seeks entry of an Order pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d) Trinity to file Exhibit A to the Objection under seal and granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate.

Basis for Relief

5. The Bankruptcy Code, Bankruptcy Rules and Local Rules authorize the Court to limit the disclosure of certain confidential information to protect entities from potential harm.

6. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall .
. . (1) protect an entity with respect to a trade secret or
confidential research, development, or commercial
information

11 U.S.C. § 107(b)(1).

7. Bankruptcy Rule 9018 expands on the protections afforded by 11 U.S.C. § 107(b), providing in relevant part that “[o]n motion, or on its own initiative, with or without notice, the court may make *any* order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018 (emphasis added). Local Rule 9018-1(b) additionally provides, in relevant part, that “[a]ny entity seeking to file a document . . . under seal must file a motion requesting such relief” Del. Bankr. L.R. 9018-1(b).

8. Exhibit A to the Objection, is a letter from Trinity to the Reorganized Debtors advising them, among other things, that Trinity intended to fully prosecute its administrative claims. Exhibit A is a document necessary to support the Objection and is material to the Extension Motion. In particular, Exhibit A provides necessary background and other information concerning the use of Trinity’s railcars by the Debtors and the Reorganized Debtors without payment, which directly gives rise to the administrative expense at issue in the Objection.

9. Exhibit A references confidential business and commercial terms. The confidential portions of Exhibit A (generally, the “Confidential Information”) reflect Trinity’s efforts to have the new leases signed by the Reorganized Debtors concerning the use of Trinity’s railcars and the

proposed terms of such use. The Confidential Information is non-public and the disclosure of such information to third parties could materially harm Trinity's business by, for example, providing its competitor's with sensitive, confidential information concerning Trinity's pricing structure. Disclosure of such information could weaken Trinity's position in the marketplace.

10. The Confidential Information constitutes "commercial information," which may be protected under section 107(b) of the Bankruptcy Code. Accordingly, Trinity submits that the filing of Exhibit A to the Objection under seal is appropriate under section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1.

11. Finally, granting the relief requested herein will not materially prejudice any party in interest. Indeed, the Official Committee of Unsecured Creditors (the "Committee") has previously sought leave to file materially similar information under seal when attached as an exhibit to its objection to the approval of proposed new railcar lease agreements. *See* Docket No. 182. This Court granted the Committee's motion, *see* Docket No. 322, and allowed the Committee to file under seal nearly the same information Trinity seeks authority to file under seal in this Motion.

12. If the Court grants the relief sought herein, unredacted copies of Exhibit A will be provided only to the Court, the Debtors, and the U.S. Trustees, and others upon further Order of the Court. The Committee will file a sealed version of the Objection as a restricted document, in accordance with CM/ECF procedures. *Id.* Contemporaneously herewith, Trinity has filed a redacted version of Exhibit on the docket.

Local Rule 9018-1(d) Certification

13. The Certification of Counsel required by Local Rule 9018-1(d) is attached to this Motion as **Exhibit B** (the "Certification of Counsel") and incorporated herein by reference. As

set forth in the Certification of Counsel, to the best of Trinity's counsel's knowledge, information and belief, and subject to the disclosure in Paragraph 11, above, the Confidential Information contained in Exhibit A belongs to Trinity and Exhibit A does not contain information subject to Confidentially Rights of another Holder of Confidential Rights (as those terms are defined in Local Rule 9018-1(d)(ii).

Prior Request(s)

14. No prior request for the specific relief sought herein has been requested from this Court or any other court.

WHEREFORE, based on the foregoing, Trinity respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**: (i) authorizing Trinity to file Exhibit A to the Objection under seal; and (ii) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate.

Dated: April 27, 2020
Wilmington, Delaware

DUANE MORRIS LLP

s/ Jarret P. Hitchings
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Counsel to Trinity Industries Leasing Co.

Exhibit A

Proposed Order

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

In re:

EMERGE ENERGY SERVICES LP, *et. al.*,¹

Debtors.

