

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

In re:

EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup>

Reorganized Debtors.

)  
) Chapter 11  
)  
) Case No. 19-11563 (KBO)  
)  
) (Jointly Administered)  
)  
) **Hearing Date: June 4, 2020 at 10:00 a.m. (ET)**  
**Related Docket Nos. 838, 840**

**REORGANIZED DEBTORS' REPLY IN SUPPORT OF  
THE REORGANIZED DEBTORS' MOTION FOR ENTRY OF A FINAL DECREE  
(I) CLOSING THE SUBSIDIARY CASES AND (II) GRANTING RELATED RELIEF**

The above-captioned reorganized debtors (collectively, the “Reorganized Debtors”)<sup>2</sup> file this reply (the “Reply”) in support of the *Motion of the Reorganized Debtors for Entry of a Final Decree (I) Closing the Subsidiary Cases and (II) Granting Related Relief* [Docket No. 838] (the “Motion”)<sup>3</sup> and in response to the *Pownall Services, LLC's Limited Objection to Debtors' Motion for Entry of a Final Decree (I) Closing the Subsidiary Cases and (II) Granting Related Relief* [Docket No. 840] (the “Objection”). In support of this Reply, the Debtors incorporate by reference the *Declaration of Hugh K Murtagh in Support of Reorganized Debtors' Reply in Support of the Reorganized Debtors' Motion for Entry of a Final Decree (I) Closing Subsidiary Chapter 11 Cases and (II) Granting Related Relief* (the “Murtagh Declaration”), filed with the Court concurrently herewith. In further support of this Reply, the Reorganized Debtors respectfully state as follows:

<sup>1</sup> The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 Reorganized Debtors' address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

<sup>2</sup> Prior to the occurrence of the Effective Date, the Reorganized Debtors were debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”).

<sup>3</sup> Capitalized terms used but not otherwise defined herein have the meaning given them in the Motion.



1. The Court should overrule the Objection. The Objection is littered with misstatements of fact (offered with no evidentiary support), makes no persuasive argument to rebut the Motion's request for closing of four of five of the Reorganized Debtors' Chapter 11 Cases, offers no explanation of how Pownall would be harmed by the case closings, and has no purpose other than to prejudice the Court's view of the Reorganized Debtors should the Kingfisher dispute ever return to this Court.

2. Pownall misstates almost all of the facts it recites regarding the Kingfisher dispute and the Reorganized Debtors' conduct. As regards Kingfisher, the quantum of liens asserted is not "approximately \$25 million," *Obj.* ¶ 1, it is less than \$8 million.<sup>4</sup> There are not four adversary proceedings relevant to Kingfisher, *Obj.* ¶ 1, there are two.<sup>5</sup> There is no credible valuation of the property at Kingfisher at "over \$15 million." *Obj.* ¶ 10. In fact, as Pownall should be well aware, this Court rejected a \$15 million valuation at a time when the economic outlook for frac sand production was indisputably far better than it is today. *See In re Emerge Energy Servs. LP, et al.*, No. 19-11563 (KBO), 2019 WL 7634308 at \*10 (Bankr. D. Del. Dec. 5, 2019) (the "*Confirmation Opinion*") (stating that even beginning from a cost-incurred metric of \$15 million "the price to be obtained in a like-user sale would likely be much lower due to depreciation and other factors leading to value destruction."). If these misstatements result from anything other than carelessness, their only purpose is to mislead the Court as to the scope and

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<sup>4</sup> The Debtors are aware of the following proofs of claim and associated claim amounts: (1) Market & Johnson, Inc.: \$3,957,088.00 (Claim No. 298); Pownall: \$1,598,738.31 (Claim No. 251); TMT Solutions Inc.: \$1,017,738.31 (Claim No. 248); RB Scott Company Inc.: \$834,345.50 (Claim No. 252); EnDeCo Engineers Inc.: \$345,743.50 (Claim No. 287); Cooper Engineering Company, Inc.: \$58,722.50 (Claim No. 285). The Debtors reserve all rights as to these claims, including without limitation as to their allowability, amount, extent, security, and priority.

