

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re	§	
	§	Chapter 11
	§	
EXPRESS ENERGY SERVICES	§	
OPERATING, LP, <i>et al.</i> ,	§	Case No. 09-____ (____)
	§	
	§	
Debtors.	§	
	§	
	§	Joint Administration Requested

DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4) AND 507(a)(5) OF THE BANKRUPTCY CODE (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION, AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, AND (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR PREPETITION CHECKS AND FUND TRANSFER REQUESTS FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Express Energy Services Operating, LP (“**EES**”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”),¹ file this motion (the “**Motion**”) for interim and final orders, pursuant to sections 105(a), 362(d), 363(b), 507(a)(4), and 507(a)(5) of title 11 of the Bankruptcy Code (defined below) (i) authorizing, but not directing, the Debtors to (a) pay prepetition wages, salaries, employee benefits and other compensation, and (b) maintain employee benefits programs and pay related administrative obligations; and (ii) authorizing applicable banks and other financial institutions to receive, process, honor and pay all checks presented for payment and to honor all funds transfer requests related to the foregoing or, to the extent necessary, authorizing the

¹ A list of the Debtors in these chapter 11 cases is attached hereto as **Exhibit A**.

Debtors to issue replacement checks or electronic fund transfers and, in support thereof, respectfully represent as follows:

I.

BACKGROUND

1. On the date hereof (the “**Commencement Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. Information regarding the Debtors’ business and events leading to the Debtors’ bankruptcy filings can be found in the Declaration of Darron Anderson in Support of the Debtors’ Chapter 11 Petitions and First Day Motions, filed contemporaneously herewith.

II.

JURISDICTION

3. Pursuant to 28 U.S.C. §§ 157 and 1334, the Court has jurisdiction to consider and grant the relief requested herein. A proceeding to consider and grant such relief is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III.

RELIEF REQUESTED

4. As described in greater detail below, by this Motion, and pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, the Debtors request entry of an interim order, substantially in the form of **Exhibit B** (the “**Interim Order**”) attached hereto, and, following further notice and a hearing, entry of a final order, substantially in the form of **Exhibit C** (the “**Final Order**”) granting the following relief requested (capitalized terms used in this Relief Requested section shall have the meaning ascribed to them in this Motion):

5. **Interim Relief:** The Debtors seek entry of an Interim Order:
- a. authorizing, but not directing, the Debtors to pay certain outstanding prepetition amounts, obligations, and associated costs as they become due prior to the entry of a final order approving this Motion (the “**Interim Period**”) relating to (i) Unpaid Wage Obligations, subject to the \$10,950 cap on compensation per employee for such prepetition obligations provided for in section 507(a) of the Bankruptcy Code (the “**Prepetition Wage Cap**”); (ii) Withholding Obligations; (iii) Reimbursement Obligations to all Employees; (iv) the Auto Allowance Program ((i)-(iv) collectively, “**Employee Compensation Obligations**”); and (v) obligations due under the Health and Welfare Programs (“**Benefits Obligations**”).
 - b. authorizing, but not directing, the Debtors during the Interim Period to (i) pay Employee Compensation Obligations and Benefits Obligations that become due on a postpetition basis, and (ii) continue to honor their Leave Policies, Health and Welfare Programs, and Auto Allowance Program; and
 - c. authorizing and directing the Debtors’ banks and other financial institutions (“**Banks**”) to receive, honor, process, and pay, to the extent funds are available in their accounts, any and all checks drawn, or electronic fund transfers requested or to be requested, on the Debtors’ accounts the extent that such checks or electronic fund transfers relate to Employee Compensation Obligations and/or Benefits Obligations.²

² The Debtors have historically operated with thirteen separate bank accounts. Consistent with the Debtors’ motion filed contemporaneously herewith seeking authority to continue their cash management system, the Debtors wish to continue to maintain these bank accounts and fund Debtor obligations as needed.

