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ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, <i>et al.</i> , ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

**DEBTORS' EXPEDITED MOTION PURSUANT TO BANKRUPTCY RULE 9019
TO COMPROMISE CONTROVERSY WITH AXIS INSURANCE COMPANY**

**AN EXPEDITED HEARING HAS BEEN REQUESTED ON THIS MATTER
ON SEPTEMBER 24, 2020 AT 1:30 P.M. (CT) IN ROOM 204, U.S.
COURTHOUSE, 501 TENTH STREET, FORT WORTH, TEXAS 76102.**

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the "Debtors") hereby file this *Debtors' Expedited Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.



Axis Insurance Company (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

3. On June 23, 2020, an official committee of unsecured creditors (the “Committee”) was appointed in these Chapter 11 Cases. No trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their businesses and the facts and circumstances of the Debtors’ Chapter 11 Cases are set forth in greater detail in the *Declaration of Kristin Whitley in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* and the

Declaration of Gary Barton in Support of the Debtors' Chapter 11 Petitions and First Day Motions (collectively, the "First Day Declarations").

5. Prior to the Petition Date, the Debtors obtained an insurance policy (AXIS Policy No. MAF773031-18) (the "Policy") from Axis Insurance Company ("Axis"), with effective dates of coverage from June 1, 2018 through June 1, 2019, which insured a sand dryer located at 3549 Monroe Highway, Granbury, Texas (the "Property").

6. The Debtors submitted a claim (claim number ATL158991) under the Policy (the "Claim") seeking coverage under the Policy for alleged loss or damage to the Property on October 16, 2018 (the "Incident").

7. A dispute arose between the Debtors and Axis as to the existence and scope of all such loss and damage to the Property, the coverage for the Property provided by the Policy, and the measurement of the Claim for damage to the Property.

8. Following good faith negotiations, the Debtors and Axis determined that it was in their respective best interests to consensually and permanently resolve and settle all disputes between them arising out of or in any way related to the Incident and the Claim.

9. On September 17, 2020, the Debtors and Axis agreed to the form and substance of a Release and Settlement Agreement (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached to the Proposed Settlement Order (defined below) as **Exhibit 1**. The material terms of the Settlement Agreement are summarized below:²

- **Release**: Vista, on behalf of and including itself, its assigns, agents, servants, public adjusters, appraisers, experts, legal representatives, predecessors-in-interest, successors-in-interest, other insureds or additional insureds under the Policy (hereinafter "Insured Parties"), hereby releases and forever discharges Axis and its agents, servants, successors, assigns, representatives, administrators, subsidiaries, employers, employees, officers, directors,

² To the extent of any inconsistency between the description of the Settlement Agreement in this Motion and the Settlement Agreement itself, the terms of the Settlement Agreement shall control.

independent adjusters, appraisers, experts, attorneys, and all related or affiliated companies and/or business organizations (hereinafter “Insurance Parties”) from any and all claims, actions, demands, rights, damages (whether compensatory, consequential, and/or punitive), and causes of action of any kind, known or unknown, anticipated and unanticipated, accrued and unaccrued, past, present, and future, which have been asserted or could have been asserted, arising out of or in any way connected or related to the Incident or the Claim, , including but not limited to any and all claims arising from breaches of contract, breaches of the duty of good faith and fair dealing, violations of the applicable consumer protection acts and insurance codes, violations of common law, negligence, breaches of fiduciary duty, all other extra-contractual claims, and any other legal causes of action.

- Payment: Axis agrees to pay Vista Proppants and Logistics, LLC the sum of \$2 million (the “Settlement Amount”). The Settlement Amount is in addition to prior payments of \$6,324,961.00. Axis shall tender the Settlement Amount within thirty (30) days after the Parties have fully executed the Settlement Agreement. Axis shall consider any deductible/SIR applicable to the Incident and/or the Claim to be fully satisfied.
- Disclaimer of Liability: The Debtors agree and acknowledge that payment of the Settlement Amount is to be considered a full and complete compromise of matters involving disputed issues arising from or related to the Incident and the Claim; that neither payment of this Settlement Amount by Axis nor the negotiations for this settlement (including all statements, admissions, or communications) by Axis or its representatives shall be considered admissions by any of said parties and same is hereby expressly denied by all parties; and that no past or present wrongdoing on the part of Axis shall be implied by such payment or negotiations.

