

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-_____ (_____)
 :
 Debtors. : (Joint Administration Requested)
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DEBTORS’ MOTION FOR ENTRY OF ORDERS UNDER 11 U.S.C. §§ 105(a), 362(d), 363(b), 364(c) AND 503(b) AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION INSURANCE OBLIGATIONS, (II) PAY THEIR PREPETITION BONDING OBLIGATIONS, (III) MAINTAIN THEIR POSTPETITION INSURANCE COVERAGE, (IV) MAINTAIN THEIR BONDING PROGRAM, AND (V) MAINTAIN POSTPETITION FINANCING OF INSURANCE PREMIUMS

The debtors and debtors-in-possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (respectively, the “**Interim Order**” and the “**Final Order**”), under sections 105(a), 362(d), 363(b), 364(c) and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) authorizing the Debtors to (i) continue to (a) administer insurance coverage currently in effect, as set forth below, and pay all amounts on account of prepetition premiums, premium financing payments, taxes, charges, fees, and other obligations owed under or with respect thereto (including any fees (such fees, the “**Insurance Brokers’ Fees**”) due to the Debtors’ insurance brokers, Willis Towers Watson (“**Willis**”) and AON Risk Services Northeast (“**AON**” and, together with Willis and their affiliates, in such capacities, the “**Insurance Brokers**”)) (collectively, the “**Prepetition Insurance Obligations**”),

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.



and (b) pay amounts on account of any obligations owed to issuers of surety bonds on the Debtors' behalf that accrued but remain unpaid as of the Petition Date (as defined below), and any fees and other obligations associated therewith (including any fees (such fees, the "**Surety Broker's Fees**" and, together with the Insurance Brokers' Fees, the "**Brokers' Fees**") due to Willis, the Debtors' surety bond broker (in such capacity, the "**Surety Broker**" and, together with the Insurance Brokers, the "**Brokers**")) (collectively, the "**Prepetition Bonding Obligations**"), to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers' Fees) relating to (a) the insurance coverage and related programs, and any other additional, revised, or supplemental insurance policies or programs obtained by the Debtors (the "**Postpetition Insurance Obligations**" and, together with the Prepetition Insurance Obligations, the "**Insurance Obligations**") and (b) the Debtors' surety bond program (the "**Postpetition Bonding Obligations**" and, together with the Prepetition Bonding Obligations, the "**Bonding Obligations**"), as such payments become due; (iii) revise, extend, supplement, change, terminate and/or replace the Debtors' insurance coverage, or purchase new, supplemental, or replacement surety bonds (such bonds, together with the surety bonds outstanding as of the Petition Date, the "**Bonding Program**") as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to insurance premiums. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the "**Gaston**

Declaration”).² In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 364(c) and 503(b) of the Bankruptcy Code. Such relief is warranted under Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

2. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Gaston Declaration and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

4. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Gaston Declaration.

RELIEF REQUESTED

5. By this Motion, the Debtors request entry of the Interim Order and the Final Order authorizing the Debtors to (i) continue to (a) administer the Insurance Policies (as defined below) and pay their Prepetition Insurance Obligations, and (b) pay their Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) pay their Postpetition Insurance Obligations and their Postpetition Bonding Obligations in the ordinary course, as such payments become due; (iii) revise, extend, supplement, change, terminate and/or replace the Debtors' insurance coverage or the Bonding Program as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to insurance premiums.

6. While the Debtors do not believe any amounts are owing on account of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations, out of an abundance of caution, the Debtors seek authority under this Motion to make payments on account of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations in an amount not to exceed \$150,000 in the aggregate upon entry of the Interim Order, and in an amount not to exceed \$300,000 in the aggregate upon entry of the Final Order.

7. While the Debtors do not believe Court approval is required to maintain their existing Insurance Policies and Bonding Program or to amend, extend, or renew the Insurance Policies or the Bonding Program in the ordinary course of business, or to terminate and subsequently initiate new Insurance Policies or Bonding Programs, out of an abundance of caution, the Debtors request entry of the Interim Order and the Final Order authorizing them to take such actions and to pay their Insurance Obligations and their Bonding Obligations where necessary to maintain their Insurance Policies and Bonding Program.

BASIS FOR RELIEF

A. The Debtors' Insurance Obligations

8. In the ordinary course of business, the Debtors maintain certain insurance policies that are administered by multiple third-party insurance carriers (the "**Insurance Carriers**"), which provide coverage for, among other things, general and environmental liability, commercial automobile liability, employment practices liability, umbrella liability, excess liability, rolling stock and mobile equipment liability, directors' and officers' liability, excess liability, fiduciary liability, crime, property, and cyber (collectively, the "**Insurance Policies**").³ A detailed list of the Insurance Policies under which the Debtors are currently covered is attached hereto as Exhibit C. The Insurance Policies are essential to the preservation of the Debtors' businesses, property, and assets, and, in some cases, such coverage is required by various federal and state laws and regulations, as well as the terms of the Debtors' various commercial contracts. The Insurance Policies provide coverage that is typical in scope and amount for businesses within the Debtors' industry.

9. The total amount paid in annual premiums and payments associated with all of the Insurance Policies is approximately \$2 million.⁴ The Debtors' Insurance Policies renew at

³ The Debtors have separately sought authorization to honor their obligations under their workers' compensation programs (including making prepetition payments associated with insurance premiums) as part of the contemporaneously filed *Debtors' Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing (A) Payment of Certain Prepetition Workforce Obligations, and (B) Continuation of Workforce Programs on Postpetition Basis, (II) Authorizing Payment of Payroll-Related Taxes, (III) Confirming the Debtors' Authority to Transmit Payroll Deductions, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators, and (V) Directing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments*. The Debtors, however, have additionally included hereunder reference to workers' compensation insurance and the attendant premiums associated with such coverage out of an abundance of caution.

⁴ Debtor Superior Silica Sands LLC ("**SSS**") pays the premiums and other payments on behalf of all of the Debtors, which payments are recorded in the books and records of the Debtors.

various times throughout each year. The Debtors' primary general and environmental liability, commercial automobile liability, umbrella liability, excess liability, and rolling stock and mobile equipment liability policies are annual policies, each of which expire on May 30, 2020. The Debtors' general liability (farm homes) is an annual policy that expires on August 22, 2019. The Debtors' directors' and officers' liability policies are three-year policies that expire on February 20, 2020. The Debtors' fiduciary liability, crime, and employment practices liability policies are annual policies that expire on September 30, 2019. The Debtors' property and cyber policies are annual policies that expire on October 30, 2019.