6. **Final Relief:** The Debtors seek entry of a Final Order:
 - a. authorizing, but not directing, the Debtors to pay all outstanding Employee Compensation Obligations and Benefits Obligations;
 - b. authorizing, but not directing, the Debtors, in the ordinary course of business and exercise of their business judgment, to continue to honor their Employee Compensation Obligations, Leave Policies, and Health and Welfare Programs, in the ordinary course of business during the administration of these chapter 11 cases; and
 - c. directing the Banks to receive, honor, process, and pay, to the extent funds are available in their accounts, any and all checks drawn, or electronic fund transfers requested or to be requested, on the Debtors' accounts the extent that such checks or electronic fund transfers relate to Employee Compensation Obligations and Benefits Obligations.

IV.

THE DEBTORS' EMPLOYEES

7. The Debtors currently employ approximately 1,200 active employees, of whom approximately 800 are hourly employees and 400 are salaried employees (each, an "**Employee**" and, collectively, the "**Employees**").

8. The Employees' skills and knowledge of the Debtors' business, infrastructure, and operations are essential to the effective operation and reorganization of the business. Without the continued services of the Employees, an effective reorganization of the Debtors will not be possible.

A. Employee Compensation Obligations

i. Wage Obligations

9. The Debtors' Employees are compensated under various pay plans and cycles. Certain of the Employees are paid on an hourly basis and others are salaried. Hourly employees are paid on a weekly or bi-weekly basis in arrears, with payment made in the week following the payroll period. Salaried employees are paid semi-monthly on the 15th and the last

day of the calendar month, with payment made on the last day of each payroll period. The Debtors' average monthly gross compensation for their Employees, including wages, salaries and related compensation (other than commissions (as discussed below)), is approximately \$7.1 million, but fluctuates based on hours worked and other variables (collectively, the "**Wage Obligations**").

10. Payroll is funded to Employees either by direct deposit or checks. Prior to each pay date, the Debtors fund payroll accounts held at Coastal Commerce Bank ("**Coastal Commerce**") with the amount necessary to satisfy direct deposit payroll obligations. The Debtors typically fund these payroll accounts with the amount necessary to satisfy check payroll obligations within a day or two after each pay date. Because the Debtors' hourly Employees are paid in arrears, as of the Commencement Date, some of the Debtors' Employees will not have been paid all of their prepetition wages. Compensation may also be due and owing as of the Commencement Date to hourly and/or salaried Employees because of, among other things: (a) potential discrepancies between the amounts paid and amounts Employees believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees; (b) the delay between when some payroll checks are issued and when they are presented to Coastal Commerce for payment from the payroll account; and (c) job, footage and other forms of compensation, which are paid in the month following the payroll periods.

11. In the ordinary course of the Debtors' business operations, the Debtors also provide additional compensation pay in the form of sales-related commissions to certain of their Employees. Participating Employees rely on the receipt of such commissions as a large part of their overall compensation. The Debtors generally pay out such commissions on a monthly basis.

12. As of the Commencement Date, no Employee had earned more than \$10,950 in unpaid Wage Obligations and/or commissions. The aggregate amount of accrued, but unpaid Wage Obligations and/or commissions earned by the Debtors' Employees was approximately \$3.0 million (collectively, the "**Unpaid Wage Obligations**"). By this Motion, the Debtors seek the authority, but not the direction, to (a) pursuant to the Interim Order, pay the Unpaid Wage Obligations that come due during the Interim Period, and (b) pursuant to the Final Order, continue their employee compensation practices postpetition in the ordinary course of business of business during the administration of these chapter 11 cases.

ii. **Withholding Obligations**

13. During each applicable pay period, the Debtors routinely deduct certain amounts from paychecks, including, without limitation, (a) garnishments, child support, and similar deductions, (b) deductions for voluntary charitable contributions, and (c) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits, health, dental, vision and life insurance premiums, 401(k) contributions, legally ordered deductions and other miscellaneous deductions) (collectively, the "**Deductions**") and forward those amounts to various third-party recipients. Historically, the Deductions are approximately \$560,000 per month. As of the Commencement Date, the Debtors estimate the amount of accrued and outstanding prepetition obligations on account of the Deductions is approximately \$257,000.