Chapter 11

Case No. 19-11563 (KBO)
(Jointly Administered)

Related to Docket Nos. 830, 833 and 834

**ORDER GRANTING TRINITY INDUSTRIES LEASING COMPANY’S MOTION FOR
ENTRY OF AN ORDER AUTHORIZING IT TO SEAL EXHIBIT A TO ITS
OBJECTION TO MOTION OF THE REORGANIZED DEBTORS FOR AN ORDER
EXTENDING THE DEADLINE FOR THE REORGANIZED DEBTORS TO OBJECT
TO ADMINISTRATIVE CLAIMS AND GRANTING RELATED RELIEF**

Upon consideration of *Trinity Industries Leasing Company’s Motion for Entry of an Order Authorizing It to Seal Exhibit A to Its Objection to Motion of the Reorganized Debtors for an Order Extending the Deadline for the Reorganized Debtors to Object to Administrative Claims and Granting Related Relief* (the “Motion to Seal”),² pursuant to sections 107 of the Bankruptcy Code and Bankruptcy Rule 9018; the Court finds that it has jurisdiction over this matter; due and proper notice of the Motion to Seal has been given, and no other or further notice is required; and the Court having determined that the legal and factual bases set forth in the Motion to Seal establish just cause for the relief granted herein; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that the venue of this proceeding and this Motion to Seal is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation; and sufficient cause appearing therefor; it is hereby

¹ The Reorganized Debtors in these chapter 11 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 Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion to Seal.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion to Seal is **GRANTED** as set forth herein.
2. Pursuant to Bankruptcy Code Section 107(b), Bankruptcy Rule 9018, and Local Rule 9018-1, Trinity is authorized to file (a) Exhibit A to the Objection on the docket of these Chapter 11 Cases with the Confidential Information redacted in the manner set forth in the Motion to Seal, and (b) the unredacted version of Exhibit A to the Objection under seal.
3. Unredacted copies of Exhibit A to the Objection shall not be made available to anyone except for this Court, the Reorganized Debtors, and the U.S. Trustee, and others upon further Court Order.
4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Exhibit B

Certification of Counsel

**IN THE UNITED STATES BANKRUPTCY COURT
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Related to Docket Nos. 830, 833 and 834

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9018-1(d)(ii)

I, Jarret P. Hitchings, counsel of record to Trinity Industries Leasing Company (“Trinity”), hereby certify as follows with respect to Exhibit A to (“Exhibit A”) to Trinity’s *Objection* [Docket No. 833] (the “Objection”) to the above-captioned reorganized debtors’ (collectively, the “Reorganized Debtors”)² *Motion of the Reorganized Debtors for an Order Extending the Deadline for the Reorganized Debtors to Object to Administrative Claims and Granting Related Relief* [Docket No. 830] (the “Extension Motion”):

1. On April 27, 2020, Trinity filed its Objection to the Extension Motion.
2. Exhibit A to the Objection is a letter from Trinity to the Reorganized Debtors advising them, among other things, that Trinity intended to fully prosecute its administrative claims. Exhibit A is a document necessary to support the Objection and is material to the Extension Motion. In particular, Exhibit A provides necessary background and other information concerning the use of Trinity’s railcars by the Debtors and the Reorganized Debtors without payment, which

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² Prior to the occurrence of the Effective Date (defined below), the Reorganized Debtors were debtors and debtors-in-possession (collectively, the “Debtors”) in the Chapter 11 Cases.

directly gives rise to the administrative expense at issue in the Objection.

3. Exhibit A references confidential business and commercial terms. The confidential portions of Exhibit A (generally, the “Confidential Information”) reflect Trinity’s efforts to have the new leases signed by the Reorganized Debtors concerning the use of Trinity’s railcars and the proposed terms of such use. The Confidential Information is non-public and the disclosure of such information to third parties could materially harm Trinity’s business by, for example, providing its competitor’s with sensitive, confidential information concerning Trinity’s pricing structure. Disclosure of such information could weaken Trinity’s position in the marketplace. The Confidential Information constitutes “commercial information,” which may be protected under section 107(b) of the Bankruptcy Code.

