IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EMERGE ENERGY SERVICES LP,[1]	)	Case No. 19-11563 (KBO)
	)	(Jointly Administered)
Reorganized Debtor.	)	
	)	**Obj. Deadline: December 17, 2020 at 4:00 p.m.**
	)	**Hearing Date: January 21, 2021 at 11:00 p.m.**
	)	
	)	**Related Docket No. 682**

JOINT MOTION OF MARKET AND JOHNSON, INC. AND POWNALL SERVICES, LLC TO ENFORCE PROVISIONS OF REORGANIZED DEBTOR'S CONFIRMED CHAPTER 11 PLAN

Pursuant to 11 U.S.C. § 1142 and Fed. R. Bankr. P. 3021, Market and Johnson, Inc. ("M&J")[2] and Pownall Services, LLC ("Pownall), creditors in this case (collectively, "Secured Creditors"), through their undersigned counsel, file this joint motion (the "Motion") to enforce certain provisions of *Debtors' Second Amended Joint Plan of Reorganization* [Doc. No. 682, the "Confirmed Plan"]. In support of their Motion, the Secured Creditors assert as follows:

PRELIMINARY STATEMENT

The Reorganized Debtor engages in the mining of silica sand. It has facilities in Wisconsin, Texas, and Oklahoma. The Secured Creditors hold properly perfected secured claims (whether characterized as construction liens or mechanic's and materialmen's liens under state law) against the Reorganized Debtor's sand facilities in Kingfisher, Oklahoma.[3] Throughout this case, the

[1]The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor's address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

[2] M&J's secured claim also contains components allocable to EnDeCo Engineers, Inc. and Cooper Engineering Company, Inc.

[3] The Secured Creditors also assert secured claims on assets located at other facilities owned by the Debtors, but those claims are not the subject of the present motion.

Secured Creditors have asserted that their liens are superior to those of the Reorganized Debtor's lenders on the Kingfisher Facility. In their *First (Substantive) Omnibus Objection to, or Motion to Reclassify, Purported Secured Claims* [Doc. No. 876, the "Omnibus Objection"], the Reorganized Debtor argued that the Kingfisher Facility was "worthless" for valuation purposes such that it could retain the facility without paying anything to the Secured Creditors on account of their claims secured by liens on the facility. The Reorganized Debtor now proposes to surrender the facility to the Secured Creditors but has failed to provide a timeline for doing so other than to telegraph its unwillingness to do so without a global resolution of all claims relating to the facility, as further discussed below. Given the economic harm that has resulted from the Reorganized Debtor's delay in this case to date, the Secured Creditors submit the Reorganized Debtor should be ordered to surrender the facility immediately.

BACKGROUND

1. The above-captioned reorganized debtor (the "Reorganized Debtor"), and certain affiliates, including Superior Silica Sands, LLC ("Superior"), each filed for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") on July 15, 2019 (the "Petition Date").

2. The Reorganized Debtor, through its operation of Superior, engages in the mining, processing, and distribution of silica sand for use in hydraulic fracturing (or "fracking") of oil and gas wells. Superior has silica mining facilities in Wisconsin, Texas, and Oklahoma.

3. The Secured Creditors have asserted lien rights under relevant state law. For purposes of this Motion, the Secured Creditors hold statutory lien rights on real property and improvements on Superior's mines in Kingfisher County, Oklahoma (the "Kingfisher Facility").

4. The Secured Creditors each filed a timely proof of claim in this case. A total of six creditors have asserted mechanics' or materialmen's liens against the Kingfisher Facility. These claims total approximately $7.5 million.[4]

5. Prior to the Petition Date, Pownall filed a lawsuit in Kingfisher County, Oklahoma, to foreclose upon its lien (the "Oklahoma Foreclosure"). Pownall named M&J and the other lien claimants as defendants. The other lien claimants appeared and asserted their lien interests by way of answers and counterclaims. The Oklahoma Foreclosure has been stayed by the pendency of this case but it remains pending.