14. Further, the Debtors are required by law to withhold from an Employee's wages amounts related to, among other things, federal, state and local income taxes, and social security and Medicare taxes (collectively, the "**Withheld Amounts**") for remittance to the appropriate federal, state or local taxing authorities. The Debtors withhold approximately \$1.3

million per month from the Employees' paychecks for the Withheld Amounts. The Debtors must then match from their own funds for social security and Medicare taxes and pay, based upon a percentage of gross payroll, plus pay additional amounts for state and federal unemployment insurance (the "**Employer Payroll Taxes**," and together with the Withheld Amounts, the "**Payroll Taxes**"). Historically, the Debtors' Payroll Taxes are approximately \$1.8 million per month. As of the Commencement Date, the Debtors estimate the amount of accrued and outstanding prepetition obligations with respect to the Payroll Taxes to be approximately \$816,000. The aggregate amount of prepetition accrued, but unpaid, Deductions and Payroll Taxes is approximately \$1.1 million (collectively, the "**Withholding Obligations**"). By this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, honor the Withholding Obligations that come due during the Interim Period, and (b) pursuant to the Final Order, continue to honor the Withholding Obligations in the ordinary course of business during the administration of these chapter 11 cases.

B. Leave Policies

15. The Debtors maintain a number of paid time off benefit programs for their Employees (the "**Leave Policies**"). The Debtors provide vacation time to most of their Employees, upon satisfaction of a waiting period after hiring, as a paid time-off benefit ("**Vacation Time**"). Vacation Time varies based on the Employee's length of service. Vacation Time accrues and is earned on an Employee's anniversary date of employment. When used, Employees are generally paid for Vacation Time at their regular hourly or salaried rates. Any earned, but unused, Vacation Time is forfeited. Vacation Time is not paid out upon termination of employment.

16. The Debtors also provide eight hours of pay for certain holidays.

Employees are also eligible for paid leave if summoned for jury duty. In addition, most full and part-time Employees are entitled to paid sick time for temporary periods of absence, including absence due to injury, illness of the Employee, or an immediate family member.

17. The Debtors believe that their Leave Policies should be honored during the administration of these chapter 11 cases because it enables the Debtors to satisfy the expectations of their workforce with minimal cash expenditures and, in some instances, to comply with applicable state law. Accordingly, by this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, continue their Leave Policies and allow Employees to take paid vacation, holidays, personal holidays, and sick leave, and (b) pursuant to the Final Order, continue to honor their Leave Policies in the ordinary course of business.

C. Reimbursement Obligations

18. Prior to the Commencement Date and in the ordinary course of their business, the Debtors, directly or indirectly, reimbursed Employees for approved expenses incurred on behalf of the Debtors in the scope of their employment and, in accordance with applicable company policy. Reimbursable expenses include purchasing fuel for business purposes, lodging, rental cars, transportation, flight arrangements and other miscellaneous business expenses (the “**Reimbursement Obligations**”). Most Employees initially incur and pay such expenses by using personal or corporate credit cards, which amounts are either satisfied directly or reimbursed by the Debtors after submission and approval of expense reimbursement requests. Based on historical data, the Debtors average approximately \$140,000 per month of approved Reimbursement Obligations.

19. As of the Commencement Date, the Debtors' total unpaid prepetition Reimbursement Obligations are estimated to be approximately \$122,000, which includes reimbursement requests that have been submitted, but not yet paid, or reimbursement amounts that have been incurred, but for which a request has not yet been submitted. The Reimbursement Obligations were incurred on the Debtors' behalf, consistent with company policy and with the expectation that they would be reimbursed.

20. Accordingly, by this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, satisfy any Reimbursement Obligations as they become due during the Interim Period, and (b) pursuant to the Final Order, authorizing, but not directing, payment of any outstanding prepetition Reimbursement Obligations owing to Employees and continuation of the Debtors' reimbursement policy in the ordinary course during the administration of these chapter 11 cases.