10. Premiums under the general liability (farm homes), the directors' and officers' liability, fiduciary liability, crime, property, cyber and employment practices liability policies are due and were paid in full by the Debtors at the beginning of the relevant policy period or extension period, as applicable.

11. Because it is often not economically advantageous for the Debtors to pay their insurance premiums on a lump-sum basis, and in an effort to manage cash flows most efficiently, the Debtors have financed the premiums for the Debtors' primary general and environmental liability, commercial automobile liability, umbrella liability, excess liability, and rolling stock and mobile equipment liability policies (the "**Financed Policies**") pursuant to a premium financing agreement (the "**PFA**") between the Debtors and AFCO Credit Corporation ("**AFCO**").⁵ Under the PFA, the Debtors make eleven monthly payments of approximately \$81,029.87, each of which includes interest at a rate of 4.49%. The Debtors believe that, as of the Petition Date, no amounts are due and owing to AFCO in connection with the PFA.

⁵ The PFA is attached hereto as Exhibit E.

12. Willis and AON serve as the Debtors' insurance brokers and manage the Debtors' relationships with the Insurance Carriers. Among other things, the Insurance Brokers assist the Debtors in selecting the appropriate carriers (subject to the Debtors' approval) and represent the Debtors in negotiations with the Insurance Carriers. The Insurance Brokers have allowed the Debtors to obtain the insurance coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Insurance Brokers' Fees are included in the premium payments the Debtors make under the Insurance Policies. In 2018, the Debtors paid approximately \$200,000 in the aggregate to the Insurance Brokers in connection with the Insurance Policies.

13. Maintenance of insurance coverage under the various Insurance Policies on an uninterrupted basis is essential to the continued operation of the Debtors' businesses and is required under the United States Trustee's Operating Guidelines for Chapter 11 Cases (the "**Operating Guidelines**"), the federal laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. Thus, the Debtors submit that they should be authorized to continue to pay premiums, taxes, charges, fees, and other obligations owed under or with respect to the Insurance Policies or the financing of the same under the PFA as such obligations come due in the ordinary course of the Debtors' businesses.

14. The Debtors' maintenance of their relationships with the Insurance Carriers and Insurance Brokers, and premium financier AFCO, is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Accordingly, although the Debtors believe no Prepetition Insurance Obligations and no prepetition amounts under the PFA are outstanding, out of an abundance of caution the Debtors

request authorization to pay any Prepetition Insurance Obligations to the Insurance Carriers or the Insurance Brokers, or AFCO, as applicable, to the extent that the Debtors determine, in their sole discretion, that such payment is necessary to avoid cancellation, default, alteration, assignment, attachment, lapse, or any form of impairment to the coverage, benefits, or proceeds provided under the Insurance Policies, and to maintain good relationships with the various Insurance Carriers and the Insurance Brokers and premium financier AFCO. The Debtors additionally request, out of an abundance of caution, authority to renew or replace the Insurance Policies as necessary in the ordinary course.

B. The Debtors' Bonding Program

15. In the ordinary course of business, the Debtors are required by certain applicable statutes, rules, and regulations to participate in the Bonding Program, pursuant to which the Debtors provide surety bonds to certain third parties to secure the Debtors' payment or performance of certain obligations, often to governmental units or other public agencies. The Bonding Program generally covers reclamation, permits and taxes, conservation and environmental obligations, and other miscellaneous items (collectively, the "**Covered Obligations**"). A detailed list of the surety bonds that are currently maintained for the benefit of the Debtors is attached hereto as Exhibit D.⁶ The Bonding Program provides coverage that is typical in scope and amount for businesses within the Debtors' industry.

16. The issuance of a surety bond shifts the risk of the Debtors' nonperformance or nonpayment of their obligations covered by the surety bond from the beneficiary of the surety to the surety. If the Debtors fail to pay the Covered Obligations, the applicable surety will pay the Debtors' obligations, up to a specified amount. Unlike an insurance policy, if a surety incurs a

⁶ The Debtors request authority to honor obligations and renew all surety bonds, as applicable, notwithstanding any failure of the Debtors to include a particular surety bond on Exhibit D.

loss on a surety bond, the surety is entitled to recover the full amount of that loss from the Debtors.

17. As of the Petition Date, the Debtors' outstanding surety bonds were issued by three separate sureties: (i) One Beacon (two surety bonds totaling approximately \$7,670,000), (ii) Everest Reinsurance Company (one surety bond totaling approximately \$900,000), and (iii) Merchants Bonding Company Mutual (two surety bonds totaling approximately \$1,000) (collectively, the "**Sureties**").

18. The premiums for the surety bonds are generally determined on an annual basis and are paid when the bonds are issued and annually upon renewal. Such premiums are approximately 2.5% of the total amount of the surety bond, which are paid to the Surety Broker who in turn pays the Sureties. The total amount paid in annual premiums and payments associated with all of the surety bonds is approximately \$280,000. The Debtors do not believe that any amounts are currently due on account of the Prepetition Bonding Obligations.

19. Willis serves as the Debtors' Surety Broker and manages the Debtors' relationships with the Sureties. Among other things, the Surety Broker assists the Debtors in selecting the appropriate Sureties (subject to the Debtors' approval) and represents the Debtors in negotiations with the Sureties. The Surety Broker has allowed the Debtors to obtain the bonding coverage necessary to operate their businesses in a reasonable and prudent manner, and to realize savings in the procurement of such policies. The Surety Broker's Fees are included in the premium payments the Debtors make under the Bonding Program. In 2018, the Debtors paid approximately \$70,000 in the aggregate to the Surety Broker in connection with the Bonding Program.

20. To continue their business operations, the Debtors must be able to provide financial assurances to federal and state governments, regulatory agencies, and other third parties. This, in turn, requires the Debtors to maintain access to the existing Bonding Program, including by paying the Bonding Obligations as they come due, maintaining required letters of credit, and paying any indemnity obligations that may arise in connection with the Bonding Program in the ordinary course of business, as well as renewing or potentially acquiring additional bonding capacity as needed in the ordinary course of their businesses, requesting releases from obsolete bonding obligations, and executing other agreements in connection with the Bonding Program.