Relief Requested

10. By this Motion, the Debtors respectfully request the entry of an order, substantially in the form attached to the Motion as Exhibit A (the “Proposed Settlement Order”), pursuant to Bankruptcy Code Sections 105(a) and Federal Rule of Bankruptcy Procedure 9019, authorizing and approving the Debtors’ entry into, and performance under, the Settlement Agreement.

Basis for Relief Requested

11. Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. Proc. 9019(a).

Compromises and settlements are “a normal part of the process of reorganization.” *Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court may, in its discretion, approve settlements in accordance with Federal Rule of Bankruptcy Procedure 9019(a). *CFB-5, Inc. v. Cunningham*, 371 B.R. 175, 181 (N.D. Tex. 2007). “Approval should only be given if the settlement is fair and equitable and in the best interest of the estate.” *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997) (internal quotations omitted); *CFB-5*, 371 B.R. at 181; *In re Heritage Org., L.L.C.*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007).

12. In deciding whether the settlement of a controversy is “fair and equitable,” Courts have considered certain factors, including: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expenses, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *In re Cajun Elec.*, 119 F.3d at 355-56; *In re Heritage Org.*, 375 B.R. at 259. Courts have also considered the best interest of the creditors, with proper deference to their reasonable views, and the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion. *See In re Cajun Elec.*, 119 F.3d at 356; *In re Heritage Org.*, 375 B.R. at 260.

13. It is unnecessary for the Court to conduct a mini-trial before approving a settlement. *In re Heritage Org.*, 375 B.R. at 260. The Court need only make itself aware of the relevant facts and law so that it may make an informed and intelligent decision. *In re Cajun Elec.*, 119 F.3d at 356.

14. Here, the factors weigh in favor of approving the Settlement Agreement. The parties have agreed that the Settlement Agreement is in the best interest of all parties. The Debtors

and Axis seek to avoid the expense, uncertainty, and delay of litigation and have reached a consensual agreement regarding the Claim. The parties engaged in good faith, arm's-length negotiations to settle on the terms of the Settlement Agreement. The Debtors believe that the terms of the Settlement Agreement are fair and reasonable, and in the best interests of all creditors. Accordingly, the Debtors request that the Court approve the proposed Settlement Agreement.

Notice

15. Notice of this Motion will be provided to the parties listed on the Debtors' service list in accordance with the Order Granting Complex Chapter 11 Bankruptcy Case Treatment (collectively, the "Notice Parties").

WHEREFORE the Debtors respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 17th day of September, 2020.

HAYNES AND BOONE, LLP

By: /s/ David L. Staab
Stephen M. Pezanosky
State Bar No. 15881850
Matthew T. Ferris
State Bar No. 24045870
David L. Staab
State Bar No. 24093194
Alexandra Kirincic
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Email: alex.kirincic@haynesboone.com

ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

The undersigned counsel for the Debtors hereby certifies that on September 17, 2020, counsel for the Debtors conferred with counsel for Axis regarding the relief requested in the Motion. Counsel for the Axis consents to the relief requested in the Motion.

/s/ David L. Staab

David L. Staab

Exhibit A

Proposed Settlement Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

**ORDER GRANTING DEBTORS' EXPEDITED MOTION PURSUANT
TO BANKRUPTCY RULE 9019 TO COMPROMISE
CONTROVERSY WITH AXIS INSURANCE COMPANY**

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

Upon the *Debtors' Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with Axis Insurance Company* (the "Motion")² of Vista Proppants, LLC *et al.* (collectively, the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the 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:

1. The Motion is GRANTED.
2. The Settlement Agreement attached to this Order as **Exhibit 1** is hereby approved in its entirety and shall be effective according to its terms as if set forth in full in this Order.
3. The Debtors are authorized to take any and all actions necessary and proper to implement the terms of the Settlement Agreement and to perform all obligations thereunder on the conditions set forth therein.
4. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