D. Incentive Plan

21. The Debtors offer an incentive program (the "**Incentive Plan**") that rewards certain key Employees with quarterly payments that are based on a percentage of the Debtors' earnings before income, taxes, depreciation, amortization, and restructuring costs (the "**EBITDAR Targets**"). The Incentive Plan and the EBITDAR Targets set forth therein were approved by the Debtors' Board of Managers and implemented in the ordinary course of business prior to the Commencement Date.

22. As of the Commencement Date, the Debtors have no outstanding obligations to Employees under the Incentive Plan. The Debtors are not scheduled to make payments to Employees, if any, pursuant to the Incentive Plan until January 2010. Should the Debtors seek to make payments that are outside the ordinary course of the Debtors' business

during the administration of these chapter 11 cases, the Debtors will return to the Court to seek such relief as is appropriate and necessary. At this time, however, the Debtors are not seeking any relief with respect to the Incentive Plan.

E. Health and Welfare Programs

23. The Debtors have established a number of insurance and benefits programs for their Employees, including (a) medical, prescription drug, dental and vision plans, (b) life and disability insurance, and (c) retirement savings plans (collectively, the “**Health and Welfare Programs**”).

24. Generally, regular full-time and part-time Employees are eligible to participate in the Health and Welfare Programs. Regular full-time Employees become eligible in the first month following thirty days of employment. Regular part-time Employees become eligible on the first of the month coinciding following ninety days of employment.

i. Medical, Prescription Drug, Dental and Vision Plans

25. Generally, the Debtors offer several insurance policies to eligible Employees for medical, dental, and vision care coverage (collectively, the “**Health Insurance Programs**”), which may be summarized as follows:

- (a) **Medical Plan and Dental Plan** Blue Cross Blue Shield of Texas administers both the Debtors’ medical plan (the “**Medical Plan**”) and dental plan (the “**Dental Plan**”). The Debtors self-insure the claims costs under the Medical Plan. The Medical Plan offers two PPO options with different deductibles, coinsurance, co-pays, payroll premiums, and coverage. As of the Commencement Date, there are no outstanding prepetition obligations owed with respect to the Medical Plan and the Dental Plan.
- (b) **Vision Plan**. The Debtors offer Employees a voluntary vision care program through Vision Service Plan (the “**Vision Plan**”). The Debtors pay a total of approximately \$7,000 per month for the Vision Plan on behalf of the Debtors’ Employees. As of the Commencement Date, there are no outstanding prepetition obligations owed with respect to the Vision Plan.

26. By this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, (i) pay prepetition amounts under the Health Insurance Programs as such amounts come due during the Interim Period, and (ii) continue such Health Insurance Programs in the ordinary course, pending entry of the Final Order, and (b) pursuant to the Final Order, pay any additional prepetition amounts as they may come due thereafter, and to continue to honor these obligations and maintain these programs postpetition in the ordinary course of business.

ii. **Life Insurance Programs**

27. The Debtors provide company-paid basic life insurance coverage, which includes basic accidental death and dismemberment (AD&D) coverage for eligible Employees. The Debtors also provide their Employees the option to elect to participate in supplemental life insurance and supplemental AD&D coverage programs (together, with the basic life and AD&D programs, the “**Life Insurance Programs**”). Premiums for the supplemental life and AD&D programs are withheld from the Employees’ pay. The Debtors pay a total of approximately \$21,100 for the Life Insurance Programs on behalf of the Employees. As of the Commencement Date, there are no outstanding prepetition obligations with respect to the Life Insurance Programs.

28. By this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, continue to offer the Life Insurance Programs and pay prepetition amounts due under such programs as they come due during Interim Period, and (b) pursuant to the Final Order, pay any remaining prepetition amounts due as part of the Life Insurance Programs and continue these programs postpetition in the ordinary course of business during the administration of these chapter 11 cases.

iii. **Disability Benefits**

29. The Debtors also provide Employees with short-term and long-term disability benefits (collectively, the “**Disability Benefits**”). Eligible Employees are entitled to, among other things, continuation of a portion of their salaries in the event of a short-term medical disability due to an illness or injury. For eligible Employees, short-term disability benefits begin after an Employee is absent from work for fourteen consecutive days due to an illness. Long-term disability benefits begin after an Employee is absent from work for one hundred and eighty consecutive days. The Debtors pay approximately \$26,700 in monthly premiums for the Disability Benefits. As of the Commencement Date, there are no outstanding obligations owed by the Debtors in connection with the Disability Benefits.

