

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. 19-11563 (KBO)
: :
Debtors. : (Jointly Administered)
: :
----- X Re: Docket No. 9

**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**

Upon the motion (the “**Motion**”),² of the Debtors for entry of an Order authorizing the Debtors to (i) reject certain railcar lease agreements, including any amendments or modifications thereto, each as set forth on Schedule 1, Schedule 2 and Schedule 3 attached hereto (collectively, the “**Rejected Railcar Leases**”) *nunc pro tunc* to the Petition Date and (ii) enter into new railcar lease agreements (collectively, the “**New Railcar Leases**”) with the Counterparties, effective as of the Petition Date, all as more fully described in the Motion; and the Court having reviewed the Motion; 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

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 them in the Motion.



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 it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and the Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to reject the Rejected Railcar Leases, identified on Schedule 1, Schedule 2 and Schedule 3 attached hereto, including, to the extent applicable, any agreements, amendments, modifications, and subleases related thereto, effective as of the Petition Date.
3. Consistent with the limitations of section 362 of the Bankruptcy Code, and any other applicable law, the Counterparties are prohibited from setting off or otherwise utilizing any amounts deposited by the Debtors with any of the Counterparties as a security deposit or pursuant to another similar arrangement, or owed to the Debtors by any of the Counterparties under the Rejected Railcar Leases or other agreements between the same parties, without further order of this Court.
4. Pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, the Rejected Railcar Leases are rejected, *nunc pro tunc* to the Petition Date.
5. The Debtors are authorized to enter into the New Railcar Leases, effective as of the Petition Date.

6. The Term Sheets are deemed modified to the extent necessary to include (and to exclude language inconsistent with), and any New Railcar Leases entered into pursuant to the Term Sheets shall include, the following provisions regarding termination of such New Railcar Leases:

- a. In the event the Company disposes of its Northern White assets, whether through sale, abandonment, cessation of operations, or otherwise, the Company shall have the right to assign, subject to the Lessor's consent, such consent to not be unreasonably withheld, or terminate the leases (and, for avoidance of doubt, no administrative claims shall exist for rent accruing for periods following the date of such termination except to the extent of any cars actually utilized by the Company after the termination date), and the Company and the Lessor shall evenly share the cost of return of all railcars. Notwithstanding the foregoing, the Company shall use commercially reasonable efforts to return railcars to a destination identified by the Lessor but shall not be under any obligation to actually return railcars to such destination.
- b. In the event that the Approved Plan is not confirmed on or prior to December 31, 2019, or if prior to such date the Company withdraws modifies, or substitutes the Approved Plan with a plan of reorganization or a plan of liquidation that treats the general unsecured creditors or the Lessors worse than the Approved Plan, i.e., the treatment has a value that is less than what is currently contemplated in the Approved Plan, or does not include the Lessors as a "Released Party" thereunder, then each such

Lessor shall have the right to terminate its respective leases. As used herein, an “Approved Plan” means the Joint Plan of Reorganization for Emerge Energy Services LP and its affiliate Debtors under Chapter 11 of the Bankruptcy Code that was filed with the United States Bankruptcy Court for the District of Delaware on July 25, 2019.

7. Any claims based on the rejection of the Rejected Railcar Leases shall be filed in accordance with the Court’s *Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim (Including for Administrative Expense Claims Arising Under Section 503(b)(9) of the Bankruptcy Code) and Approving the Form and Manner of Notice Thereof* [D.I. 157].

8. Nothing herein shall prejudice the rights of the Debtors to argue that any of the Rejected Railcar Leases were terminated prior to the Petition Date or that any claim for damages arising from the rejection of the Rejected Railcar Leases is limited to the remedies available under any applicable termination provision of such contract or lease, as applicable, or that any such claim is an obligation of a third party and not that of the Debtors or their estates.

9. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption of any lease, sublease, or contract pursuant to section 365 of the Bankruptcy Code.

10. Adequate notice of, and an opportunity for a hearing on, the Motion has been provided, and such notice satisfies the requirements of Bankruptcy Rule 6004(a).

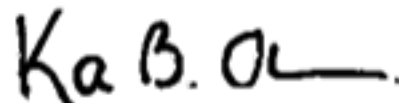
11. Notwithstanding any applicability of Bankruptcy Rule 6004(h) the terms and conditions of this Order are immediately effective and enforceable upon its entry. The Debtors

are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. 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 Order, including but not limited to executing the New Railcar Leases.