21. The Debtors, therefore, request that they be authorized to participate in the Bonding Program in the same manner as they did prepetition and to: (i) pay any Prepetition Bonding Obligations;⁷ (ii) continue to make all payments for Postpetition Bonding Obligations; and (iii) revise, extend, supplement, or change the Bonding Program as needed, including through the issuance of new surety bonds.

APPLICABLE AUTHORITY

A. Payment of the Insurance Obligations and Renewal of the Insurance Policies Is Necessary to Comply with United States Trustee Requirements

22. Maintenance of insurance coverage under the various Insurance Policies is essential to the continued operation of the Debtors' businesses and is required under the Operating Guidelines, the federal laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual

⁷ As with Prepetition Insurance Obligations, the Debtors believe there are no outstanding Prepetition Bonding Obligations and request the instant relief out of an abundance of caution.

commitments. *See* Operating Guidelines Sec. 6 (requiring maintenance of appropriate insurance coverage).

23. The Debtors believe that the ordinary course maintenance of their necessary insurance coverage, including paying all Insurance Obligations, satisfying all postpetition commitments to the Insurance Carriers, renewing the Insurance Policies, or entering into new insurance or premium financing arrangements, without further order of the Court, is necessary and essential to the Debtors' achievement of their chapter 11 objectives, especially where, as here, the Debtors' failure to take all actions necessary to honor their obligations to and preserve their relationships with the Insurance Carriers could have disastrous consequences for the Debtors' estates.

24. The employment of the Insurance Brokers is necessary for the ordinary course maintenance of the Insurance Policies in the most efficient, cost-effective manner (and has the additional benefit of positioning the Debtors to obtain the most competitive rates and high quality service from the Insurance Brokers in connection with any renewals of the Insurance Policies). Accordingly, to the extent that any amounts accrue on account of the Insurance Brokers' Fees or other amounts owed to the Insurance Brokers, the Debtors believe that they should be authorized to continue to pay such amounts as they come due.

B. Section 363 of the Bankruptcy Code Supports Payment of the Insurance Obligations and the Bonding Obligations

25. To the extent that payment of any of the Insurance Obligations and the Bonding Obligations sought to be paid under this Motion would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing payment of the amounts associated with such obligations is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a

hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims so long as a sound business purpose exists for the transaction. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b) [of the Bankruptcy Code], courts consider a variety of factors, which essentially represent a ‘business judgment test.’” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999). Once the debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

26. The Debtors have routinely paid premiums, taxes, charges, fees, and other obligations in connection with their Insurance Policies, premium financing arrangements, and the Bonding Program, and, thus, view the payments of such obligations as ordinary course payments. To the extent the Court (or any party in interest) believes that this Court’s express authorization under section 363(b) of the Bankruptcy Code is necessary to honor the Insurance Obligations or the Bonding Obligations, however, the Debtors’ assert that sound business judgment supports the relief requested herein because the failure to pay such obligations could result in the cancellation of their Insurance Policies or their surety bonds, the Debtors’ inability to obtain renewal of their Insurance Policies or their surety bonds on terms that are as

competitive, and the violation of the Operating Guidelines, the various applicable federal and state laws and regulations, various contractual commitments, and the fiduciary duties of the debtors in possession. Each of these outcomes would be detrimental to the Debtors, their creditors, and their estates. Accordingly, the Debtors submit that they have satisfied the requisite standard applied to requests under section 363(b) of the Bankruptcy Code and, to the extent necessary, this Court should authorize the payment of all the Insurance Obligations and the Bonding Obligations on such basis.

C. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations

27. To the extent any payments are made on account of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations, such payments should be authorized pursuant to section 105(a) of the Bankruptcy Code and under the “doctrine of necessity.” Section 105(a) of the Bankruptcy Code authorizes this Court “to issue any order . . . necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). The doctrine of necessity is a well-settled doctrine in this jurisdiction that permits a bankruptcy court to authorize the payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment);⁸ *see also In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E. D. Va.

⁸ The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport, C. & Sw. Ry. Co.*, 106 U.S. 286 (1882)[, in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity

1992) (“[T]he court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show the payment is necessary to avert a serious threat to the Chapter 11 process.”).

28. For the reasons stated herein, and in light of the risks applicable to the Debtors’ operations and the critical need for the Debtors to protect their assets and recoverable value from such risks through, among other things, maintenance of legally-mandated insurance coverage, good relationships with the Insurance Carriers and the Brokers, as well as maintenance of the Bonding Program, payment of the Prepetition Insurance Obligations and the Prepetition Bonding Obligations is proper and in accordance with section 105(a) of the Bankruptcy Code, and necessary to the Debtors’ achievement of their chapter 11 objectives.

D. Sections 363 and 364 of the Bankruptcy Code Support the Debtors’ Request to Maintain Postpetition Insurance Coverage, the Bonding Program, and the Premium Financing Arrangement, and Enter into New Coverage as Needed

29. The Debtors submit that section 363(c) of the Bankruptcy Code provides statutory authority for the Debtors’ request for authorization to satisfy all of the Debtors’ postpetition commitments with respect to the Insurance Carriers, the Brokers, and the Sureties, renew the Insurance Policies, the PFA, and surety bonds, or enter into new insurance policies, premium financing arrangements, and surety bonds in the Debtors’ reasonable and sole discretion. In pertinent part, section 363(c)(1) of the Bankruptcy Code provides that “unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the

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of the business in receivership. *See id.* at 309-14.] The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious jeopardy.”).

estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The maintenance of the Insurance Policies, the PFA, and the Bonding Program, and honoring of postpetition obligations arising thereunder, including undertaking renewals of the Insurance Policies and surety bonds as they expire or entering into new insurance arrangements, premium financing arrangements, or surety contracts, are each the type of ordinary course transactions contemplated by the foregoing provision. To the extent, however, that this Court (or any party in interest) believes that any such actions are not properly characterized as transactions in the ordinary course of the Debtors’ businesses, the Debtors respectfully request that this Court authorize the Debtors to take such actions pursuant to section 363(b) of the Bankruptcy Code as a reasonable exercise of their business judgment.