30. By this Motion, the Debtors seek authority, but not direction, to (a) pursuant to the Interim Order, continue to provide such Disability Benefits to their Employees and pay prepetition amounts due under the Disability Benefits as such amounts come due during Interim Period, and (b) pursuant to the Final Order, pay any remaining prepetition amounts due as part of the Disability Benefits and continue to honor these obligations postpetition in the ordinary course of business during the administration of these chapter 11 cases.

iv. **401(k) Plan**

31. The Debtors maintain a 401(k) plan for the benefit of all eligible part- and full-time EES Employees (the “**401(k) Plan**”). Funds in the 401(k) Plan are held by the Debtors and Wachovia Bank (“**Wachovia**”), and are administered by Wachovia. The 401(k) Plan generally provides for pre-tax and post-tax salary deductions of eligible compensation up to the limits set by the Internal Revenue Code. The 401(k) Plan amounts are generally automatically deducted from each participating Employee’s paycheck. As of the Commencement Date, there

are no outstanding prepetition obligations with respect to the 401(k) Plan. By this Motion, the Debtors seek authority, but not direction, pursuant to the Interim Order and Final Order, to maintain the 401(k) Plan postpetition in the ordinary course of business, including, but not limited to, passing Employee contributions to the 401(k) Plan to Wachovia.

F. Auto Allowance Program

32. The Debtors' Employees who are required to drive in connection with the Debtors' business operations are entitled to receive an automobile allowance (the "**Auto Allowance Program**"). A majority of the vehicles involved in the Auto Allowance Program include large four-wheel drive pickup trucks and SUVs that have the necessary capability of going off road to access a client's well site, deliver equipment to, and provide services for, the Debtors' clients. Payments are made under the Auto Allowance Program on a monthly basis and total approximately \$108,000.

33. The Auto Allowance Program is essential to the Debtors' business operations. The Debtors' next payment for the Auto Allowance Program is due on or about November 1, 2009. The Debtors seek interim and final authority, but not direction, to continue to honor and satisfy their obligations under the Auto Allowance Program in the ordinary course of business during the administration of these chapter 11 cases.

V.

BASIS FOR RELIEF REQUESTED

A. Payment of Employee Compensation Obligations and Benefits Obligations and Continuation of the Leave Policies and Health and Welfare Programs is Essential to the Debtors' Successful Reorganization.

34. The Debtors seek the relief requested herein because any delay in paying any of the Employee Compensation Obligations or Benefits Obligations could severely disrupt the Debtors' relationship with their Employees and irreparably impair their morale at the very

time that their dedication, confidence, retention, and cooperation are most critical. At this critical stage, the Debtors simply cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale or composition attributable to the Debtors' failure to pay the Employee Compensation Obligations and Benefits Obligations in the ordinary course of their business.

35. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, employee claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Commencement Date are afforded priority unsecured status to the extent of \$10,950 per employee. Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$10,950 per employee covered by such plan, less any amount paid pursuant to section 507(a)(4). Furthermore, section 363(b)(1) of the Bankruptcy Code provides 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). Section 105(a) of the Bankruptcy Code further provides that a Bankruptcy Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code.

36. The Debtors believe that a substantial portion of the prepetition Employee Compensation Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any of the Debtors' general unsecured obligations may be satisfied. Accordingly, the relief requested herein largely will affect only the timing of the payment of these priority obligations, and should not prejudice the rights of general unsecured creditors or other parties in interest.