<sup>5</sup> *Pownall Services, LLC v. Superior Silica Sands LLC*, Adv. No. 19-50295, and *Market & Johnson, Inc. v. Superior Silica Sands LLC*, Adv. No. 19-50728 relate to Kingfisher. *Stout Excavating Group LLC v. Superior Silica Sands LLC*, Adv. No. 19-50729, relates to property in Texas; and *A-I Excavating, Inc. v. Superior Silica Sands LLC*, Adv. No. 19-50730, relates to property in Wisconsin.

gravity of the Kingfisher dispute; they have no bearing on the merits of closing the Superior Silica case.

3. As regards the Debtors' conduct, Pownall states that the "Debtors are seeking to 'have their cake and eat it too'" by "refusing to move forward with mediation" while "seeking to close the Superior Silica Case." *Obj.* ¶ 2. Pownall filed this statement *after* having participated in a conference call with the Reorganized Debtors and the mediator during which all parties agreed on a process, and a tentative date, for concluding the mediation. *See* Murtagh Decl. ¶ 2. Furthermore, counsel for the Reorganized Debtors had been in frequent contact with Pownall and the other lien claimants prior to that call regarding the prospects for mediation, and reiterating the Reorganized Debtors' preference to adjourn mediation until it could be conducted in person. *See id.* ¶ 3. Ultimately, the Reorganized Debtors acceded to the lien claimants' (and mediator's) suggestion that the parties fix a date by which mediation would be held either in-person or via videoconference. *See id.* ¶ 2. Here, if Pownall's misstatements result from anything other than carelessness, their only purpose is to mislead the Court that the Reorganized Debtors are seeking to avoid the Kingfisher dispute, rather than to resolve it efficiently. Again, these statements have no bearing on the merits of closing the Superior Silica case.

4. The Objection also omits to mention that Pownall never raised any of its putative concerns with the Reorganized Debtors prior to filing the Objection. *Murtagh Decl.* ¶ 4. Pownall did not seek any comfort language in the order to address potential prejudice. *Id.* Pownall then rejected the Reorganized Debtors' offer, after having received the Objection, to consider such language. *Id.* Of course, the proposed order already includes substantial comfort language to assure all relevant parties, and specifically parties with contested matters pending before this Court, that closing the subsidiary cases, while leaving the parent case open, will be without prejudice to their rights. *See* Ex. A (Proposed Order) ¶ 6.

5. Indeed, Pownall will not be prejudiced if the Superior Silica case is closed and, apparently acknowledging that fact, fails to make any attempt whatsoever to argue how it will be prejudiced. In contrast, to date, the Reorganized Debtors have paid \$633,729.07 in Section 1930 Fees just relating to the Superior Silica case and, if such case remains open, estimate paying \$279,500.00 such fees through the end of the calendar year. Notably, the U.S. Trustee--the only party potentially prejudiced by closing the Superior Silica case--did not object to the Motion and, as you would have expected Pownall to do, negotiated agreed language to include in the proposed order to resolve its concerns.

6. The thrust of Pownall's misstatements and omissions is clear: Pownall is not concerned that closing the subsidiary cases will harm Pownall, instead Pownall saw and exploited an opportunity to prejudice the Court's view of the Reorganized Debtors in the event the Kingfisher dispute does return to this Court. The Reorganized Debtors are committed to resolving the dispute without the need to further trouble the Court, but in the event further Court proceedings are needed, Pownall's attempt to mislead the Court must be rejected. Finally, given that Pownall offers no persuasive reason to deny the Motion, the Court should overrule the Objection.

**CONCLUSION**

7. The Reorganized Debtors have met the standard for closing the Subsidiary Cases under Section 350 of the Bankruptcy Code, Bankruptcy Rule 3022, and other considerations recognized by courts. Therefore, the Reorganized Debtors respectfully request that the Court overrule the Objection, grant the relief requested in the Motion, and enter the Proposed Order, in substantially the form attached to the hereto as **Exhibit A**.<sup>6</sup>

Dated: June 1, 2020  
Wilmington, Delaware

*/s/ Travis J. Cuomo*

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*Counsel for the Reorganized Debtors*

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<sup>6</sup> Also attached hereto as **Exhibit B** is a redline of the proposed order redlined against the proposed order filed with the Motion. The changes shown address informal comments received.