30. The Court may also authorize the Debtors to enter into new premium finance agreements pursuant to section 364(c)(2) of the Bankruptcy Code. Section 364(c)(2) authorizes, after notice and a hearing, a debtor in possession to obtain debt secured by a lien on property of the estate. *See* 11 U.S.C. § 364(c)(2). Under any new premium finance agreement, the counterparty would likely require that the Debtors grant a security interest in the unearned premiums under the policies being financed.

31. Section 364(c) authorizes a debtor, in the exercise of its business judgment, to incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. *See, e.g., In re General Growth Props., Inc.*, 412 B.R. 122, 125-26 (Bankr. S.D.N.Y., May 14, 2009) (granting motion for post-petition financing upon finding that (i) “no comparable credit [was] available on more favorable terms”; (ii) that the debtors needed post-petition financing to “to preserve [their] assets and continue their

operations”; and (iii) that the terms and conditions of the DIP Documents had been negotiated in good faith); *In re Budget Grp., Inc.*, Case No. 02-12152, 2002 Bankr. LEXIS 1050, *6 (Bankr. D. Del. Aug. 1, 2002) (authorizing funding of acquisition of property on a secured basis where acquired property was necessary to maintain operations and debtor could not obtain such funding on an unsecured basis). The Debtors believe that borrowing to maintain essential insurance coverage is in the best interests of the Debtors’ estates, and, as referenced above, premium financing companies would likely require a security interest in the unearned premiums under the policies being financed. Accordingly, the Court should authorize the Debtors to renew the PFA and/or execute new premium finance agreements post-petition under substantially similar terms.

E. Precedent Cases Support the Granting of the Requested Relief

32. Relief similar to the relief requested herein has been granted in this district in numerous chapter 11 cases. *See, e.g., In re Hexion Holdings LLC, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019); In Re Imerys Talc America Inc., Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019); In re J & M Sales Inc., Case No. 18-11801 (LLS); (Bankr. D. Del. Aug. 27, 2018); In re Samuels Jewelers, Inc., Case No. 18-11818 (KJC) (Aug. 8, 2018); In re Enduro Res. Partners LLC, Case No. 18-11174 (KG) (Bankr. D. Del. Jun. 8, 2018); In re Claire’s Stores, Inc., Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018); In re TK Holdings, Inc., Case No. 17-11375 (BLS) (Bankr. D. Del. Aug. 9, 2017).*

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

33. The request for authorization to pay the Insurance Obligations and the Bonding Obligations is subject to Bankruptcy Rule 6003, which provides for authorization to be obtained within twenty-one days after the Petition Date if necessary to avoid immediate and irreparable harm. The Debtors submit that standard is satisfied here. The Debtors believe that if any

Insurance Obligations or Bonding Obligations that come due are not authorized for payment as soon as possible and on an expedited basis, the Insurance Carriers or the Sureties may seek to terminate the Debtors' Insurance Policies or surety bonds. Specifically, the effect of potential cancellation of the Insurance Policies or the surety bonds – or even litigation regarding the same – would be devastating to the Debtors' estates, particularly at these early stages of the Chapter 11 Cases. Moreover, cancellation of the Insurance Policies or the surety bonds could render the Debtors in violation of the Operating Guidelines, the federal laws and regulations applicable to the Debtors' businesses, the laws of the various states in which the Debtors operate, and the Debtors' various contractual commitments. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rule 6003.

34. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

35. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would

constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Interim Order and Final Order once entered. Nothing contained in the Interim Order or the Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

CONSENT TO JURISDICTION

36. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

NOTICE

37. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (v) counsel to the DIP Agent and the Prepetition Agents; (vi) counsel to Insight Equity; (vii) the Insurance Carriers; (ix) the Sureties; (x) the Brokers; (xi) AFCO; and (xii) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

38. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, www.kccllc.net/EmergeEnergy.

NO PRIOR REQUEST

39. No previous request for the relief sought herein has been made to this Court or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Interim Order and Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: July 15, 2019
Wilmington, Delaware

/s/ Paul N. Heath

RICHARDS, LAYTON & FINGER, P.A.

John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Zachary I. Shapiro (No. 5103)
Brett M. Haywood (No. 6166)
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
E-mail: knight@rlf.com
heath@rlf.com
shapiro@rlf.com
haywood@rlf.com

- and -

LATHAM & WATKINS LLP

George A. Davis (*pro hac* vice admission pending)
Keith A. Simon (*pro hac* vice admission pending)
Hugh K. Murtagh (*pro hac* vice admission pending)
Liza L. Burton (*pro hac* vice admission pending)
885 Third Avenue
New York, New York 10022
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E-mail: george.davis@lw.com
keith.simon@lw.com
hugh.murtagh@lw.com
liza.burton@lw.com

Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Interim Order

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Joint Administration Pending)
	:	
	X	

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 362(d), 363(b), 364(c) AND 503(b)
AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION INSURANCE
OBLIGATIONS, (II) PAY THEIR PREPETITION BONDING OBLIGATIONS,
(III) MAINTAIN THEIR POSTPETITION INSURANCE COVERAGE,
(IV) MAINTAIN THEIR BONDING PROGRAM AND (V) MAINTAIN
POSTPETITION FINANCING OF INSURANCE PREMIUMS**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an Interim Order, authorizing the Debtors to (i) continue to (a) administer the Insurance Policies and pay the Prepetition Insurance Obligations and (b) pay the Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers’ Fees) relating to (a) the Postpetition Insurance Obligations, or (b) the Postpetition Bonding Obligations, as such payments become due; (iii) revise, extend, supplement, change, terminate, and/or replace the Debtors’ insurance coverage or the Bonding Program as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to

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

insurance premiums; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Interim Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies, the PFA, and the Bonding Program.
3. The Debtors are authorized, but not directed, to pay to the Insurance Carriers, the Brokers, AFCO, and the Sureties any amounts owed on account of the Insurance Obligations, the PFA, and the Bonding Obligations, whether incurred prepetition or postpetition, in the ordinary course of business and not on an accelerated basis; *provided that* payments on account of the Prepetition Insurance Obligations, the PFA, and the Prepetition Bonding Obligations shall not

exceed \$150,000 in the aggregate pursuant to this Interim Order without further order of this Court.