5. Notwithstanding anything in this Order to the contrary, (a) payments authorized by, and any authorizations contained in, this Order are subject to the terms, conditions, limitations, and requirements of the *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities, (II) Granting Adequate Protection to Prepetition Secured Entities, and (III) Granting Related Relief* [Dkt. No. 219] (the “DIP Order”) and (b) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

END OF ORDER

Agreed to in form and substance:

By: /s/ David L. Staab
Stephen M. Pezanosky
State Bar No. 15881850
Matthew T. Ferris
State Bar No. 24045870
David L. Staab
State Bar No. 24093194
Alexandra Kirincic
State Bar No. 24116621
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ATTORNEYS FOR DEBTORS

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Attorney for Axis Insurance Company

Exhibit 1 to Settlement Order

Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

This AGREEMENT (“Agreement”) is made and entered by and between VISTA PROPPANTS AND LOGISTICS, LLC (“Vista”) and AXIS INSURANCE COMPANY (“Axis”) (sometimes collectively referred to as “the Parties”) for the purpose of settling all claims, controversies, and disputes against and between the Parties arising from or otherwise related to damage occurring to a sand dryer located at 3549 Monroe Highway, Granbury, Texas (the “Property”) on October 16, 2018 (the “Incident”), which was submitted under AXIS Policy No. MAF773031-18 (the “Policy”) and assigned insurance claim number ATL158991 (the “Claim”).

RECITALS

WHEREAS, Axis issued the Policy to Vista, with effective dates of coverage from June 1, 2018 through June 1, 2019, insuring the Property, subject to all terms, conditions and limitations therein;

WHEREAS, Vista submitted the Claim, seeking coverage under the Policy for alleged loss or damage to the Property resulting from the Incident;

WHEREAS, a dispute arose between Vista and Axis as to the existence and scope of all such loss and damage to the Property, the coverage for the Property provided by the Policy, and the measurement of the Claim for damage to the Property;

WHEREAS, the Parties now deem it to be in their respective best interests to permanently resolve and settle all disputes between them arising out of or in any way related to the Incident and the Claim.

WHEREAS, on June 9, 2020, Vista filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Bankruptcy Court”).

WHEREAS, this Agreement is subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants, and agreements expressed herein, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

In consideration of the covenants contained in this Agreement, the Parties agree as follows:

1. **Release**

Vista, on behalf of and including itself, its assigns, agents, servants, public adjusters, appraisers, experts, legal representatives, predecessors-in-interest, successors-in-interest, other insureds or additional insureds under the Policy (hereinafter “Insured Parties”), hereby releases and forever discharges Axis and its agents, servants, successors, assigns, representatives, administrators, subsidiaries, employers, employees, officers, directors, independent adjusters, appraisers, experts, attorneys, and all related or affiliated companies and/or business organizations (hereinafter “Insurance Parties”) from any and all claims, actions, demands, rights, damages (whether compensatory, consequential, and/or punitive), and causes of action of any kind, known or unknown, anticipated and unanticipated, accrued and unaccrued, past, present, and future, which have been asserted or could have been asserted, arising out of or in any way connected or related to the Incident or the Claim, , including but not limited to any and all claims arising from breaches of contract, breaches of the duty of good faith and fair dealing, violations of the applicable consumer protection acts and insurance codes, violations of common law, negligence, breaches of fiduciary duty, all other extra-contractual claims, and any other legal causes of action.

This Agreement shall be a fully binding and complete release by Insured Parties as against Insurance Parties in relation to the Incident and/or the Claim.

2. Payment

In consideration of the releases set forth in Paragraph 1, Axis agrees to pay the Vista the sum of TWO MILLION DOLLARS AND NO/100 DOLLARS (\$2,000,000.00 USD) (the "Settlement Amount"). The Settlement Amount is in addition to prior payment(s) of SIX MILLION, THREE HUNDRED TWENTY-FOUR THOUSAND, NINE HUNDRED SIXTY-ONE AND NO/100 DOLLARS (\$6,324,961.00 USD). The Settlement Amount shall be wired to the following account:

**LONESTAR PROSPECTS LTD BANKRUPTCY ACCT
DBA VISTA PROPPANTS AND LOGISTICS LLC
DIP CASE #20-42002 ELM11
RAILCAR ACCOUNT
US COURT NORTHERN TX DISTRICT Account # 8097196546
ROUTING NUMBER 111014325**

Axis shall tender the Settlement Amount within thirty (30) days after the Parties have fully executed this Agreement. Axis shall consider any deductible/SIR applicable to the Incident and/or the Claim to be fully satisfied.