**EXHIBIT A**

Proposed Order

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

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, : Case No. 19-11563 (KBO)  
: :  
Debtor. : Tax I.D. No. 90-0832937  
: :  
----- X

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES GP LLC, : Case No. 19-11564 (KBO)  
: :  
Debtor. : Tax I.D. No. 45-5174683  
: :  
----- X

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES OPERATING : Case No. 19-11565 (KBO)  
LLC, : :  
: Tax I.D. No. 61-1682511  
Debtor. : :  
X  
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----- X  
In re: : Chapter 11  
: :  
SUPERIOR SILICA SANDS LLC, : Case No. 19-11566 (KBO)  
: :  
Debtor. : Tax I.D. No. 90-0389889  
: :  
----- X

-----	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES FINANCE	:	Case No. 19-11567 (KBO)
CORPORATION,	:	
	:	Tax I.D. No. 46-5769875
Debtor.	:	
	:	
-----	X	

**FINAL DECREE (I) CLOSING THE  
SUBSIDIARY CASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>1</sup> of the Reorganized Debtors for entry of an order, pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rules 2002-1(f) and 3022-1, for entry of a final decree (i) closing the Subsidiary Cases and (ii) granting related relief, all as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 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 February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.



1. The Motion is granted as provided herein.
2. The Chapter 11 Cases of Emerge Energy Services GP LLC (Case No. 19-11564 (KBO)); Emerge Energy Services Operating LLC (Case No. 19-11565 (KBO)); Superior Silica Sands LLC (Case No. 19-11566 (KBO)); and Emerge Energy Services Finance Corporation (Case No. 19-11567 (KBO)) are hereby **CLOSED**.
3. The case of Emerge Energy Services LP (Case No. 19-11563 (KBO)) shall remain open pending further order of this Court.
4. The Clerk of this Court shall enter this order and final decree individually on each of the dockets of the above-captioned Chapter 11 Cases and each of the dockets of the Subsidiary Cases shall be marked as “Closed.”
5. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order and final decree in accordance with the Motion.
6. Entry of this order and final decree (a) is without prejudice to the rights of the Reorganized Debtors or any other party with requisite standing to (i) commence, prosecute and/or resolve any claim or Cause of Action, or (ii) object to claims filed against any Debtor or Reorganized Debtor; (b) is without prejudice to the rights of the Reorganized Debtors or any party in interest to reopen the Subsidiary Cases for cause; and (c) shall have no effect whatsoever on any contested or other matters pending before this Court.
7. For the avoidance of doubt, nothing in this order and final decree shall prejudice, effect or otherwise restrict Trinity Industries Leasing Company’s ability to: (a) prosecute and seek allowance of proofs of claim numbers 373 and 374, and seek a distribution from any of the Reorganized Debtors; (b) prosecute and seek allowance of proofs of administrative claim numbers 513 and 515, and seek a distribution from any of the Reorganized Debtors; and (c)

commence an adversary proceeding in Emerge Energy Services LP's Chapter 11 Case and/or enforce a judgement against any of the Reorganized Debtors; *provided, however*, that the Debtors reserve all rights, defenses, and counterclaims as to the foregoing.

8. The Debtors shall provide to the U.S. Trustee all quarterly reports not already filed, including reports for any partial quarter, within 21 days after entry of this Order, and pay any fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930, including fees for disbursements up through the date of entry of this Order, even if for a partial quarter ("**Quarterly Fees**"), within 21 days after entry of this Order; provided, however, that if any Debtor seeks to dissolve prior to 21 days after the entry of this Order, such Debtor shall pay all Quarterly Fees to the U.S. Trustee prior to dissolving.