6. After a contested confirmation hearing, the Court initially denied confirmation of the Reorganized Debtor's first amended plan in an order dated December 6, 2019. [Doc. No. 671, the "Confirmation Decision"]. The Court subsequently entered an order confirming the Confirmed Plan on December 18, 2019 [Doc. No. 719].

7. The Reorganized Debtor's Confirmed Plan defines a "Secured Claim" as a claim that is "secured by a Lien on property in which any of the Debtors' Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, *to the extent of the value of the Claim holder's interest in such Estate's interest in such property* or to the extent of the amount subject to setoff, as applicable, *as determined pursuant to section 506(a) of the Bankruptcy Code* or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code." Confirmed Plan, Doc. No. 682, at 17 (emphasis added).

8. The Confirmed Plan defines "Other Secured Claim" as "*any* Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim." *Id*., at 13.

[4] As is discussed in greater detail below, under Oklahoma law all valid mechanics' or materialmen's liens have the same level of priority and receive a pro rata distribution from the sale of any collateral.

9. In the Confirmed Plan, Other Secured Claims are classified as "Class 2." *Id*., at Art. III.B.2.

10. The Confirmed Plan provides that each holder of an allowed Class 2 Claim shall receive, at the "election" of the Reorganized Debtor:

> (A) *Cash equal to the amount of such Allowed Class 2 Claim*; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed in writing; (C) *the Collateral securing such Allowed Class 2 Claim*; or (D) *such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code*. . . . For the avoidance of doubt, any Lien that secures a Class 2 Claim shall be retained against the applicable Collateral until such Class 2 Claim is paid or reserved in full in Cash or *Disallowed* by order of the Bankruptcy Court.

Id. (emphasis added).

11. As concerns the treatment of construction or mechanics' or materialmen's liens, the Reorganized Debtor's Disclosure Statement provided as follows:

> In some cases, vendors have asserted liens ("M&M Liens") to secure allegedly accrued and unpaid amounts owing under prepetition contracts with the Debtors. The Debtors are aware of the assertion of M&M Liens filed against various of the Debtors' properties at which the subject work and/or services were allegedly supplied. These properties include Debtor-owned property at Kingfisher, Oklahoma, Kosse, Texas, San Antonio, Texas, and Chippewa County, Wisconsin. The Debtors continue to examine the validity and perfection of such liens and their related claims, as well as the relative priority of any such valid and perfected liens relative to other valid and perfected liens on the affected properties. To the extent any valid and perfected M&M Liens enjoy a priority in respect of the affected property sufficient to render the related claims secured, those claims will be treated as Other Secured Claims under the Plan, while any deficiencies will be treated as General Unsecured Claims. The Debtors continue to reserve all rights in respect of the asserted M&M Liens.

See Disclosure Statement, Article II.C.3.

12. Further, the Disclosure Statement acknowledged that as to the Kingfisher Facility, the Debtors were "not aware of the existence of any mortgage" in favor of the Prepetition Lenders. *See* Disclosure Statement, Article IIC.1, 2, and 3.[5]

13. Valuation of their assets was a substantial issue during the confirmation hearing conducted in November of 2019. The Secured Creditors had filed an objection to confirmation and were prepared to present evidence during the confirmation hearing (including, in M&J's case, testimony of an expert) regarding the *replacement value* of the Kingfisher Facility as contemplated by § 506(a) for purposes of determining their "Allowed Class 2 Claims" under the plan. However, the Court deferred ruling on the issue, which was instead to be resolved only in the event the plan was confirmed.

14. During the confirmation hearing, the Reorganized Debtor's expert expressed a variety of valuations tied to the Kingfisher Facility, including a "liquidation" value range of between $440,000.00 and $4 million and an estimated "going concern" valuation of between $6 million and $9 million. The "going concern" valuation was tied to a discount of the book value of work-in-progress construction costs of the facility.