37. Moreover, with respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors, as the relevant taxing authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations. Moreover, the portion of the Payroll Taxes withheld from an employee's wages on behalf of an applicable taxing authority and the other Deductions are held in trust by the Debtors. As such, Payroll Taxes and other similar Deductions are not property of the Debtors' estates under section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53 (1990) (concluding that withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate).

38. Finally, the maintenance of the Leave Policies and Health and Welfare Benefits Programs are necessary for the Debtors' business to continue to operate in the ordinary course and to maximize value for all stakeholders. Absent the relief requested, Employees will suffer undue hardship and potential serious financial difficulties. Employees are also essential to the orderly and successful reorganization of the Debtors. They have substantial and valuable knowledge of the Debtors' business operations, and any deterioration in Employee morale and welfare at this critical time undoubtedly would adversely impact the Debtors, the value of their assets and business, and ultimately their ability to reorganize.

39. This Court has previously granted authority for a debtor's payment of claims similar to the Employee Compensation Obligations and Benefits Obligations. See, e.g., In re Energy Partners, Ltd., et al., Case No. 09-32957 (Bankr. S.D. Tex. May 1, 2009 and May 8, 2009) (Dkt. Nos. 31 and 87); In re CDX Gas, LLC, Case No. 08-37922 (Bankr. S.D. Tex. Feb. 3, 2009) (Dkt. No. 189).

B. Banks Should Be Authorized and Directed to Honor and Pay Checks Issued and Make Other Transfers to Pay Employee Compensation Obligations and Benefits Obligations

40. The Debtors further request that the Court authorize and direct the Debtors' Banks to receive, process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtors in respect of the Employee Compensation Obligations and Benefits Obligations. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of the Employee Compensation Obligations and Benefits Obligations to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected.

41. As a result of the commencement of the Debtors' chapter 11 cases, and in the absence of an order of the Court providing otherwise, the Debtors' checks, wire transfers and direct deposit transfers in respect of the Employee Compensation Obligations or Benefits Obligations may be dishonored or rejected by the Banks. The Debtors represent that each of these checks or transfers is or will be drawn on specific accounts that can be readily identified as relating directly to payment of Employee Compensation Obligations or Benefits Obligations.

C. The Debtors Have Satisfied The Requirements of Bankruptcy Rule 6003

42. Bankruptcy Rule 6003 provides that to the extent "relief is necessary to avoid immediate and irreparable harm," a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty days after the Commencement Date. FED. R. BANKR. P. 6003.

43. As described herein and in the Declaration of Darron Anderson, the immediate and irreparable harm to the Debtors' estates is self-evident if the authority sought herein were not promptly implemented to pay Employee Compensation Obligations and Benefits

Obligation as described in this Motion. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, the requirements of Bankruptcy Rule 6003 have been satisfied.

D. Waiver of Bankruptcy Rules 6004(a) and (h)

44. To implement the foregoing immediately, to the extent the Court deems them applicable, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

VI.

NOTICE

45. The Debtors have served notice of this Motion on (i) the U.S. Trustee; (ii) Credit Suisse, as administrative agent for (a) the Debtors' prepetition secured lenders under the Credit Agreement dated as of July 11, 2008, as amended, and (b) the Swap Agreement dated as of July 11, 2008; (iii) Akin Gump Strauss Hauer & Feld (Attn: J. Michael Chambers and Charles R. Gibbs), attorneys for Credit Suisse; (iv) the Debtors' 20 largest unsecured creditors (on a consolidated basis); and (v) all applicable government agencies, to the extent required by the Bankruptcy Rules or the Bankruptcy Local Rules for the Southern District of Texas. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: October 27, 2009
Houston, Texas

/s/ Alfredo R. Pérez
Alfredo R. Pérez (15776275)

WEIL, GOTSHAL & MANGES LLP
700 Louisiana Street, Suite 1600
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