4. Notwithstanding anything to the contrary in any Insurance Policy, any agreement in respect of the Bonding Program, the PFA, or any related agreements, in the event the Debtors default under the terms of any of the foregoing, no Insurance Carrier, Surety, Broker, or AFCO shall purport to cancel, modify or take any other action adverse to the Debtors without first providing notice of such default in writing by overnight mail to the Debtors and their bankruptcy counsel, and at least 5 business days to cure. If the Debtors fail to cure the default within that time, then the relevant Insurance Carrier, Broker, Surety, or AFCO may, to the extent consistent with the terms of their agreement(s) with the Debtors, and without further order of this Court, exercise any and all of their rights under such agreement(s).

5. Subject to paragraph 14 of this Interim Order, the Debtors are authorized, but not directed, to revise, extend, supplement, change, terminate, and/or replace insurance coverage, premium financing arrangements, and their Bonding Program as needed and to enter into new insurance policies, premium financing arrangements, and surety bonds through renewal or purchase of new insurance policies, premium financing arrangements, and surety bonds, in each case without further notice to, hearing before, or order from this Court; *provided, however*, that absent further order of this Court upon notice, during the course of the Chapter 11 Cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the exiting PFA.

6. The Debtors are authorized to pay any prepetition or postpetition fees of the Brokers in connection with the Insurance Policies and the Bonding Program in the ordinary

course of business, subject to the cap set forth in paragraph 3 of this Interim Order with respect to prepetition obligations.

7. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to those Insurance Obligations and the Bonding Obligations whose payment is approved by this Interim Order, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

8. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

9. The Debtors are hereby authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests with respect to the Prepetition Insurance Obligations and the Prepetition Bonding Obligations dishonored or denied as a consequence of the commencement of the Chapter 11 Cases, and to reimburse any expenses that holders of claims in connection with the Prepetition Insurance Obligations and the Prepetition Bonding Obligations may incur as a result of any bank's failure to honor a prepetition check.

10. Nothing contained in the Motion or this Interim Order or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim held by, any person to whom any of the Insurance Obligations or the Bonding Obligations may be owed.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rules 6003(b) and 6004(a).

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon its entry.

13. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

14. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.

15. The final hearing (the “**Final Hearing**”) on the Motion shall be held on [_____, 2019, at_____:_____.m], prevailing Eastern Time. On or before [__:__.m.], prevailing Eastern Time, on [_____, 2019], any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-_____ (_____)
 :
 Debtors. : (Joint Administration Pending)
 :
 ----- X

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 362(d), 363(b), 364(c) AND 503(b)
 AUTHORIZING DEBTORS TO (I) PAY THEIR PREPETITION INSURANCE
 OBLIGATIONS, (II) PAY THEIR PREPETITION BONDING OBLIGATIONS,
 (III) MAINTAIN THEIR POSTPETITION INSURANCE COVERAGE,
 (IV) MAINTAIN THEIR BONDING PROGRAM, AND (V) MAINTAIN
POSTPETITION FINANCING OF INSURANCE PREMIUMS**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a Final Order, authorizing the Debtors to (i) continue to (a) administer the Insurance Policies and pay the Prepetition Insurance Obligations and (b) pay the Prepetition Bonding Obligations, to the extent the Debtors determine in their discretion that such payments are necessary or appropriate; (ii) in the ordinary course of business, pay all postpetition premiums, administrative fees, deductibles, and other obligations (including the Brokers’ Fees) relating to (a) the Postpetition Insurance Obligations, or (b) the Postpetition Bonding Obligations, as such payments become due; (iii) revise, extend, supplement, change, terminate, and/or replace the Debtors’ insurance coverage or the Bonding Program as needed in the ordinary course of business; and (iv) maintain or renew current, or enter into new, postpetition financing arrangements with respect to insurance premiums; and the

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

Court having reviewed the Motion and the Gatson Declaration, and the Interim Order entered on _____, 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this Final Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to continue their Insurance Policies, the PFA, and the Bonding Program.
3. All objections to entry of this Final Order, to the extent not withdrawn or settled, are overruled.
4. The Debtors are authorized, but not directed, to pay to the Insurance Carriers, the Brokers, AFCO, and the Sureties any amounts owed on account of the Insurance Obligations, the PFA, and the Bonding Obligations, whether incurred prepetition or postpetition, in the ordinary course of business and not on an accelerated basis.

5. All payments on account of the Prepetition Insurance Obligations, the PFA, and the Prepetition Bonding Obligations, collectively, shall not exceed \$300,000 in the aggregate pursuant to this Final Order without further order of this Court.

6. Notwithstanding anything to the contrary in any Insurance Policy, any agreement in respect of the Bonding Program, the PFA, or any related agreements, in the event the Debtors default under the terms of any of the foregoing, no Insurance Carrier, Surety, Broker, or AFCO shall purport to cancel, modify or take any other action adverse to the Debtors without first providing notice of such default in writing by overnight mail to the Debtors and their bankruptcy counsel, and at least 5 business days to cure. If the Debtors fail to cure the default within that time, then the relevant Insurance Carrier, Broker, Surety, or AFCO may, to the extent consistent with the terms of their agreement(s) with the Debtors, and without further order of this Court, exercise any and all of their rights under such agreement(s).

7. Subject to paragraph 15 of this Final Order, the Debtors are authorized, but not directed, to revise, extend, supplement, change, terminate, and/or replace insurance coverage, premium financing arrangements, and their Bonding Program as needed and to enter into new insurance policies, premium financing arrangements, and surety bonds through renewal or purchase of new insurance policies and surety bonds, in each case without further notice to, hearing before, or order from this Court; *provided, however*, that absent further order of this Court upon notice, during the course of the Chapter 11 Cases, the Debtors shall not renew or enter into any new premium financing agreement upon any terms less favorable than those in the exiting PFA.

8. The Debtors are authorized to pay any prepetition or postpetition fees of the Brokers in connection with the Insurance Policies and the Bonding Program in the ordinary

course of business, subject to the cap set forth in paragraph 5 of this Final Order with respect to prepetition obligations.

9. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to those Insurance Obligations and the Bonding Obligations whose payment is approved by this Final Order, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

11. The Debtors are hereby authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests with respect to the Prepetition Insurance Obligations and the Prepetition Bonding Obligations dishonored or denied as a consequence of the commencement of the Chapter 11 Cases, and to reimburse any expenses that holders of claims in connection with the Prepetition Insurance Obligations and the Prepetition Bonding Obligations may incur as a result of any bank's failure to honor a prepetition check.