15. During the confirmation hearing, the Reorganized Debtor's expert also testified that, as to the Kingfisher Facility, it was "possible it's worth zero or it's a liability," but that the $6 million to $9 million valuation range was established "hoping that somebody – maybe a local player down there wants a different location." When the Court asked if this was a "replacement value," the expert said "I would think it's just what the value of the assets that are there sold as a – not in a liquidation where you're just selling piece by piece, *but maybe somebody who wants to*

[5] The Reorganized Debtor has likewise acknowledged this fact in their Omnibus Objection. *See* ¶ 9 ("there are no mortgages on the Kingfisher real property to secure the Prepetition Funded Debt").

finish this project." *See* Confirmation Transcript of Testimony of Adam Dunayer, at 83-84 (emphasis added; excerpts attached hereto as Exhibit A).

16. In its Confirmation Decision, the Court concluded that it was not appropriate to value the Kingfisher Facility as "an operating facility," and, in the context of addressing the objections of the Unsecured Creditors' Committee, saw no reason to "disrupt" the Debtors' proffered liquidation value (in a chapter 7 case) of between $400,000 to $4 million for the facility. *See* Doc. No. 671, at 12. However, the Court also noted that the Debtors "intend to long-term idle the facility to maintain *the option* to resume development if and when it is deemed appropriate and financing obtained." *Id*., at 3 (Emphasis added).

17. After the Reorganized Debtor's Plan was confirmed, the Court scheduled a special purpose hearing in January of 2020 to determine the value of the Kingfisher Facility for purposes of establishing the allowed secured claims of lienholders with interests in that property. Prior to the hearing, the parties agreed to mediate the dispute. Given unexpected circumstances affecting all parties over the subsequent months, mediation was postponed on several occasions but was ultimately conducted, without success, on July 22, 2020.

18. After the unsuccessful mediation, the Reorganized Debtor filed its Omnibus Substantive Objection. Wherein it again asserted the intention to *retain* the Kingfisher Facility. The only objection raised in the Omnibus Substantive Objection was to the *value* of the facility for purposes of determining secured claims under § 506(a). Admittedly, the Reorganized Debtor did not "concede" validity of the liens against the facility. *See* Doc. No. 876 at ¶ 30. However, it did not raise any other substantive issues with the liens themselves and thus may have waived them pursuant to Del.Bankr.L.R. 3007-1(f)(iii).[6] Instead, the Reorganized Debtor simply contended that

[6] The Secured Creditors reserve all rights in this regard.

the value of the Kingfisher Facility was "de minimus [sic] at most." *See* Doc. No. 876 at ¶ 31 (bracketed material supplied). They also argued (i) there was a "lack of current and forecasted demand and significant oversupply of sand in the basin;" (ii) it was unlikely the market "will move dramatically enough that mining at Kingfisher Site becomes economical;" and (iii) the market has "only declined further" since the Reorganized Debtor's "emergence from bankruptcy." *Id.*, at ¶¶ 31-33.

19. The Secured Creditors responded to the Omnibus Subtantive Objection and requested a hearing as to valuation of the Kingfisher Facility for purposes of determining their secured claims under § 506(a). In reply, the Reorganized Debtor suddenly changed course and decided to invoke the alternative option referenced in the plan – namely, surrender of the facility.

20. Since then, the Reorganized Debtor conducted an auction of certain items located at the Kingfisher Facility. The Reorganized Debtor has argued that these items are "personal property" and are therefore not subject to the liens (which, under Oklahoma law, attach to the real estate, buildings, and "appurtenances"). The Secured Creditors believe that at least some of the items sold by the Reorganized Debtor were previously affixed to the real estate (or were affixed to an item affixed to the real estate) in such a manner that they became "appurtenances" under Oklahoma law. The subsequent removal or dismantling of these items by the Reorganized Debtor cannot act to defeat the lien rights which previously attached to them.

21. In addition, the Secured Creditors have advised the Reorganized Debtor that – as is reflected in its own filings, including its Omnibus Substantive Objection – it appears the value of the Kingfisher Facility has declined *substantially* since the confirmation hearing in November of 2019. Throughout most of 2020, the Reorganized Debtor insisted it intended to retain the facility, and only changed direction when it decided it was no longer in its economic interest. Under the

Confirmed Plan, the Secured Creditors were entitled to receive payment of their Allowed Secured Claim, which is based upon the value of the facility *as of confirmation*, not the value of the facility a year later. The Reorganized Debtor's surrender of the collateral at this point fails to provide the Secured Creditors with the equivalent of their secured claims. The Secured Creditors assert the Reorganized Debtor remains liable for this diminution in value.