Attorneys for Debtors
and Debtors in Possession

EXHIBIT A**LIST OF DEBTORS**

Debtor	Last Four Digits of Federal Tax I.D. No.
Express Energy Services Operating, LP	7644
Express Energy Services (2008) LLC	3087
Express Energy Services Holding, LP	7122
Express Energy Services GP, LLC	7083
Express Energy Services CT, LP	8432
Express Energy Services Ark, LP	5287
Express Energy Services P&A, LP	8402
Express Energy Services WL, LP	2834
Express – Byrd R&S GP, LLC	7556
Express – Byrd R&S Oilfield Services, L.P.	7580
Express – MBCC GP, LLC	0760
Express – MBCC, Ltd.	0802
Express – Mike Byrd Casing Crews GP, LLC	0852
Express – Mike Byrd Casing Crews, Ltd.	0938
Express – R&S Tong Services GP, LLC	2230
Express – R&S Tong Services, Ltd.	7465
Express – BAH Leasing GP, LLC	0510
Express – BAH Leasing, Ltd.	0708
D&D Tongs GP, LLC	6566
D&D Tongs, L.P.	6586
Express – North Trail Oilfield Services, GP, LLC	7506
Express – North Trail Oilfield Services, Ltd.	7526
Express – Ace Rat Hole Service GP, LLC	6617
Express – Ace Rat Hole Service, Ltd.	6632

EXHIBIT B

PROPOSED INTERIM ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<p>In re</p> <p>EXPRESS ENERGY SERVICES OPERATING, LP, et al.,</p> <p>Debtors.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 09-_____ (____)</p> <p>Joint Administration Requested</p>
---	---	--

**INTERIM ORDER PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4)
AND 507(a)(5) OF THE BANKRUPTCY CODE (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,
EMPLOYEE BENEFITS AND OTHER COMPENSATION, AND
(B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED
ADMINISTRATIVE OBLIGATIONS; AND (II) AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR PREPETITION CHECKS AND FUND TRANSFER
REQUESTS FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS**

Upon the Emergency Motion (the "Motion")¹ of Express Energy Services Operating, LP ("EES") and its affiliated debtors in the above referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors") Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure for Entry of an Order (i) Authorizing the Debtors to (a) Pay Prepetition Wages, Salaries and other Compensation, and (b) Maintain Employee Benefits Programs and Pay Related Administrative Obligations; and (ii) Authorizing Financial Institutions (the "Banks") to Honor Prepetition Checks and Fund Transfer Requests for Payment of Prepetition Employee Obligations, all as more fully described in the Motion; and upon consideration of the Declaration

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of Darron Anderson in Support of the Debtors' Chapter 11 Petitions and First Day Motions; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding the Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the hearing thereon has been given under the circumstances and that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is ORDERED that

1. The Motion is GRANTED on an interim basis to the extent provided herein.
2. A final hearing (the "**Final Hearing**") on the Motion shall be held on _____, 2009 at _:__ a.m./p.m. Central Time. Any objections or responses to the Motion shall be filed on or before _____ business days prior to the Final Hearing and served in accordance with applicable law.
3. Pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, the Debtors are authorized, but not required, to make payments with respect to the prepetition accrued, but unpaid, Employee Compensation Obligations and Benefits Obligations, as well as those that become due postpetition during the Interim Period, in accordance with the Debtors' prepetition practices and policies; provided, however, that the Debtors are not authorized to pay any Employee more than \$10,950 on account of Unpaid Wage Obligations prior to the entry of a final order approving the relief requested in the Motion.

4. Pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, the Debtors are authorized, but not directed, to continue to honor existing practices, programs, and policies with respect to their Employees during the Interim Period, including the Health and Welfare Programs, Auto Allowance Program, and Leave Policies, as such practices, programs, and policies were in effect as of the date of the commencement of the Debtors' chapter 11 cases, all as further described in the Motion.

5. The Banks shall be, and hereby are authorized and directed, when the Debtors request, in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' payroll or disbursement accounts and any other transfers that are related to the prepetition Employee Compensation Obligations or Benefits Obligations and the costs and expenses incidental thereto, whether those checks were presented prior to or after the Commencement Date, provided that sufficient funds are available in the accounts to make such payments.