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

Dated: August 14th, 2019
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Schedule 1**Rejected Trinity Railcar Leases**

No.	Debtor Name	Counterparty	Contract Name	Contract Description	Contract Date
1.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.2 to Rider One (1)	Railcar Lease Rider One (1), as Amended May 23, 2016	5/23/2016
2.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Two (2)	Railcar Lease Rider Two (2), as Amended May 23, 2016	5/23/2016
3.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Three (3)	Railcar Lease Rider Three (3), as Amended May 23, 2016	5/23/2016
4.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Four (4)	Railcar Lease Rider Four (4), as Amended May 23, 2016	5/23/2016
5.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Five (5)	Railcar Lease Rider Five (5), as Amended May 23, 2016	5/23/2016
6.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Eight (8)	Railcar Lease Rider Eight (8), as Amended May 23, 2016	5/23/2016
7.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Nine (9)	Railcar Lease Rider Nine (9), as Amended May 23, 2016	5/23/2016
8.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Ten (10)	Railcar Lease Rider Ten (10), as Amended May 23, 2016	5/23/2016
9.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Twelve (12)	Railcar Lease Rider Twelve (12), as Amended May 23, 2016	5/23/2016
10.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.2 to Rider Thirteen (13)	Railcar Lease Rider Thirteen (13), as Amended May 23, 2016	5/23/2016
11.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.2 to Rider Fourteen (14)	Railcar Lease Rider Fourteen (14), as Amended May 23, 2016	5/23/2016
12.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Fifteen (15)	Railcar Lease Rider Fifteen (15), as Amended May 23, 2016	5/23/2016

No.	Debtor Name	Counterparty	Contract Name	Contract Description	Contract Date
13.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Sixteen (16) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 16	10/6/2014
14.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Seventeen (17) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 17	10/6/2014
15.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Eighteen (18) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 18	10/6/2014
16.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Nineteen (19) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 19	10/6/2014
17.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty (20) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 20	10/6/2014
18.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-One (21) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 21	10/6/2014
19.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Acknowledgement of Termination Notice	Trinity Railcar Lease Rider 22, Terminated April 13, 2015	4/13/2015
20.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Three (23) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 23	2/10/2015
21.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Four (24) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 24	2/10/2015
22.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Five (25) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 25	2/10/2015
23.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Six (26) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 26	2/10/2015
24.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Seven (27) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 27	2/10/2015
25.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Eight (28) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 28	2/10/2015
26.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Twenty-Nine (29) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 29	2/10/2015

No.	Debtor Name	Counterparty	Contract Name	Contract Description	Contract Date
27.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Thirty (30) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 30	2/10/2015
28.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Thirty-One (31) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 31	2/10/2015
29.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Rider Thirty-Two (32) to Railroad Car Lease Agreement	Trinity Railcar Lease Rider 32	2/10/2015
30.	Superior Silica Sands LLC	Trinity Industries Leasing Company	Amendment No.1 to Rider Thirty-Four (34)	Trinity Railcar Lease Rider 34	5/23/2016

Schedule 2**Rejected MUL Railcar Leases**

No.	Debtor Name	Counterparty	Contract Name	Contract Description	Contract Date
1.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 1	11/1/2016
2.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 2	11/1/2016
3.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 3	11/1/2016
4.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 5	11/1/2016
5.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 7	11/1/2016
6.	Superior Silica Sands LLC	MUL Railcar Leasing LLC	Lease Amendment Agreement Lease Schedules No. 1, 2, 3, 5, 7 And 9	MUL Railcar Lease Rider 9	11/1/2016

Schedule 3

Rejected CIT Railcar Leases

A. CIT Bank leases

Master Railcar Lease, dated as of February 13, 2014 (“Master Lease”), between CIT Rail LLC and Superior Silica Sands LLC (“SSS”), and the following lease schedules thereto: (i) Schedule No. 01 dated as of February 13, 2014 (SSSA02001); (ii) Schedule No. 02 dated as of February 13, 2014 (SSSA02002), (iii) Schedule No. 03 dated as of February 13, 2014 (SSSA02003); (iv) Schedule No. 04 dated as of February 13, 2014 (SSSA02004); and (v) Schedule No. 06 dated as of October 30, 2014 (SSSA02006), between CIT Bank, N.A. (as assignee of CIT Rail LLC) and SSS

B. CIT/EF leases

The Master Lease and the following lease schedules thereto: (i) Schedule No. 05 dated as of October 30, 2014 (SSSA02005); (ii) Schedule No. 07 dated as of October 30, 2014 (SSSA02007); and (iii) Schedule No. 09 dated as of October 30, 2014 (SSSA02009), between The CIT Group/Equipment Financing, Inc. (as assignee of CIT Rail LLC) and SSS