22. The Secured Creditors have repeatedly asked the Reorganized Debtor for a timeline for the immediate surrender of the Kingfisher Facility while these other issues are resolved. It has refused to do so. The Reorganized Debtor's vacillation on turnover has already resulted in substantial economic harm to interests of the Secured Creditors; it should not be allowed to prolong it. It should be ordered to surrender the Kingfisher Facility to the Secured Creditors without further delay. The resolution of other related issues, such as whether items that were removed from the facility and sold without the Secured Creditors' approval were "appurtenances", have no impact on turnover and should not further delay that outcome.

BASIS FOR RELIEF

I. The Court Has Jurisdiction to Enforce the Plan.

23. Article XI of the Confirmed Plan provides for retention of exclusive jurisdiction by this Court to handle various matters, including to (i) ensure that distributions to Holders of Allowed Claims or Allowed Equity interests are accomplished pursuant to the provisions of this Plan; (ii) enter such orders "as may be necessary or appropriate to implement or consummate" the provisions of the Confirmed Plan; and (iii) enforce the terms and conditions of the Confirmed Plan.

24. Under 11 U.S.C. § 1142(b), the Court may direct the debtor and any other necessary party "to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan," or to perform any other act that is

necessary for consummation of the plan. Likewise, Fed. R. Bankr. P. 3021 provides that after a plan is confirmed, distribution *shall* be made to creditors whose claims have been allowed.

25. Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects to the claim. While the Reorganized Debtor did file its Omnibus Substantive Objection, as noted above, the only basis asserted in that objection to the Secured Creditors' claims was as to valuation under § 506(a), and the Reorganized Debtor is now seeking to *surrender* the Kingfisher Facility.

26. At this point, it appears the Reorganized Debtor has had a change of heart and now wishes to surrender "the collateral," even though it is no longer worth what it was at the time of confirmation, and despite the concern it may have sold some items that were subject to the liens. The Secured Creditors have no objection to receiving the Kingfisher Facility. Given the economic turmoil in the energy sector (and frac sand mining in particular), any turnover should occur quickly to minimize further economic harm to the lien creditors. The outstanding disputes over whether certain items of personal property are subject to the liens, or if the Reorganized Debtor is liable for the current diminution in market value of the facility, should not delay the turnover process any further. Instead, those issues can be reserved for future resolution.

II. Surrender of the Kingfisher Facility Still Leaves Lien Issues to Resolve

27. Under Okla. Stat. § 42-141, any person who, under an oral or written contract with the owner of land, performs labor or furnishes materials or equipment for the "erection, alteration, or repair of any building, improvement, or structure thereon," shall have a lien "**upon the whole of said tract or piece of land, the buildings and appurtenances** in an amount inclusive of all sums owed to the person at the time of the lien filing, including, without limitation, applicable profit and overhead costs." (Emphasis added).

28. Under Oklahoma law, any valid materialmen's lien "stand[s] co-equal" with other materialmen's liens against the property. *Local Federal Sav. & Loan Ass'n v. Davidson & Case Lumber Co.*, 208 Okla. 155, 162, 255 P.2d 248 (Okla. 1952). As the court put it in that case, "if the funds [available from the property] are insufficient to pay the lien claimants in full, then claims should be paid co-equal upon a pro rata basis." *Id.* (bracketed material supplied). To the extent the Kingfisher Facility is worth less than the combined total of valid liens, therefore, all valid lien claimants will share pro rata in the distribution to be made by the Debtors.

29. To date, the only substantive issue raised regarding the lien claims at Kingfisher related to the value of the facility itself. The Reorganized Debtor has arguably waived all others. The Secured Creditors believe that after any surrender or abandonment by the Reorganized Debtor, the lien claimants may still have issues to resolve among themselves, such as allocation issues. The Oklahoma Foreclosure would be the logical place to handle those issues, as well as any subsequent judicial sale of the Kingfisher Facility, as the lien claimants are all parties to that proceeding and it could move forward quickly. The reality is that the lien claimants have been delayed by more than a year in realizing on the value of their collateral due to the Reorganized Debtor's handling of the claim issues. They should not be further delayed in having a court of competent jurisdiction resolve any other issues remaining amongst and between themselves..

