

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 : :
: :
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A-1 EXCAVATING, INC., :
: :
Plaintiff, :
v. : Adversary Proceeding No. 19-50730 (KBO)
: :
SUPERIOR SILICA SANDS LLC, and :
HPS INVESTMENT PARTNERS, LLC, :
: :
Defendant. :
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**CERTIFICATION OF COUNSEL REGARDING ORDER VACATING
ORDER ASSIGNING ADVERSARY PROCEEDING TO MEDIATION**

1. On October 25, 2019, A-1 Excavating, Inc. (“**A-1**”) commenced an adversary proceeding by filing its *Complaint* [Adv. Docket No. 1] against Superior Silica Sands LLC (“**SSS**”) and HPS Investment Partners, LLC (“**HPS**” and, together with SSS and A-1, the “**Parties**”).

2. On December 23, 2019, HPS and SSS each filed their respective *Answer and Affirmative Defenses to Plaintiff’s Complaint* [Adv. Docket Nos. 8 & 9].

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.



3. On January 27, 2020, the Court entered the *Order Directing Mediation Regarding the Kingfisher Property* [Case No. 19-11563 (KBO), Docket No. 765] approving a stipulation (the “**Mediation Stipulation**”) by and between, among other parties, A-1, HPS, and SSS. Pursuant to the Mediation Stipulation, the Parties jointly selected the Honorable Kevin J. Carey (Ret.) to mediate the above-captioned dispute (the “**Dispute**”). Due to travel and gathering restrictions caused by COVID, the mediation has been delayed, but the parties now have confirmed that they will be mediating over Zoom on July 22, 2020.

4. On July 2, 2020, the Court entered the *Order Assigning Adversary Proceeding to Mediation, Appointing Mediator, and Setting Mediation Deadlines and Trial Date* [Adv. Docket No. 11] (the “**Mediation Order**”), among other things, directing the Parties to mediate the Dispute before Ian Connor Bifferato (“**Mr. Bifferato**”).

5. After the Court entered the Mediation Order, counsel to SSS advised the Court and Mr. Bifferato that a mediation regarding the Dispute was already scheduled to take place on July 22, 2020 before the Honorable Kevin J. Carey (Ret.).

6. Accordingly, counsel to SSS has prepared a proposed form of order (the “**Proposed Order**”), attached hereto as **Exhibit A**, vacating the Mediation Order.²

7. Counsel to SSS has circulated the Proposed Order to counsel to A-1, counsel to HPS and Mr. Bifferato and none of the aforementioned parties object to the entry of the Proposed Order.

WHEREFORE, SSS respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, at its earliest convenience.

² Contemporaneously herewith, SSS has filed the *Notice of Selection of Mediator*.

Dated: July 10, 2020
Wilmington, Delaware

/s/ David T. Queroli

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Counsel for Superior Silica Sands LLC

Exhibit A

Proposed Order

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FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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EMERGE ENERGY SERVICES, LP,	:	Case No. 19-11563 (KBO)
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A-1 EXCAVATING, INC.,	:	
	:	
Plaintiff,	:	
v.	:	Adversary Proceeding No. 19-50730 (KBO)
	:	
SUPERIOR SILICA SANDS LLC, and	:	
HPS INVESTMENT PARTNERS, LLC,	:	Re: Adv. Docket No. ____
	:	
Defendant.	:	
-----	X	

**ORDER VACATING ORDER ASSIGNING
ADVERSARY PROCEEDING TO MEDIATION**

The Court having considered the *Certification of Counsel Regarding Order Vacating Order Assigning Adversary Proceeding to Mediation* [Adv. Docket No. ____] (the “**Certification of Counsel**”),² and the Court having determined that the Certification of Counsel establishes good and just cause for the relief granted herein,

IT IS HEREBY ORDERED that:

1. The Mediation Order [Adv. Docket No. 11] is hereby vacated.

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 used but not otherwise defined herein shall have the meanings ascribed to such terms in the Certification of Counsel.

2. This Order shall be effective immediately upon its entry.

3. This Court retains jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.