9. Following entry of this order and final decree, the caption for Case No. 19-11563 (KBO) shall read as follows:

-----	X
In re:	: Chapter 11
	:
EMERGE ENERGY SERVICES LP,	: Case No. 19-11563 (KBO)
	:
Reorganized Debtor. <sup>1</sup>	:
	:
-----	X

<sup>1</sup> 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.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**EXHIBIT B**

Redline of Proposed Order

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

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES LP, : Case No. 19-11563 (KBO)  
: :  
Debtor. : Tax I.D. No. 90-0832937  
: :  
----- X

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES GP LLC, : Case No. 19-11564 (KBO)  
: :  
Debtor. : Tax I.D. No. 45-5174683  
: :  
----- X

----- X  
In re: : Chapter 11  
: :  
EMERGE ENERGY SERVICES OPERATING : Case No. 19-11565 (KBO)  
LLC, : :  
: Tax I.D. No. 61-1682511  
Debtor. : :  
: :  
----- X

----- X  
In re: : Chapter 11  
: :  
SUPERIOR SILICA SANDS LLC, : Case No. 19-11566 (KBO)  
: :  
Debtor. : Tax I.D. No. 90-0389889  
: :  
----- X

-----	X
In re:	: Chapter 11
	:
EMERGE ENERGY SERVICES FINANCE	: Case No. 19-11567 (KBO)
CORPORATION,	:
	: Tax I.D. No. 46-5769875
Debtor.	:
	:
-----	X

**FINAL DECREE (I) CLOSING THE  
SUBSIDIARY CASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>1</sup> of the Reorganized Debtors for entry of an order, pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rules 2002-1(f) and 3022-1, for entry of a final decree (i) closing the Subsidiary Cases and (ii) granting related relief, all as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 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 February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and ~~it appearing that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their estates, creditors, and all parties in interests; and~~ upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. The Chapter 11 Cases of Emerge Energy Services GP LLC (Case No. 19-11564 (KBO)); Emerge Energy Services Operating LLC (Case No. 19-11565 (KBO)); Superior Silica Sands LLC (Case No. 19-11566 (KBO)); and Emerge Energy Services Finance Corporation (Case No. 19-11567 (KBO)) are hereby **CLOSED**.
3. The case of Emerge Energy Services LP (Case No. 19-11563 (KBO)) shall remain open pending further order of this Court.
4. The Clerk of this Court shall enter this order and final decree individually on each of the dockets of the above-captioned Chapter 11 Cases and each of the dockets of the Subsidiary Cases shall be marked as “Closed.”
5. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order and final decree in accordance with the Motion.
6. Entry of this order and final decree (a) is without prejudice to the rights of the Reorganized Debtors or any other party with requisite standing to (i) commence, prosecute and/or resolve any claim or Cause of Action, or (ii) object to claims filed against any Debtor or Reorganized Debtor; (b) is without prejudice to the rights of the Reorganized Debtors or any party in interest to reopen the Subsidiary Cases for cause; and (c) shall have no effect whatsoever on any contested or other matters pending before this Court.

7. For the avoidance of doubt, nothing in this order and final decree shall prejudice, effect or otherwise restrict Trinity Industries Leasing Company’s ability to: (a) prosecute and seek allowance of proofs of claim numbers 373 and 374, and seek a distribution from any of the Reorganized Debtors; (b) prosecute and seek allowance of proofs of administrative

claim numbers 513 and 515, and seek a distribution from any of the Reorganized Debtors; and (c) commence an adversary proceeding in Emerge Energy Services LP's Chapter 11 Case and/or enforce a judgement against any of the Reorganized Debtors; *provided, however*, that the Debtors reserve all rights, defenses, and counterclaims as to the foregoing.

8. The Debtors shall provide to the U.S. Trustee all quarterly reports not already filed, including reports for any partial quarter, within 21 days after entry of this Order, and pay any fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930, including fees for disbursements up through the date of entry of this Order, even if for a partial quarter ("**Quarterly Fees**"), within 21 days after entry of this Order; *provided, however*, that if any Debtor seeks to dissolve prior to 21 days after the entry of this Order, such Debtor shall pay all Quarterly Fees to the U.S. Trustee prior to dissolving.

9. ~~7.~~ Following entry of this order and final decree, the caption for Case No. 19-11563 (KBO) shall read as follows:

-----	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP,	:	Case No. 19-11563 (KBO)
	:	
Reorganized Debtor. <sup>1</sup>	:	
	:	
-----	X	

<sup>1</sup> 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.

10. ~~8.~~ This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.