III. The Residual Issues Can Be Resolved Separately.

30. The first unresolved issue is whether the Reorganized Debtor sold items as "personal property" which had been previously affixed or attached to the real estate (or to another item which was, in turn, affixed or attached to the real estate) so that it was subject to the lien claims. As this Court may recall, the Reorganized Debtor decided to proceed with an auction of these items notwithstanding the objections of the Secured Creditors. The Reorganized Debtor does

not believe these items are subject to the liens. If they are, the Reorganized Debtor had asserted the liens would, in turn, attach to the proceeds of the sale. Since the items have already been sold and the Reorganized Debtor has received the proceeds of that sale, resolution of this issue should have no impact upon the timely turnover of everything the Reorganized Debtor *concedes* is subject to the lien claims, rather than be permitted to lord that collateral over the Secured Creditors' collective heads as a litigation tactic.

31. The second open issue – determining the value of the facility as of the date of confirmation -- is admittedly more complicated but flows directly from the Reorganized Debtor's unilateral decision to *surrender* the Kingfisher Facility rather than pay the judicially determined replacement value as contemplated under § 506(a). As such, it realistically only arises *if* the Reorganized Debtor surrenders the collateral and should also have no impact upon the immediate surrender of the facility itself.

32. The Confirmed Plan specified that holders of "Other Secured Claims" would be treated in one of three ways (if they did not *agree* to a different treatment): (i) payment of their allowed secured claim as determined under § 506(a); (ii) receipt of the collateral securing their claim; or (iii) other treatment that would render them unimpaired.

33. The Bankruptcy Code provides that an allowed claim of a creditor secured by a lien on property "is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." 11 U.S.C. § 506(a). The appropriate standard for determining value depends upon what will be done with the property: i.e., if it will be liquidated, surrendered, or retained by the debtor. *In re Heritage Highgate, Inc.*, 679 F.3d 132, 141 (3d Cir. 2012).

34. The Supreme Court has held that a "replacement-value" standard properly values the creditor's interest when the "reality" is that there will be no foreclosure sale (and no liquidation)

but rather the economic benefit for the debtor is equal to the asset's replacement value. *Associates Commerical Corp. v. Rash*, 520 U.S. 953 (1997). Accordingly, the Supreme Court concluded that the value of property retained by a debtor in a bankruptcy reorganization is properly "the cost the debtor would incur to obtain a like asset for the same 'proposed use.'" *Id*. at 963.

35. As another appellate court noted recently, the Supreme Court in *Rash* emphasized that retention of property by a debtor signals a certain "proposed repayment reality: no foreclosure sale." *In re Sunnyslope Housing Limited Partnership*, 859 F.3d 637, 644 (9th Cir. 2017) (citing *Rash*, 520 U.S. at 963). Replacement value is the price a willing buyer in a debtor's trade, business, or situation would pay to obtain "like property" from a willing seller. *Rash*, 520 U.S. at 960. As the Third Circuit recognized in *Heritage Highgate*, the proposed disposition or use of the property is of "paramount importance" to the determination under § 506(a). 679 F.3d at 141.

36. As the Third Circuit noted in *Heritage Highgate*, the value of property should be determined as of the date to which the valuation relates; where the purpose is to determine treatment of a claim by a plan, the hearing must focus on the values "that will prevail on the confirmation date." 679 F.3d at 143 n.9 (*citing In re Stanley*, 185 B.R. 417, 423-24 (Bankr. D. Conn. 1995)). As the Third Circuit observed, "[a] wait-and-see approach would in effect do away with bankruptcy courts' obligation to determine value under § 506(a)." *Id.*, at 143.