12. Nothing contained in the Motion or this Final Order or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim held by, any person to whom any of the Insurance Obligations or the Bonding Obligations may be owed.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

14. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

15. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C**Policy Schedule**

POLICY TYPE	EFFECTIVE PERIOD	POLICY NUMBER	CARRIER	ANNUAL PREMIUM
Primary General & Environmental Liability	5/30/19-5/30/20	****9EE19	Aspen Specialty Insurance Co	\$171,295.95
Commercial Automobile Liability	5/30/19-5/30/20	****5191	Starr Indemnity & Liability Co	\$48,612.40
Umbrella Liability	5/30/19-5/30/20	****9EE19	Aspen Specialty Insurance Co	\$151,359.60
Excess Liability	5/30/19-5/30/20	****08606	Colony Insurance Co	\$47,512.51
Rolling Stock & Mobile Equipment Liability	5/30/19-5/30/20	****14919	Starr Indemnity & Liability Co	\$79,714.00
General Liability (Farm Homes)	8/22/18-8/22/19	****6400	Covington Specialty Insurance Co	\$1,445.09
Directors and Officers Liability	8/31/17-2/28/20	****1117	Indian Harbor Insurance Co	\$522,500.00
Excess Directors and Officers Liability	8/31/17-2/28/20	****03205	Markel American Insurance Co	\$261,500.00
Excess Directors and Officers Liability	8/31/17-2/28/20	****2429	Freedom Specialty Insurance Co	\$145,522.00
Excess Directors and Officers Liability	8/31/17-2/28/20	****71317	XL Specialty Insurance Co	\$94,668.00
Excess Directors and Officers Liability	8/31/17-2/28/20	****6960	Illinois National Insurance Co	\$37,870.00
Excess Directors and Officers Liability	8/31/17-2/28/20	****9068	Allied World National Assurance Co	\$32,185.00
Excess Directors and Officers Liability	8/31/17-2/28/2020	****2301	Endurance American Insurance Co	\$30,642.00
Fiduciary Liability	8/31/18-9/30/19	****1157	Great American Insurance Co	\$3,200.00
Crime	8/31/18-9/30/19	****79-03	Zurich American Insurance Co.	\$8,700.00
Employment Practices Liability	8/31/18-9/30/19	****0047	Great American Insurance Co	\$32,178.00

POLICY TYPE	EFFECTIVE PERIOD	POLICY NUMBER	CARRIER	ANNUAL PREMIUM
Property	10/30/18-10/30/19	1. ****8905	Indian Harbor Insurance Co.	\$336,067.00 ¹
		2. ****50-18	Axis Surplus Insurance Co.	
		3. ****6502	Zurich American Insurance Co.	
		4. ****1803	HDI Global Insurance Co.	
		5. ****6100		
		6. ****3018	Liberty Mutual Fire Insurance Co.	
		7. ****8728	Homeland Insurance Co. of New York	
		8. ****MT18	Aspen Specialty Insurance Co.	
		9. ****1314	QBE Specialty Insurance Co.	
		10. ****2084	Underwriter at Lloyds	
		11. ****4C18	Validus Specialty Underwriting Services, Inc.	
		12. ****R18A	XL Insurance America, Inc.	
		13. ****4B17	Underwriter at Lloyds	
		14. ****98-1A	Allied World Assurance Co. (U.S.) Inc.	
		15. ****0108	HCC Specialty Insurance Co.	
		16. ****9700	Westport Insurance Corporation	
		17. ****2200	Ironshore Specialty Insurance Co.	

¹ The Debtors' indirect parent entity, Insight Equity Management Company LLC ("**Insight**"), is the named insured on the above referenced property policy, which is part of a larger, umbrella property Insurance Policy that covers other Insight portfolio companies. For the avoidance of doubt, the Debtors' payment of \$336,067 relates only to insurance coverage of the Debtors' property and no other property covered under the umbrella property Insurance Policy.

POLICY TYPE	EFFECTIVE PERIOD	POLICY NUMBER	CARRIER	ANNUAL PREMIUM
		18. ****2713	Evanston Insurance Co.	
Cyber	10/30/18 <input type="checkbox"/> 10/30/19	****9300	Endurance American Specialty Ins. Co.	\$23,500.00

EXHIBIT D**Bonding Obligations**

Obligee	Principal	Surety	Nature of Bond	Surety Bond Number	Surety Bond Amount
Barron County Soil and Water Conservation Department	Superior Silica Sands LLC	One Beacon	Reclamation Bond	800008776	\$4,700,000
Chippewa County Department of Land Conservation and Forest Management	Superior Silica Sands LLC	One Beacon	Reclamation Bond	800008775	\$2,970,000
State of Oklahoma	Superior Silica Sands LLC	Everest Reinsurance Company	Reclamation Bond	ES00002074	\$900,000
State of Wisconsin	Brittany Ludwigson	Merchants Bonding Company Mutual	Notary Bond	W*21614	\$500
State of Wisconsin	Trisha Nelson	Merchants Bonding Company Mutual	Public Official Bond	WI2574	\$500

EXHIBIT E

PFA



Commercial Premium Finance Agreement - Promissory Note

5600 N River Road, Suite 400, Rosemont, IL 60018-5187
 TEL. NOS. 847-685-6700 800-288-8214

Agent (Name and Address) Willis of Texas, Inc. 15305 North Dallas Parkway Ste 1100 Colonnade III Dallas, TX 75001 972-385-9800	10052978	Insured (Name and Address as shown on the policy) Superior Silica Sands, LLC Emerge Energy Services LP Attn : Chief Financial Officer 5600 Clearfork Main St Suite 400 Fort Worth, TX 76109 817-841-8070
-----------------------------------------------------------------------------------------------------------------------------------------------	----------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

A) Total Premiums	B) Down Payment	C) Amount Financed	D) Finance Charge	E) Total Payments
\$871,638.46	\$0.00	\$871,638.46	\$19,690.11	\$891,328.57
F) Annual Percentage Rate	No. of Payments	Amount of Payments	First Installment Due	Installment Due Dates
4.490 %	11 (Monthly)	\$81,029.87	06/30/2019	30th

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
ERAA9EE18	05/30/2019	Aspen Specialty Insurance Company CRC Insurance Services, Inc. Galleria North Tower One 13737 Noel Road 10th Floor Dallas, TX 75240 USA	GL	12*	162,639.00
		Broker Fee	FEE	NRef	500.00
		Stamping Fee	FEE	Ref	244.71
		Policy Detail Continued...			