6. Any Bank 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 Commencement Date should be honored pursuant to this Interim Order, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

7. The Debtors are authorized (consistent with this Interim Order) to issue postpetition checks or to effect postpetition funds transfer requests in replacement of any checks or funds transfer requests related to Employee Compensation Obligations or Benefits Obligations dishonored or rejected as a consequence of the commencement of the Debtors' chapter 11 cases.

8. Nothing in this Motion nor any payments made by the Debtors pursuant to this Interim Order, shall be deemed an assumption, adoption, or rejection of any employee

benefit plan, collective bargaining agreement, employment agreement, or other program or contract or shall otherwise affect the Debtors' rights under sections 365 and 1113 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and the contract counterparty or the Debtors' rights under section 1114 of the Bankruptcy Code, if applicable, to modify or terminate retiree benefits.

9. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Employee Compensation Obligation, including without limitation any taxes that may be due to any taxing authority.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, and 9014 or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

11. Bankruptcy Rule 6003(b) has been satisfied.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Interim Order.

Dated: _____, 2009
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

PROPOSED FINAL ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>In re</p> <p>EXPRESS ENERGY SERVICES OPERATING, LP, et al.,</p> <p style="text-align: center;">Debtors.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 09-_____ (___)</p> <p>Joint Administration Requested</p>
---	---	---

**FINAL ORDER PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4)
AND 507(a)(5) OF THE BANKRUPTCY CODE (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,
EMPLOYEE BENEFITS AND OTHER COMPENSATION, AND
(B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY
RELATED ADMINISTRATIVE OBLIGATIONS; AND
(II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
PREPETITION CHECKS AND FUND TRANSFER REQUESTS
FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS**

Upon the Emergency Motion (the “**Motion**”)¹ of Express Energy Services Operating, LP (“**EES**”) and its affiliated debtors in the above referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure for Entry of an Order (i) Authorizing Debtors to (a) Pay Prepetition Wages, Salaries and other Compensation, and (b) Maintain Employee Benefits Programs and Pay Related Administrative Obligations; and (ii) Authorizing Financial Institutions (the “**Banks**”) to Honor Prepetition Checks and Fund Transfer Requests for Payment of Prepetition Employee Obligations, all as more fully described in the Motion; and upon consideration of the Declaration of Darron

¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in Motion.

Anderson in Support of the Debtors' Chapter 11 Petitions and First Day Motions; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding the Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the hearing thereon has been given under the circumstances and that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is ORDERED that

1. The Motion is GRANTED to the extent provided herein.
2. Pursuant to sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, the Debtors are authorized, but not directed, to continue to honor existing practices, programs, and policies with respect to their Employees, including the Health and Welfare Programs, Auto Allowance Program, and Leave Policies, as such practices, programs, and policies were in effect as of the date of the commencement of the Debtors' chapter 11 cases, all as further described in the Motion.
3. The Banks shall be, and hereby are authorized and directed, when the Debtors request in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' payroll or disbursement accounts and any other transfers that are related to the prepetition Employee Compensation Obligations or Benefits Obligations and the costs and expenses incidental thereto, whether those checks were presented prior to or after the Commencement Date, provided that sufficient funds are available in the accounts to make such

payments.

4. Any Bank 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 Commencement Date should be honored pursuant to this Order, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

5. The Debtors are authorized (consistent with this Order) to issue postpetition checks or to effect postpetition funds transfer requests in replacement of any checks or funds transfer requests related to Employee Compensation Obligations or Benefits Obligations dishonored or rejected as a consequence of the commencement of the Debtors' chapter 11 cases.

6. Nothing in this Motion nor any payments made by the Debtors pursuant to this Motion, shall be deemed an assumption, adoption, or rejection of any employee benefit plan, collective bargaining agreement, employment agreement, or other program or contract or shall otherwise affect the Debtors' rights under sections 365 and 1113 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and the contract counterparty or the Debtors' rights under section 1114 of the Bankruptcy Code, if applicable, to modify or terminate retiree benefits.

7. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Employee Compensation Obligation, including without limitation any taxes that may be due to any taxing authority, or Benefits Obligation.

8. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2009
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE