

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11  
: :  
: : Case No. 19-11563 (KBO)  
EMERGE ENERGY SERVICES LP, *et al.*,<sup>1</sup> :  
: (Jointly Administered)  
: :  
Debtors. : **Hearing Date: August 14, 2019 at 11:00 a.m. (ET)**  
: **Re: Docket Nos. 6 and 61**  
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**DECLARATION OF BRYAN M. GASTON IN SUPPORT OF DEBTORS’ OMNIBUS  
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE  
DEBTORS TO (I) REJECT CERTAIN RAILCAR LEASE AGREEMENTS NUNC PRO  
TUNC TO THE PETITION DATE, AND (II) ENTER INTO PROPOSED NEW  
RAILCAR LEASE AGREEMENTS EFFECTIVE AS OF THE PETITION DATE**

I, Bryan M. Gaston, pursuant to 28 U.S.C. § 1764, hereby declare and state:

1. I am the Restructuring Officer (“**RO**”) of each of the debtors and debtors-in-possession in the above-captioned cases (collectively, the “**Debtors**” or “**Emerge Energy**”). I submit this Declaration in support of the *Debtors’ Omnibus Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Railcar Lease Agreements Nunc Pro Tunc to the Petition Date, and (II) Enter into Proposed New Railcar Lease Agreements Effective as of the Petition Date* (the “**Motion**”).<sup>2</sup>

<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 have the meaning given them in the Motion.



2. All facts and opinions set forth in this declaration are based upon: (a) my personal knowledge; (b) information learned from my review of relevant documents; (c) information supplied to me or verified by company personnel or the Debtors' advisors; and/or (d) my experience and knowledge concerning turnarounds and restructurings of distressed companies.

3. Prior to these Bankruptcy Cases, the Debtors' business model focused both on mining and processing sand in Wisconsin, referred to as "northern white" sand, as well as operating "in-basin" sand mines (discussed in greater detail below). Selling northern white sand entails transporting it to customers using railcars. As a result, the Debtors leased a fleet of 4,910 railcars<sup>3</sup>, and had agreements in place to lease more than 3,000 additional cars in the future.

4. Over time, however, the fracking industry began to shift towards using "in-basin" sand, which is located close to drilling sites. In-basin sand is a cheaper alternative to northern white sand because it does not require lengthy and costly transportation from Wisconsin via railcar. The industry shift toward an in-basin model has significantly reduced demand for northern white sand. As a result, the Debtors' Wisconsin operations have slowed and the Debtors hold a large, underutilized, and expensive railcar fleet. Moreover, given the state of the industry, many of the leases include rates for these railcars that are much higher than current market rates for the same cars. Therefore, the Debtors hold far too many railcars, at above-market fixed monthly rental rates. Further, absent retroactive rejection, the Debtors may incur unnecessary administrative charges and other obligations under these railcar leases without any reciprocal benefits to their estates. The terms of these leases do not allow the Debtors to unilaterally

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<sup>3</sup> This number excludes 75 railcars that the Debtors have sub-leased to third parties and another 25 railcars that have been repossessed on terminated leases.

terminate the leases out of bankruptcy without potentially subjecting the Debtors to substantial damages.

5. The Debtors currently intend to continue their Wisconsin operations going forward and to continue selling their product throughout the North American market. After adjusting for contracts slated for rejection, the Debtors will have four transload terminals under contract and numerous other transload terminals used on a spot market basis throughout North America to distribute the sand produced in Wisconsin to existing customers. The Debtors continue to explore new opportunities and establish, build and expand relationships with potential customers. However, a substantially greater portion of the Debtors' business is now in-basin sand than it was in the past. As a result, the Debtors estimate they may need far fewer railcars than under the existing leases.

6. There are numerous factors which determine the number of railcars needed for the Debtors' fleet. One such factor is the current and expected sales volumes for northern white sand. Another is the Debtors' plant and rail infrastructure, which dictates the number of railcars the Debtors can hold and how they operate these cars in relation to their production facilities to fulfill customer orders. A third factor is the locations to which sales are expected to be shipped, which determine the type of trains needed, the train routes, and the time required to reach the destinations, offload the shipment, and return to the plants. In evaluating all these factors, the Debtors determined it was in their best interest to not only reduce the number of leased cars but to structure new, more flexible leases to allow the Debtors to optimize their fleet.

7. After carefully considering the rail factors described above, as well as the volatility of the sand industry, the Debtors determined that leases with a fixed and variable structure were a better alternative to pure fixed-rate leases. Because of the significant cost to

move or return empty railcars, and the Debtors' excess plant capacity to hold cars, existing lessors of the Debtors were incentivized to have the Debtors hold as many cars as possible. Therefore, a fleet based upon fixed lease structures, with payment for only those cars in use, allowed the Debtors to achieve far better economic terms than any other alternative available to the Debtors. This leasing structure also allows the Debtors to hold excess cars to take advantage of possible upside should the market recover, but without the downside cost associated with prior, traditional lease structures. With all these factors taken into consideration, the Debtors negotiated to lease a minimum of approximately 1,450 railcars going forward but will (a) hold additional cars at their option and (b) pay only for cars they use, which could fall above or below 1,450. This structure and these terms are far superior to a fleet of 5,000 cars at above-market, fixed rents and, in my view, these revised terms add significant value to the Debtors' estates.

8. The Debtors' railcar fleet includes leases for large numbers of railcars with Trinity Industries Leasing Company ("Trinity"), MUL Railcars Leasing, LLC ("MUL"), and CIT Bank, N.A. and The CIT Group/Equipment Financing, Inc., as an assignee of CIT Rail, LLC (collectively, "CIT"). Since January 2019, the Debtors have been engaged in extensive arms'-length negotiations with all existing railcar lessors to reduce the fleet size and restructure these leases. Only these parties elected to negotiate amended leases with the Debtors.

9. Those negotiations continued and intensified in the months leading up to bankruptcy. These negotiations were successful and resulted in several crucial benefits to the Debtors: (a) the Debtors will reduce their fleet size<sup>4</sup> substantially, with a minimum of 1,450 railcars made available to them by the lessors, and with the Debtors paying rent only on such cars

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<sup>4</sup> If the Motion is granted, Debtors will be able to reduce their current fleet size of 4,910 railcars through the rejection of their existing railcar lease agreements.

as they have in use in a given period; (b) the Debtors will benefit from a limited holiday in the accrual of rent under the new leases; (c) the Debtors have substantially reduced the fixed rental rates for each railcar (and have added a variable rent increase mechanism that steps up rental rates depending on the tonnage of sand the Debtors are able to ship via rail); (d) the Debtors are permitted to terminate the leases if the Wisconsin-based northern white sand operations cease (mitigating against downside risk should a further decline in the northern white sand market require the Debtors to ever halt their Wisconsin operations); and (e) the Debtors avoided having the railcar lessors exercise contractually entitled remedies due to the Debtors' defaults under the prior agreements in the months preceding the Petition Date.<sup>5</sup>

10. Irrespective of the favorable terms of the new leases, agreeing to amended lease terms prepetition was critical to the continuity of operations of the northern white sand business and avoidance of substantial administrative costs under the existing leases. In either case, (i) continuing to operate under the current leases, or (ii) the complete rejection and abandonment of all leases and railcars could require the Debtors to have to shut down their northern white operations, and thus cause irreparable harm to the business through the potential loss of customers, creation of liabilities through delivery shortfalls relating to firm supply agreements, layoff of experienced employees with no guarantee of rehiring, and damage to vendor relationships including the railcars lessors themselves.

11. It is my view that the proposed terms of these renegotiated leases are more favorable to the Debtors than their prior leases. These new terms were developed as a result of

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<sup>5</sup> In exchange for the above benefits to the Debtors, the Debtors have, among other things, agreed that the lessors will benefit from the releases under the Proposed Plan. The lessors, through their good-faith negotiations and entry into beneficial new leases with the Debtors, are making meaningful contributions to the success of these cases that substantially benefit all parties in interest.

lengthy, good- faith, arms'-length negotiations. I believe that it is in the best interests of the Debtors and their stakeholders to enter into the letter agreements.

12. Accordingly, I believe that the Court should grant the Motion, as the Debtors' proposal to reject the existing railcar lease agreements *nunc pro tunc* to the Petition Date, and enter into the proposed new agreements effective as of the Petition Date, reflects a sound exercise of the Debtors' business judgment.

Dated: August 14, 2019  
Wilmington, DE



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Bryan M. Gaston  
Senior Managing Director  
Ankura Consulting Group, LLC