

**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.*,<sup>1</sup> : Case No. 19-11563 (KBO)  
: :  
Debtors. : Jointly Administered  
: :  
----- X **Re: Docket Nos. 8, 63 & 72**

**CERTIFICATION OF COUNSEL REGARDING  
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**

The undersigned hereby certifies as follows:

1. On July 15, 2019, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *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* [Docket No. 8] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. On July 17, 2019, the Court entered the *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*

<sup>1</sup> 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.



*Postpetition Insurance Coverage, (IV) Maintain Their Bonding Program, and (V) Maintain Postpetition Financing of Insurance Premiums* [Docket No. 63] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of 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; and (B) Final Hearing Thereon* [Docket No. 72], objections to the Motion were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET).

4. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee and the official committee of unsecured creditors (the “**Committee**”). The Comments were resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (“**Revised Order**”).

5. The Revised Order has been circulated to counsel to the Committee, counsel to the DIP Agent and the Prepetition Agents, and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Motion, and no objection or responsive pleading to the Motion has appeared on the Court’s docket in these chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as Exhibit B.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: August 12, 2019  
Wilmington, Delaware

/s/ Travis J. Cuomo

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*Proposed Counsel for Debtors and Debtors-in-Possession*

**EXHIBIT A**

**Revised 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> , <sup>1</sup>	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	x	<b>Re: Docket Nos. 8 &amp; 63</b>

**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**”)<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 July 17, 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, to the extent incurred 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. 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. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as a waiver of the Official Committee of Unsecured Creditors' rights to object to any postpetition payment of the Insurance Obligations, the PFA, and the Bonding Obligations to the extent that the Committee and its professionals determine such payments are not ordinary course of business or that underlying insurance coverage is no longer necessary to preserve the Debtors' estates.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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.

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.

**EXHIBIT B**

**Blackline**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

----- X  
 In re: : Chapter 11  
 :  
 EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> : Case No. ~~19~~ 19-11563  
 : [\(KBO\)](#)  
 :  
 Debtors. :  
 : (Joint Administration Pending)  
 ----- X

[Re: Docket Nos. 8 & 63](#)

**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,  
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enter into new, postpetition financing arrangements with respect to insurance premiums; and the Court having reviewed the Motion and the Gatson Declaration, and the Interim Order entered on ~~July 17~~, 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 to the extent~~ 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~~ 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. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as a waiver of the Official Committee of Unsecured Creditors' rights to object to any postpetition payment of the Insurance Obligations, the PFA, and the Bonding Obligations to the extent that the Committee and its professionals determine such payments are not ordinary course of business or that underlying insurance coverage is no longer necessary to preserve the Debtors' estates.

10. ~~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.

11. ~~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.

12. ~~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.

13. ~~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.

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

15. ~~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

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UNITED STATES BANKRUPTCY JUDGE