37. The Secured Creditors were prepared to address the value of the property – and the extent of their Allowed Secured Claims – *during* the confirmation hearing in November of 2019. For the better part of 2020, the Reorganized Debtor held the Kingfisher Facility as a hedge against the possibility it might want the facility at some point in the future. Indeed, as the Court noted in its Confirmation Decision, the Debtors always manifested an intention "to long-term idle the facility to maintain *the option* to resume development if and when it is deemed appropriate and

financing obtained." *See* Doc. 671 at 3 (emphasis added). Now, the Reorganized Debtor apparently wishes to hold the Kingfisher Facility during litigation as a tactic against the possibility they might have to pay damages for diminution in value of that facility over the past year.

38. Of course, it appears the economics have changed. It no longer wishes to keep the facility and would prefer to surrender it, but only *after* discovering the markets have "declined" since it emerged from bankruptcy. In other words, now that the facility is worth less than it was, the Reorganized Debtor is willing to let it go. But this delayed decision-making has detrimentally impacted the Secured Creditors in a corresponding fashion. In essence, any decrease in the collateral's value that occurred after confirmation has resulted in a reduction in the amount the Secured Creditors can realize on their secured claims.

39. The Secured Creditors have advised the Reorganized Debtor that they reserve the right to assert claims for the post-confirmation diminution in value of the Kingfisher Facility. The idea the Reorganized Debtor can hold the property for its advantage and shift the burden of depreciation to the creditors is inconsistent with *Heritage Highgate's* rejection of a "wait and see" approach to § 506(a). Courts in other contexts have also recognized that it is "unlikely" congressional intent is to give debtors the "option" to shift the burden of depreciation to a secured creditor when the debtor no longer has any use for a devalued asset after confirmation. *See In re Adkins*, 425 F.3d 296, 301 (6th Cir. 2005).

40. Regardless, the reservation of this dispute should not prevent the Reorganized Debtor from acting upon its stated intention – namely, to surrender the facility to the lien claimants and to so immediately, thereby making this an actual controversy between the parties.

CONCLUSION

For the foregoing reasons, the Secured Creditors request that the Court enter an Order, substantially in the form attached hereto as Exhibit B: (i) granting the Motion, (ii) directing the Reorganized Debtor to immediately surrender the Kingfisher Facility, (iii) reserving the issues of any additional personal property disputes and any potential claims for diminution in value of the Kingfisher Facility for later determination; and (iv) granting such other and further relief as the Court deems just and proper.

Date: December 3, 2020
Wilmington, Delaware

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EMERGE ENERGY SERVICES LP,[1]	)	Case No. 19-11563 (KBO)
	)	
Reorganized Debtor.	)	**Obj. Deadline: December 17, 2020 at 4:00 p.m.** **Hearing Date: January 21, 2021 at 11:00 a.m.**
	)	
	)	**Related Docket No. 682**

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on December 3, 2020, Market and Johnson, Inc. and Pownall Services, LLC, creditors in this case, filed their *Joint Motion of Market and Johnson, Inc. and Pownall Services, LLC to Enforce Provisions of Reorganized Debtor's Confirmed Chapter 11 Plan* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that objections or responses to the Motion, if any, must be made in writing, filed with the Bankruptcy Court, and served so as to actually be received by the undersigned attorneys for the Debtors on or before **December 17, 2020 at 4:00 p.m. (EST)** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion, if required, is scheduled before the Honorable Karen B. Owens at the Bankruptcy Court, 824 North Market Street, Sixth Floor, Courtroom #3, Wilmington, Delaware 19081 on **January 21, 2021 at 11:00 a.m. (EST).**

[1] 1 The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor's address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED BY THE OBJECTION DEADLINE IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Date: December 3, 2020
Wilmington, Delaware

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Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
EMERGE ENERGY SERVICES LP, *et al.*,	Case No. 19-11563 (KBO)
Debtors.	Courtroom No. 2 824 North Market Street Wilmington, Delaware 19801 November 4, 2019 9:30 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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evidence.

MR. DENTON: Thank you, Your Honor.

So, if there are no further objections from the parties or the court, I request to move Mr. Dunayer's declaration, docket number 563, into evidence.