4. I am aware that the Official Committee of Unsecured Creditors (the “Committee”) has previously sought leave to file materially similar information under seal when attached as an exhibit to its objection to the approval of proposed new railcar lease agreements. *See* Docket No. 182. This Court granted the Committee’s motion, *see* Docket No. 322, and allowed the Committee to file under seal nearly the same information Trinity seeks authority to file under seal in this Motion.

5. To the best of my knowledge, information and belief, and subject to the disclosure in the preceding paragraph, the Confidential Information contained in Exhibit A belongs to Trinity and Exhibit A does not contain information subject to Confidentially Rights of another Holder of Confidential Rights (as those terms are defined in Local Rule 9018-1(d)(ii).

[Signature Page Follows]

Dated: April 27, 2020
Wilmington, Delaware

DUANE MORRIS LLP

/s/ Jarret P. Hitchings

Jarret P. Hitchings (DE 5564)

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Counsel to Trinity Industries Leasing Co.

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**NOTICE OF TRINITY INDUSTRIES LEASING COMPANY’S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING IT TO SEAL EXHIBIT A TO ITS OBJECTION TO
MOTION OF THE REORGANIZED DEBTORS FOR AN ORDER EXTENDING THE
DEADLINE FOR THE REORGANIZED DEBTORS TO OBJECT TO
ADMINISTRATIVE CLAIMS AND GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on April 27, 2020, the undersigned filed *Trinity Industries Leasing Company’s Motion for Entry of an Order Authorizing It to Seal Exhibit A to Its Objection to Motion of the Reorganized Debtors for an Order Extending the Deadline for the Reorganized Debtors to Object to Administrative Claims and Granting Related Relief* (the “Motion to Seal”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that, unless otherwise ordered by the Court, in accordance with Local Rule 9018-1(d)(viii),² the Court will consider the Motion to Seal on **June 4, 2020 at 10:00 a.m. (ET)** (the “Hearing”).

¹ The Reorganized Debtors in these chapter 11 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 Debtor’s address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² For the avoidance of doubt, the Motion to Seal is noticed for June 4, 2020 in accordance with Local Rule 9018-1(d)(viii), which provides that if a motion to seal is filed in connection with an objection the Court will consider the sealing motion at the applicable hearing date scheduled for the motion to which the objection responds. Trinity Industries Leasing Company reserves the right to request the Hearing on its objection – and thus this Motion to Seal – be rescheduled for an earlier date.

PLEASE TAKE FURTHER NOTICE that, in accordance with Local Rule 9018-1(d)(viii), objections to the Motion to Seal, if any, may be presented at the Hearing the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if no objections are filed on or before the Objection Deadline, the Court may enter an order approving the Motion without further notice.

Dated: April 27, 2020
Wilmington, Delaware

DUANE MORRIS LLP

s/ Jarret P. Hitchings
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CERTIFICATE OF SERVICE

I, Jarret P. Hitchings, hereby certify that April 27, 2020, a true and correct copy of *Trinity Industries Leasing Company's Motion for Entry of an Order Authorizing It to Seal Exhibit A to Its Objection to Motion of the Reorganized Debtors for an Order Extending the Deadline for the Reorganized Debtors to Object to Administrative Claims and Granting Related Relief* was served on the persons listed below via CM/ECF and First Class Mail:

Richards, Layton & Finger, P.A.
John H. Knight
Paul N. Heath
Zachary I. Shapiro
One Rodney Square
920 North King Street
Wilmington, DE 19801

Latham & Watkins LLP
George A. Davis (admitted pro hac vice)
Keith A. Simon (admitted pro hac vice)
Hugh K. Murtagh (admitted pro hac vice)
Liza L. Burton (admitted pro hac vice)
885 Third Avenue
New York, New York 10022

Office of the United States Trustee
Attn: Juliet Sarkessian
United States Department of Justice
J. Caleb Boggs Federal Building
844 King Street, Suite 2207,
Lockbox 35
Wilmington, Delaware 19801

Dated: April 27, 2020
Wilmington, Delaware

DUANE MORRIS LLP

/s/ Jarret P. Hitchings
Jarret P. Hitchings (DE 5564)

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