3. Disclaimer of Liability

Vista agrees and acknowledges that payment of the Settlement Amount specified in Paragraph 2 of this Agreement is to be considered a full and complete compromise of matters involving disputed issues arising from or related to the Incident and the Claim; that neither payment of this Settlement Amount by Axis nor the negotiations for this settlement (including all statements, admissions, or communications) by Axis or its representatives shall be considered admissions by any of said parties and same is hereby expressly denied by all parties; and that no past or present wrongdoing on the part of Axis shall be implied by such payment or negotiations.

4. Attorneys' Fees and Costs

Each party hereto shall bear their own attorneys' fees and costs arising from or related to the Incident or the Claim, this Agreement and all other matters referred to herein.

5. Representation and Warranties

Vista represents and warrants that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Agreement; that Vista has the sole and exclusive right to receive the Settlement Amount specified in this Agreement; that Vista has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, rights, obligations, or causes of action referred to in this Agreement; and that Vista has the full and exclusive right and authority to execute this Agreement. Vista represents and warrants that all lenders, loss payees, public adjusters, vendors, consultants, and attorneys have been paid or will be paid any amount owed to them relating to damage at the Property out of payment of the Settlement Amount. Vista acknowledges that Axis has relied upon the representations and warranties contained in this Agreement in entering into this Agreement.

6. Wording of this Agreement

Neither Vista nor Axis shall be entitled to have any wording of this Agreement construed against the other party in the event that any dispute arises between them in connection with it.

7. Choice of Law

This Agreement is entered into in the State of Texas and shall be construed and interpreted in accordance with the laws of Texas.

8. Comprehension of Agreement and Consultation with Counsel

Vista represents and warrants that it enters into this Agreement relying wholly upon its own judgment, belief, and knowledge of the nature, extent, effect, and duration of any damages and liability therefore. Vista further represents that it relied or has had the opportunity to rely

upon the advice of personally selected counsel and have the terms of this Agreement completely read and explained by such counsel. Vista further states that the terms of this Agreement are fully understood and voluntarily agreed upon without duress.

9. Signature of Parties/Proof of Authority to Execute and Allocate

The undersigned warrant that they: (a) are over the age of eighteen (18) years; (b) have carefully read the foregoing, and fully understand the terms and provisions herein contained; and (c) agree and intend to be bound by its terms.

10. Tax Consequences

It is further understood among the Parties that Vista has not relied upon any representations, express or implied, made by Axis or its attorneys or representatives, as to the possible tax consequences of this agreement and that Vista hereby releases Axis and its attorneys and representatives from any and all liability in connection with any such tax consequences.

11. Entire Agreement and Successors in Interest

This Agreement contains the entire agreement between Vista and Axis with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between the Parties except as herein expressly set forth. The terms of this Agreement are contractual and not mere recitals.

12. Effectiveness

This Agreement shall become effective immediately following the occurrence of both (a) receipt of a fully executed Agreement by Axis and (b) entry and effectiveness of an Order by the Bankruptcy Court approving this Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019.

13. Confidentiality

The terms of this Agreement and all references to monetary consideration shall be kept confidential and shall be disclosed only to the Parties to this agreement and to their counsel, or as necessary for purposes of any approvals required for the bankruptcy proceeding, or as may be required by law or legitimate business purposes.

14. Multiple Originals

This Agreement may be executed by the Parties in multiple counterpart originals, and copies of the original signed Agreement, whether signed in whole or in counterpart, shall have the same binding effect as the original signed Agreement.

PRINTED NAME: _____

TITLE: _____

SIGNATURE _____

**AS AUTHORIZED REPRESENTATIVE OF
VISTA PROPPANTS AND LOGISTICS, LLC**

DATE: _____

PRINTED NAME: _____

TITLE: _____

SIGNATURE _____

**AS AUTHORIZED REPRESENTATIVE OF
AXIS INSURANCE COMPANY**

DATE: _____