THE COURT: Okay. Are there any objections to the admission?

(No verbal response)

THE COURT: Okay. Hearing none, it's admitted.

(Declaration of Adam Dunayer, admitted)

MR. DENTON: And, Your Honor, as our witness today, we would like to call Adam Dunayer, please.

THE COURT: Okay. Mr. Dunayer, good morning, sir, please approach and remain standing, so you can be sworn.

ADAM DUNAYER, WITNESS, SWORN

THE CLERK: Please be seated. State your full name for the record and spell your last.

THE WITNESS: It's Adam Lee Dunayer; D-U-N-A-Y-E-R.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. DENTON:

Q Good morning, Mr. Dunayer.

A Good morning.

Q Where are you employed?

Q And so, if we're looking at Slide 28, can you show the Court where in here you have the total costs that the debtors have incurred so far in building Oklahoma.

A It's the middle column, "total incurred."

Q And that's the one that sums up to 15.193 million; is that right?

A Yes.

Q So why did you choose to base your methodology off of cost incurred?

A This is an uneconomic set of assets at this point in a basin that just doesn't make sense to finish. It's possible it's worth zero or it's a liability.

We're thinking that maybe at some point somebody will buy these assets for something, but today, you know, we came one this six-to-nine-million-dollar valuation hoping that somebody -- maybe a local player down there wants a different location. It's kind of a hope kind of valuation.

Q And --

THE COURT: Sorry. So, is it a replacement value?

THE WITNESS: I wouldn't call it a replacement value because, you know, to take what we have and finish it, it's $18-plus million dollars.

THE COURT: Uh-huh.

THE WITNESS: I would think it's just what the value of the assets that are there sold at as a -- not in a

liquidation where you're just selling piece by piece, but maybe somebody who wants to finish this project.

THE COURT: Like a lake user analysis?

THE WITNESS: Correct.

THE COURT: Okay. So, that would be different than a going-concern basis?

THE WITNESS: Well, there's no going-concern here to use to value this.

THE COURT: Right.

BY MR. DENTON:

Q And you had testified before about construction back in 2017, right?

A Yes.

Q And, presumably, the debtors paid for -- strike that. So, in terms of the equipment and construction materials and everything that they acquired back in 2017 for this plant, what have those materials been doing for the past year or two?

A Just sitting there.

Q And how does that view -- how does that impact your views as to their value?

A It's going to impair your value. They depreciate, for one thing, but just having steel and other assets just sit there is never a good thing for these types of assets.

Q So, if we can then go back to once you took that cost

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EMERGE ENERGY SERVICES LP, [1]	)	Case No. 19-11563 (KBO)
	)	
Reorganized Debtor.	)	**Related Docket No. ____**

ORDER GRANTING JOINT MOTION OF MARKET AND JOHNSON, INC. AND POWNALL SERVICES, LLC TO ENFORCE PROVISIONS OF REORGANIZED DEBTOR'S CONFIRMED CHAPTER 11 PLAN

Upon consideration of the *Joint Motion of Market and Johnson, Inc. and Pownall Services, LLC to Enforce Provisions of Reorganized Debtor's Confirmed Chapter 11 Plan* (the "Motion"); the Court having reviewed the Motion, any objections or responses to the Motion and all related pleadings; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein and that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor,

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Reorganized Debtor is directed immediately to surrender the Kingfisher Facility[2]; and it is further

ORDERED that the issues of any additional personal property disputes and any potential claims for diminution in value of the Kingfisher Facility are hereby reserved for later determination; and it is further

[1] 1 The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor's address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2021
Wilmington, Delaware

_____
The Honorable Karen B. Owens
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Elihu E. Allinson, III, hereby certify that on the 3rd day of December, 2020, a copy of the *Joint Motion of Market and Johnson, Inc. and Pownall Services, LLC to Enforce Provisions of Reorganized Debtor's Confirmed Chapter 11 Plan* was electronically filed and served via CM/ECF on all parties requesting electronic notification in this case.

December 3, 2020
Date

/s/ E.E. Allinson III
Elihu E. Allinson, III