(1) DEFINITIONS: The above named Insured is the borrower. AFCO Credit Corporation ("AFCO") is the lender. "Insurance company" or "company", "insurance policy" or "policy" and "premium" refer to those items listed under the "Schedule of Policies". Singular words mean plural and vice-versa as may be required in order to give the agreement meaning.

NOTICE TO INSURED: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement at the time you sign. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge. 4. Keep your copy of this agreement to protect your legal rights.

INSURED AGREES TO ALL TERMS SET FORTH ON ALL PAGES OF THIS AGREEMENT AND ANY ADDENDA THERETO.

[Signature] Robby Myers VP Finance 6/13/19
 SIGNATURE OF INSURED(S) OR AUTHORIZED REPRESENTATIVE PRINT NAME TITLE DATE

AGENT OR BROKER REPRESENTATIONS

The undersigned warrants and agrees: (A) The policies are in full force and effect and the information in the Schedule of Policies has been verified and is correct. (B) The Insured authorized this transaction, recognizes the security interest assigned herein and has received a copy of this agreement. (C) To hold in trust for AFCO any payments made or credited to the Insured through or to the undersigned, directly or indirectly, actually or constructively by any party and to pay the monies as well as any unearned commissions to AFCO promptly to satisfy the outstanding indebtedness of the Insured. (D) There are not and will not be any other liens given against the listed policies and the premiums are not and will not be financed by any other lender. (E) The policies comply with AFCO's eligibility requirements. (F) No audit or reporting form policies, policies subject to retrospective rating or minimum earned premium are included. The deposit or provisional premiums are not less than anticipated premiums to be earned for the full term of the policies. (G) The Insured can cancel the policies and the unearned premiums will be computed on the standard short-rate or pro-rata table. (H) No proceeding(s) in bankruptcy, receivership, or insolvency have been instituted by or against the Insured. (I) All premiums shall be paid to the insurer(s). (J) No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. (K) AFCO will rely upon these representations in determining whether to accept this Agreement.

IF THERE ARE ANY EXCEPTIONS TO THE ABOVE STATEMENTS, PLEASE LIST BELOW:

THE UNDERSIGNED FURTHER WARRANTS THAT IT HAS RECEIVED THE DOWN PAYMENT AND ANY OTHER SUMS DUE AS REQUIRED BY THE AGREEMENT AND IS HOLDING SAME OR THEY ARE ATTACHED TO THIS AGREEMENT

[Signature] Sam LaRocca 6/13/19
 AGENT OR BROKER SIGNATURE OF AGENT OR BROKER TITLE DATE

*: Subject to Audit


Commercial Premium Finance Agreement - Promissory Note

 5600 N River Road, Suite 400, Rosemont, IL 60018-5187
 TEL. NOS. 847-685-6700 800-288-8214

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SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
		Surplus Lines Tax	TAX	Ref	7,912.24
EXAA9EF18	05/30/2019	Aspen Specialty Insurance Company CRC Insurance Services, Inc. Galleria North Tower One 13737 Noel Road 10th Floor Dallas, TX 75240 USA	XSLB	12	143,902.00
		Broker Fee	FEE	NRef	250.00
		Stamping Fee	FEE	Ref	216.23
		Surplus Lines Tax	TAX	Ref	6,991.37
ITD1000704149 19	05/30/2019	Starr Indemnity & Liability Company	IM	12	79,714.00
1000198725191	05/30/2019	Starr Indemnity & Liability Company Surcharge	AUTO SUR	12 NRef	48,567.00 45.40
1000002229	05/30/2019	Starr Indemnity & Liability Company	WC	12*	373,144.00
EXO306606	05/30/2019	Aspen Specialty Insurance Company CRC Insurance Services, Inc. Galleria North Tower One 13737 Noel Road 10th Floor Dallas, TX 75240 USA	EXCE	12	45,000.00
		Stamping Fee	FEE	Ref	67.88
		Surcharge	SUR	NRef	250.00
		Surplus Lines Tax	TAX	Ref	2,194.63

- (2) **PROMISE OF PAYMENT:** The Insured (i) requests that AFCO pay the premiums in the Schedule of Policies, less the Down Payment and any installments paid prior to acceptance of this Agreement and (ii) promises to pay to AFCO the amount stated in Block E above according to the payment schedule, subject to the remaining terms of this agreement. No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. AFCO may, at its option, pay loan proceeds to any agent, broker, general agent, managing general agent or insurer set forth herein. Payments to AFCO are deemed made only upon receipt in good funds. Checks are accepted, subject to collection.
- (3) **SECURITY INTEREST AND POWER OF ATTORNEY:** The Insured assigns and hereby gives a security interest to AFCO as collateral for the total amount payable in this agreement and any other past, present or future extension of credit: (a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy. If any circumstances exist in which all premiums related to any policy could become fully earned in the event of any loss, AFCO shall be named a loss-payee with respect to such policy. AFCO at its option may enforce payment of this debt without recourse to the security given to AFCO. The Insured irrevocably appoints AFCO as its attorney in fact with full authority to (i) cancel all insurance financed by AFCO for the reason set forth in paragraph 12, whether pursuant to this or any other agreement, (ii) receive all sums hereby assigned to AFCO and (iii) execute and deliver on the Insured's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance in furtherance of this agreement.
- (4) **WARRANTY OF ACCURACY:** The Insured (i) warrants that all listed insurance policies have been issued to it and are in full force and effect and that it has not and will not assign any interest in the policies except for the interest of mortgagees and loss payees and (ii) authorizes AFCO to insert or correct on this agreement, if omitted or incorrect, the insurer's name, the policy numbers, and the due date of the first installment and to correct any obvious errors. In the event of any such change, correction or insertion, AFCO will give the Insured written notice thereof.
- (5) **REPRESENTATION OF SOLVENCY:** The Insured represents that it is not insolvent or the subject of any insolvency proceeding.
- (6) **ADDITIONAL PREMIUMS:** The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. If an additional premium becomes due on a financed policy AFCO may pay the additional premium and amend this Agreement. The additional premium may be added to this agreement only if a Memorandum of Agreement between the agent or broker named in this Agreement is given to the Insured before the first installment due date of the Amended Agreement. If AFCO assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any agreement or agreements identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by AFCO to the totality of such transaction.
- (7) **SPECIAL INSURANCE POLICIES:** If the insurance policy is auditable or is a reporting form policy or is subject to retrospective rating, then the Insured promises to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.
- (8) **NAMED INSURED:** If the insurance policy provides that the first named insured in the policy shall be responsible for payment of premiums and shall act on behalf of all other insureds regarding the policy, then the same shall apply to this Agreement and the Insured represents that it is authorized to sign on behalf of all insureds. If not, then all insureds' names must be shown on this agreement unless a separate agreement appoints an insured to act for the others.
- (9) **FINANCE CHARGE:** The finance charge shown in Block D begins to accrue as of the earliest policy effective date, unless otherwise indicated in the Schedule of Policies, and shall continue to accrue until the balance due AFCO is paid in full or until such other date as required by law, notwithstanding any cancellation of coverage. If AFCO issues a Notice of Cancellation, AFCO may recalculate the total finance charge payable pursuant to this Agreement, and the Insured agrees to pay interest, on the Amount Financed set forth herein, from the first effective date of coverage, at the highest lawful rate of interest.
- (10) **AGREEMENT BECOMES A CONTRACT:** This Agreement becomes a binding contract when AFCO mails the Insured its acceptance and is not a contract until such time.
- (11) **DEFAULT AND DISHONORED CHECK CHARGES:** If the Insured is late in making a loan payment to AFCO by more than ten (10) days, the Insured will pay to AFCO a delinquency charge of 5% of any delinquent installment. If a check is dishonored, the Insured will pay a check processing fee not to exceed the lesser of \$25 or the amount permitted by law.
- (12) **CANCELLATION:** AFCO may cancel all insurance policies financed by AFCO after giving statutory notice and the full balance due to AFCO shall be immediately payable if the Insured does not pay any installment according to the terms of this or any other agreement with AFCO. Payment of unearned premiums shall not be deemed to be payment of installments to AFCO, in full or in part.
- (13) **CANCELLATION CHARGES:** If AFCO cancels any insurance policy in accordance with the terms of this agreement, then the Insured will pay AFCO a cancellation charge, if permitted, up to the limit specified by law.
- (14) **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payments made to AFCO after mailing of AFCO's Notice of Cancellation may be credited to the Insured's account without affecting the acceleration of this agreement and without any liability or obligation to request reinstatement of a canceled policy. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus paid over to whomever is entitled to the money. No refund of less than \$1.00 shall be made. In the event that AFCO requests, on the Insured's behalf, reinstatement of the policy, such request does not guarantee that coverage will be reinstated.
- (15) **ATTORNEY FEES - COLLECTION EXPENSE:** If, for collection, this agreement is referred to an attorney and/or other party who is not a salaried employee of AFCO, the Insured agrees to pay to AFCO all court costs actually incurred and reasonable attorney fees assessed by a court.
- (16) **REFUND CREDITS:** The Insured will receive a refund of the finance charge, calculated according to the rule of 78s, if the account is voluntarily prepaid in full before the last installment due date. If full prepayment occurs before the first installment due date, AFCO may retain a finance charge computed according to the following formula: Number of days from inception of the policy to full prepayment, multiplied by one month's interest computed according to the rule of 78s divided by 30. No refund of less than \$5.00 shall be made. AFCO may retain an additional non-refundable administrative fee of \$25.00 for a loan of more than \$1,000 or \$20.00 for a loan of \$1,000 or less.
- (17) **INSURANCE AGENT OR BROKER:** The insurance agent or broker named in this agreement is the Insured's agent, not AFCO's and AFCO is not legally bound by anything the agent or broker represents to the Insured orally or in writing. AFCO has not participated in the choice, placement, acquisition or underwriting of any financed insurance.
- (18) **NOT A CONDITION OF OBTAINING INSURANCE:** This agreement is not required as a condition for obtaining insurance coverage.
- (19) **SUCCESSORS AND ASSIGNS:** All legal rights given to AFCO shall benefit AFCO's successors and assigns. The Insured will not assign this Agreement and/or the policies without AFCO's written consent except for the interest of mortgagees and loss payees.
- (20) **LIMITATION OF LIABILITY - CLAIMS AGAINST AFCO:** The Insured hereby irrevocably waives and releases AFCO from any claims, lawsuits and causes of action which may be related to any prior loans and/or to any act or failure to act prior to the time that this Agreement becomes a binding contract, pursuant to paragraph 10. AFCO's liability for breach of any of the terms of this agreement or the wrongful exercise of any of its powers shall be limited to the amount of the principal balance outstanding, except in the event of gross negligence or willful misconduct. Any claims against AFCO shall be litigated exclusively in the Supreme Court of the State of New York, County of New York.
- (21) **DISCLOSURE:** The insurance company or companies and their agents, any intermediaries and the insurance agent or broker named in this agreement and their successors are authorized and directed to provide AFCO with full and complete information regarding all financed insurance policy or policies, including, without limitation, the status and calculation of unearned premiums.
- (22) **ENTIRE DOCUMENT - GOVERNING LAW - ENFORCEMENT VENUE:** This document is the entire agreement between AFCO and the Insured and can only be changed in a writing signed by both parties except as stated in paragraph (4). The laws of the State of Texas will govern this agreement. AFCO may, at its option, prosecute any action to enforce its rights hereunder in the Supreme Court of the State of New York, County of New York, and the Insured (i) waives any objection to such venue and (ii) will honor any order issued by or judgment entered in such Court.
- (23) **WAIVER OF SOVEREIGN IMMUNITY:** The Insured hereby certifies that it is empowered to enter into this agreement without any restrictions and that the individual signing it has been fully empowered to do so. To the extent that the Insured either possesses or claims sovereign immunity for any reason, such sovereign immunity is expressly waived and the Insured agrees to be subject to the jurisdiction of the laws and courts set forth in the preceding paragraphs.